

DIRECTIVE PRINCIPLES OF STATE POLICY AND WOMEN IN INDIA

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ABSTRACT

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. The Directive Principles of State Policy are the guidelines or principles given to the federal institutes governing the state of India, to be kept in citation while framing laws and policies. The Constitution of India prohibits discrimination based on sex but it equally directs and empowers the government to undertake special measures for women. The principles have been inspired by the Directive Principles given in the Constitution of Ireland relate to social justice, economic welfare, foreign policy, and legal and administrative matters. These provisions, contained in Part IV (Article 36-51) of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered irrefutable in the governance of the country, making it the duty of the State² to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the Directive Principles given in the Constitution of Ireland relate to social justice, economic welfare, foreign policy, and legal and administrative matters.

KEYWORDS : Welfare state, Directive Principles, Gender equality and Uniform civil code

The aim of our constitution is to establish a welfare state. Welfare state means a nation where the government bodies take care of the needs of the citizens. The directive principles of state policy are the reflection of

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² The term "State" includes all authorities within the territorial periphery of India. It includes the Government of India, the Parliament of India, the Government and legislature of the states of India. It also includes all local or other authorities such as Municipal Corporations, Municipal Boards, District Boards, and Panchayats etc. To avoid confusion with the term states and territories of India, State (encompassing all the authorities in India) has been capitalized and the term state is in lower case.

governance that India is a welfare democratic state. The Constitution provides many protection rights for women such as Protective discrimination in favor of women, Right to freedom of women, Right of women against exploitation, Rights of women under directives and political representations of women. This policy envisaged equal rights to work, equal pay for equal work, adequate means of decent and dignified livelihood to both men and women, these are guaranteed under the directive principles of State policy. Part IV of the Constitution containing Articles 38, 39 (a) (d) and (e), 42, 44 and 45 deals with the welfare and development of women. All these rights are explained below.

A. Equal justice and Free legal aid

In Indian Constitution there are provisions to get Equal justice and free legal aid to the needy. "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". Legal Services Authorities Act, 1987 also contains many provisions and guidelines to ensure free legal aid and equal justice. Legal Aid which means giving free legal services to the poor and needy who are unable to afford the services of an advocate for the conduct of a case or a legal proceeding in any court, tribunal or before an Judicial authority. In the case of Hussainara khatoon vs. State of Bihar³, it was held that if any accused is not able to afford legal services then he has a right to free legal aid at the cost of the state.

B. Principle of “equal pay for equal work” is a constitutional goal.

India still lacks a comprehensive and transparent wage policy for all the sectors of the economy. Gender equality is the goal, while gender neutrality and gender equity are practices and ways of thinking that help in achieving the goal. Gender parity, which is used to measure gender balance in a given situation, can aid in achieving gender equality but is not the goal in and of itself. The principle of Equal Pay for Equal Work was first considered in Kishori Mohanlal Bakshi v. Union of India⁴ in the year 1962 where the Supreme Court declared it incapable of being enforced in the court of law. However, it received due recognition only in 1987 through Mackinnon Mackenzie’s case⁵. Here the issue of concern was a claim for equal remuneration for Lady Stenographers and Male Stenographers. This was ruled in favour of lady stenographers as the Court was in favour of equal pay. The Apex court in Randhir Singh v. Union of India⁶, has expressed the opinion that the

³ AIR 1979 SC 1322

⁴ Kishori Lal Mohan Lal Bakshi v. Union of India, A.I.R. 1962 S.C.

1139 http://www.companyliquidator.gov.in/12/jud_sc/OFFICIAL%20LIQUIDATOR%20VS.%20DAYANAND.pdf

⁵ Mackinnon Mackenzie and Co. Ltd. vs. Audrey D'Costa and Others (1987) 2 SCC

469 http://www.ilo.org/public/english/employment/gems/eo/law/india/case_law.htm

⁶⁶⁶ AIR 1982 SC 879

principle of “equal work” is not declared in the Constitution to be a fundamental right but it is certainly a constitutional goal. Article 39(d) ensures that there is equal pay for equal work for both men and women. The Parliament has enacted the Equal Remuneration Act, 1976 and to implement Article 39. The doctrine of ‘equal pay for equal work’ is equally applicable to both men and women, even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work⁷.

The court further said that continuing Articles 14 and 16 in the light of Preamble and Article 39(d), the principle of equal pay for equal work is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though, those drawing the different scales of pay do identical work under the same employer. In the present case, the Supreme Court has held that the principle of ‘equal pay and equal work’, though not a fundamental right, is certainly a constitutional remedies under Article 32 of the Constitution.

C. Men and women workers to be protected equally

According to Article 39(e) of the Constitution is that the state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength and that of the children of underage to be protected equally. They should not be forced to work under inhuman and hazardous condition. In *M.C Mehta v. State of Tamil Nadu*⁸, it has been held that in view of Article 39 the employment of children within the match in view of Article 39 the employment of children within the matches factories directly connected with the manufacturing process of matches and fireworks cannot be allowed as it is hazardous. Children can, however, be employed in the process of packing, etc. away from the place of manufacturing.

D. Uniform Civil Code and Gender Equality

Under the Directive Principles of State Policy in Article 44, it is suggested, “The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India.” In order to establish true equality among the citizens of the country, the State must enforce the Uniform Civil Code. Gender justice means social, political and economic equality for women. It suggests the abolition of the patriarchal system that has infused with the system. Gender justice is indispensable for ‘development’ in a true sense. The implementation of a uniform civil code and the issue of gender justice, these two are closely connected to each other in Indian socio legal perspective. Women empowerment in core areas like social status, gender bias, health, security and empowerment are of urgent necessity. Article 44 expects from the State to secure a Uniform Civil Code for all

⁷ Daily Rates Casual Labor v. Union of India, (1988) 1 SCC 122.

⁸ (1991) 1 SCC 283

citizens of India. There is no Uniform Civil Code in India but a Uniform Criminal Code exists. The Criminal law is equally applicable to all citizens irrespective of their religious affiliation. However in the case of civil law particularly in the matter of personal laws there is no uniformity. Article 15(1) of the Indian Constitution, “The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.” World history is evidence to the fact that one of the most neglected ideas has been that of women’s rights. Around half of the world’s population has been denied equality in almost every sphere of life. This statement is a testimony to the fact that equality without gender justice is no equality at all. In *Sarla Mudgal vs Union of India*⁹, a division bench of the Supreme Court consisting of Kuldip Singh and R.M. Sahai, JJ strongly advocated the introduction of a Uniform Civil Code in India. In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose Of contracting bigamous circumvents Section 494 of Indian Penal Code. Such marriages have been declared as bigamous and void by the court. The court after referring to various precedents on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to second marriage while the first marriage is subsisting to become a Muslim. Here the Court was pointing out the injustice done to the first wife, legally wedded. The Bench noted the failure of successive governments till date, to implement the constitutional mandate under Article 44 of the constitution of India. It was suggested that the personal laws of the minorities should be rationalized to develop religious and cultural amity preferably by entrusting the responsibility to the Law Commission and Minorities Commission. The Bench further directed the Government of India to file an affidavit indicating the steps taken and efforts made to have a fresh look at Article 44 in August, 1996. However, the latter direction was treated as “obiter dicta” by the court subsequently. In a recent judgment, *Lily Thomas vs. Union of India*¹⁰, while dealing with the validity of the second marriage contracted by a Hindu husband after his conversion to Islam, the Supreme Court clarified that the court had not issued any directions for the codification of a common Civil Code and that the judges constituting the different Benches had only expressed their views in the Facts and circumstances under these cases. It appears that the Apex Court in India, which showed great judicial activism initially with regard to uniform civil code, has taken a backward step with this clarification.

E. Protection of women from prostitution and rehabilitation of their children

In the past decade the volume of human trafficking has increased to the extent that today it is the third-largest form of transnational illegal trade after arms and drugs. The objective of such trafficking of women and girls is the commercial sexual exploitation. Section 16 of the Immoral Traffic (Prevention) Act, 1956, provides for the

⁹ AIR, 1995 1531

¹⁰ AIR 2000 SC 1650

rescue of persons living or carrying on, or made to carry on prostitution, in a brothel. In the case of *Gaurav Jain v. Union of India*¹¹, the issue that came up before the Supreme Court was the rehabilitation of the children of the prostitutes. The Apex Court observed that, segregating children of prostitutes by locating separate schools, and providing separate hostels, would not be in the best interest of the children and the society at large. The Honorable Court directed that, these children should be segregated from their mothers and should be allowed to mingle with others and become a part of the society. The Court further contemplated that, the children of prostitutes should, however, not be permitted to live in the inferno and other undesirable surroundings of prostitute homes. This was observed particularly so in context of the young girls whose body and mind are likely to be abused with growing age for being admitted into the profession of their mothers. Whilst the court did not accept the plea for separate hostels for children of the prostitutes, it felt that, accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their respective mothers living in prostitute homes as soon as they are identified. In the case of *Gaurav Jain and Anr v. Union of India & Ors*¹², the Supreme Court of India (the Three Judges Bench comprising of: Sujata V. Manohar, S.P. Kurdukar, and D.P. Wadhwa, JJ.) elucidating on the scope of its power under Article 142 held that, Article 142 cannot override Article 145(5). The Apex Court observed as follows:

1. Even in non-adversarial public interest litigation if the two-judges comprising the Division Bench differ, matter has to be referred to the Chief Justice of India for constituting a larger bench for decision, and it would not be competent for one of them to issue directions for compliance by invoking Article 142 on the plea that the same has been done to avoid delay involved in reference to a larger bench.
2. The directions issued under Article 142 by K. Ramaswamy, J. in *Gaurav Jain Union of India*, (1997) 8 SCC 114, regarding prostitution, its amelioration and eradication to which D.P. Wadhwa, J., the other member of the Division Bench dissented, cannot stand in law.

Thus, this case overruled, *Gaurav Jain v. Union of India*¹³, however, directions issued in *Gaurav Jain v. Union of India*¹⁴, with respect to social-reintegration of the children of the prostitutes and establishment of juvenile homes were upheld.

CONCLUSION

The directive principle plays an ideal before the legislator of India which shows that light while they frame the policies & laws. They are basically a code of conduct for the legislature and administrators of the country. They

¹¹ 1990 Supp SCC 709: 1991 SCC (Cri) 140

¹² (1998) 4 SCC 270

¹³ (1997) 8 SCC 114

¹⁴ (1997) 8 SCC 114

show the path to the leaders of the country which takes the country to achieve the ideal of the constitution embodied in the Preamble “Justice, Social, Economic, Political; liberty, equality and fraternity”. Prostitutes cannot be seen as individuals with half-rights or no-rights; the Constitution of India guarantees them all rights as are available to all other citizens of the country, the crowning glory of them all being the “right to self-determination”. The only good that can be done to uplift the prostitutes from their situation of crises is to acknowledge them as human beings not only of ‘flesh’ but also of emotions; rights; privileges and liberties; and to make them realize that the Constitution of India shields them, protects them and embraces them, as it does to all other citizens of the country. The problem of trafficking of women and children for the purpose of sexual exploitation is prevalent at various levels—local, inter-district, inter-State and cross-border. Commercial exploitation of women and children takes place in various forms including brothel-based prostitution, sex tourism, entertainment industry and pornography in print and electronic media. Trafficking for commercial exploitation of women and children has resulted not only in violation of right, but also has adverse physical, psychological and moral consequences for the victims.

