

SUPREME COURT OF INDIA

Kapila Hingorani

Versus

State of Bihar

9.5.2003

(V.N. Khare, CJ and S.B. Sinha, J.)

Writ Petition (C) No. 488 of 2002.

V.N. Khare, CJ. - If at all and to what extent the Government of the State of Bihar is vicariously liable for payment of arrears of salaries to the employees of the State owned corporations, public sector undertakings or the statutory bodies is the core question involved in this writ petition.

2. It appears from the records that various Government companies/public sector undertakings details whereof are stated hereunder have not paid salaries to their workmen and other employees for a long time resulting in death of several persons and miseries brought to a large number of families as would appear from the following :

Statement as of 12.3.2003

Table with 15 columns: D, Bi, Bi, Bi, In, Bih, Fr, Bi, Bi, In, In, Bi, Bi, Fro. The table contains names of various entities and their locations, such as D. Ha, Bi. Ha, Bi. Ha, In. Ha, Bih. Ha, Fr. Ha, Bi. Ha, Bi. Ha, In. Ha, In. Ha, Bi. Ha, Bi. Ha, Fro. Ha.

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3. A newspaper report as regard non-payment of salary for a long time resulting in starvation highlighted the case of one Chandan Bhattacharya, son of an employee of the Bihar State Agro-Industries Development Corporation who tried to immolate himself. The incident was widely reported, inter alia, in 'The Hindustan Times', Delhi Edition, on 19.9.2002 under the caption "Empty coffers drive staff to self-immolation bids'. The said Chandan Bhattacharya later on succumbed to the burn injuries suffered by him.

4. In this writ petition, the writ petitioner, a public spirited citizen and a Supreme Court lawyer, alleged that apart from plight of the employees of the public sector undertakings or the statutory authorities, even the teaching and non-teaching staff of Aided and Unaided Schools, Madrassas and Colleges have been facing a similar fate. We, however, as at present advised do not intend to deal with the same. According to the petitioner, from a newspaper report it would appear that about 250 employees died due to starvation or committed suicide owing to acute financial crisis resulting from non-payment of remunerations to them for a long time. The report further goes on to say that the

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Managing Director or has reported that the employees' Union has submitted a list of 251 employees who have died or become disabled. Similarly, the Company Secretary of the Bihar State Seeds Corporation had initially reported that 4 employees of the Corporation have

died during the period when salary was not paid. Subsequently, the Company Secretary had reported that 5 employees of the Corporation have died for want of proper treatment. However, in view of the discrepancy in the two reports of these corporations, the concerned

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hardship. The Managing Director of the corporation has reported that no case of suicide or starvation death by employees of their dependents have been reported to the Corporation but the submissions of the employees union is being verified. The Managing Director has been

asked to make a thorough investigation into the causes of these deaths and to submit a detailed report in the matter. "

9. The records of this case bear out the details had occurred owing to starvation or malnutrition. The fact that the employees have not been

paid their salaries for a long time; in some cases for a decade or more; stands admitted.

10. The Affidavit of the State of Bihar, purported to have been based on reports of the Managing Director of some Undertaking does not inspire confidence. The statements

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12. Keeping in view the complexity of the matter, this Court appointed Shri P.S. Mishra, a senior counsel of this Court, as amicus curiae. Shri Amarendra Sharan also assisted the court.

13. The learned amicus curiae has, inter alia, submitted that the independent

investigation revealed that the head offices of the Government Companies are situated in rented premises. It was contended that all shares are owned by the State and in some of the cases only one share had been allotted in the name of the nominee of the Government of the State

of Bihar. The allegations of the writ petitioner to the effect that there had been starvation deaths and/or suicide by the employees of the public sector undertakings are correct .

14. Mr. Shanti Bhushan, learned senior counsel appearing on behalf of the State of Bihar, would

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15. Mr. Soli J. Sorabjee, the learned Attorney General appearing on behalf of Union of India submitted that neither in law nor in equity the Union

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16. Mr. Mishra

, learned amicus curiae, would submit that there is no reason as to why the burden of the State should be shifted to the Union of India and having regard to the provisions of Article s 21 and 23 of the Constit

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17. Mr. Mishra would submit that the Full Bench of the Patna High Court has referred to certain decisions of this Court which did not deal with an issue of this nature nor it took notice of different facts of Article 21 of the Constitution of India which would include a right to

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Mishra
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reliance on People's Union for *Democratic Rights and others* v. *Union of India and others*, 1982(3) SCC 235, *Board of Trustees of the Port of Bombay* v. *Dilipkumar Raghvendra Nath Nadkarni and others*, 1983(1) SCC 124 and *Olga Tellis and others* v. *Bombay*

Municipal Corporation and others, 1985(3) SCC 545.

18.
Ms. Hingorani, the petitioner appearing in person, would contend that the State cannot escape its liability in the matter of payment of salaries to its own employees, although ostensibly they are working in

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1977(3
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*Som
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v.
Union
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another,
1981(2)
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20.
The
case at
hand
poses a
large
number
of
complex
questions
such as
:-

1.
Whether in a
case of
this
nature,
the
Court
would
take a
sheer
legalistic
approach in
holding that
the

corporate veil would not be lifted although its conscience stands satisfied that there has been violations of citizens' right to life and liberty as adumbrated under Article 21 of the Constitution of India ?

2. Whether having regard to the admitted position that the Government Compa

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fulfill its own and/or corporations obligations to comply with the citizen's right under Article s 21 and 23 of the Constitution of India ?

3. Whether the State of Bihar can escape its liability having regard to the human rights problem involved in the matter ?

4. Whether

er in a case of this nature the liability of the State of Bihar, if any, can be shifted to the Union of India?

21. A Company incorporated under the Companies Act is a juristic person. A company indisputably has a distinct and separate entity vis-a-vis its shareholders.

22.
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Court
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the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.
"

23. Yet again, a Constitution Bench of the Court in Steel Authority of India's case (supra) noticed the following decision

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by the
Government
for
setting
up and
management
of
public
enterprises
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carrying
out
public
functions, act
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instrumentalities of
the
Government;
they
would
be
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***Managing
Director,
U.P.
Warehousing
Corporation***

v.
***Vijay
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the principles of natural justice. There also the Court held the Corporation to an instrumental role of the State and extended protection of Article 14 and 16 of the Constitution to the employee taking the view that when the Government is bound to observe the equality

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1981(1
) SCC
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question decided by a Constitution Bench of this Court was : whether Jammu and Kashmir Regional Engineering College, Srinagar, registered as a society under the Jammu and Kashmir Registration of Societies Act, 1898, was "State" within the meaning of Article 12 of

the
Constitution
so as
to be
amenable
to
the
jurisdiction
of the
High
Court.
Having
examined
the
memorandum
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and the
Rules
of the
Society, the
Court
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the
control
of the
State
and the
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was
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the
Society
was
a mere
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the State and the Central Government and it was, therefore, an instrumental agency of the State and the Central Government and as such an authority-State within the meaning of Article 12.

The principle laid down in the aforementioned cases that if the Government acting through its

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consid

erable erosion of the efficiency of the fundamental rights, for in that event the Government would be enabled to override the fundamental rights by adopting the stratagem of carrying out its function through the instrumentality or agency of a corporation while retaining control over it.

That principle has been consistently followed and reiterated in all subsequent cases - see *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213, Som Prakash Rekhi v. Union of India, 1981(1) SCC 449 : 1981 SCC (L&S)*

**200,
Manm
ohan
Singh
Jaitla
v.
Comm
issione
r,
Union
Territo
ry of
Chand
igarh,
1984
Supp
SCC
540 :
1985
SCC
(L&S)
269,
P.K.
Ramac
handr
a Iyer
v.
Union
of
India,
1984(2
) SCC
141 :
1984
SCC
(L&S)
214, A.
L.
Kalra
v.
Project
and
Equip
ment
Corp.
of
India
Ltd.,**

*1984(3)
) SCC
316 :
1984
SCC
(L&S)
497,
Centra
l
Inland
Water
Transp
ort
Corp.
Ltd. v.
Brojo
Nath
Gangu
ly
(Centr
al
Inland
Water
Transp
ort
Corp.
Ltd. v.
Brojo
Nath
Gangu
ly,
1986(3)
) SCC
156 :
1986
SCC
(L&S)
429 :
1986(1)
) ATC
103, C.
V.
Rama
n v.
Bank
of
India
(C.V.*

*Rama
n v.
Bank
of
India,
1988(1
) SCC
105 :
1988
SCC
(L&S)
687),
Luckn
ow
Develo
pment
Author
ity v.
M.K.
Gupta,
1994(1
) SCC
243,
Star
Enterp
rises v.
City
and
Indust
rial
Develo
pment
Corpn.
of
Mahar
ashtra
Ltd.,
1990(3
) SCC
280,
LIC of
India
v.
Consu
mer
Educat
ion
and*

**Research
Centre**

**,
1995(5)
) SCC
482**

and

**G.B.
Mahajan
v.
Jalagon**

**n
Municipal
Council,
1991(3)**

) SCC

91. We

do not
propose

to
burden

this
judgment

by
adding

to the
list and

referring

to
each
case

separately.

We
wish to

clear
the air

that
the

principle,

while
discharging

the

public functions and duties the government companies/corporations/societies which are instrument abilities or agencies of the Government must be subjected to the same limitations in the field of public law - constitutional or administrative law - as the Government itself, does not lead to

the inference that they become agents of the Centre/ State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law.

(Emphasis supplied)

24. Thus, the law as stated therein

is not of universal application. The ratio of the said decisions must be applied having regard to the fact situation obtaining therein (See *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others, 2003(2) SCC 111 - (Para 59)*). It has its limitations in its applications,

as
excepti
ons
exist in
several
areas.

25. It
is now
well-
settled
that
the
corpor
ate veil
can in
certain
situatio
ns be
pierced
or
lifted.
The
princip
les
behind
the
doctrin
e is a
changi
ng
concep
t and it
is
expand
ing its
horizo
n as
was
held in
the
*State
of U.P.
and
others
v.
Renus
agar*

***Power
Company and
others,
1988(4)
) SCC
59.***

The ratio of the said decision clearly suggests that whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and look into the realities so as to identify the persons who

are
guilty
and
liable
therefo
r.

26.
The
propos
ition
that a
compa
ny
althou
gh
may
have
only
one
shareh
older
will be
distinct
juristic
person
as
adumb
rated
in
*Salom
on v.
Salom
on and
Co.,
1897
AC 22,*
has
time
and
again
been
visited
the
applica
tion of
doctrin
e of

lifting
the
corpor
ate veil
in
revenu
e and
taxatio
n
matters
. (See
***Dal
Chand
and
others
v.
Comm
issione
r of
Incom
e Tax,
Punja
b,
1944(1
2) ITR
458
and
Juggil
al
Kamla
pat v.
Comm
issione
r of
incom
e Tax,
U.P.,
1969(1
) SCR
988 :
1969(7
3) ITR
702.***

22.
The
corpor
ate veil

indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest. (See *C.I.T. Madras v. The Meenakshi Mills Ltd. and others*, 1967(1) SCR 934); *Workmen Employed in Assn. Rubber*

Industry Ltd, Bhavnagar v. Associated Rubber Industry Ltd., Bhavnagar and another, 1985(4) SCC 11; New Horizons Ltd. and another v. Union of India and others, 1995(1) SCC 478; State of U.P. and others v. Renuagar Power Co. and others, 1988(4) SCC 59; Hussai

***nbhai,
Calicut v.
The
Alath
Factor
y
Thezhi
ilali
Union,
Khozhi
kode
and
others,
1978(4
) SCC
257
and
Secret
ary
H.S.E.
B. v.
Suresh
and
others,
1999(3
) SCC
601.***

28.
The
test
that a
public
sector
undert
aking
or
Gover
nment
compa
ny can
be a
'State'
within
the
meanin
g of

Article
12 of
the
Constitution,
only
when
it
discharges
some
sovereign
functions,
has
been
given a
go-bye
by this
Court
in a
recent
decision
in
*Pradeep
Kumar
Biswas
v.
Indian
Institute
of
Chemical
Biology
and
others,
2002(5)
SCC
111.*
Disagreeing
with
the
decision
of
this
Court

in
***Sabhaj
it
Tewary
v.
Union
of
India
and
others,
1975(1
) SCC
485***, it
was
held
that
the
premis
es
whereu
pon
the
ratio of
the
said
decisio
n was
based
was
not
correct
and
follow
ed the
preced
ents a
like
***Sukhd
ev
Singh
and
others
v.
Bhaga
tram
Sardar
Singh
Raghu***

*vanshi
and
another, AIR
1975
SC
1331
and
Ajay
Husia
and
others
v.
Khalid
Mujib
Sehrav
ardi
and
others,
1981(1
) SCC
722.*
This
Court
further
held
that
the
decision
in
*Chand
er
Moha
n
Khanna
a v.
Nation
al
Counc
il of
Educat
ional
Resear
ch and
Traini
ng and
others,
1991(4*

) *SCC*
578
does
not lay
down
the
correct
law.

29. We
are not
oblivio
us of
the
legal
propos
ition as
enunci
ated in
Raman
a
Dayara
m
Shetty
and
SAIL
(supra)
that
even if
a
Gover
nment
compa
ny is a
State
within
the
meanin
g of
Article
12 of
the
Constit
ution
of
India
as an
agency

or instrumental
ity of the
State, there
does not
exist a
relationship
of principal or
an agent
and only the
action of the
said authorities
would be
State action.

30.
The Government
companies/public
sector undertakings
being 'States'
would be
constitutionally
liable

to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. They, therefore, must do so in cases of their own employees. The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability

towards the debtors of the Company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the Government companies; in the matter of enforcement of human rights and/or rights of the citizen of life and liberty, the State has

also an additional duty to see that the rights of employees of such corporations are not infringed.

31. The right to exercise deep and pervasive control would in its turn make the Government of Bihar liable to see that the life and liberty clause in respect of the employees is

fully
safegu
arded.
The
Gover
nment
of the
State
of
Bihar,
thus,
had a
constit
utional
obligat
ion to
protect
life
and
liberty
of the
emplo
yees of
the
Gover
nment
owned
compa
nies.co
rporati
ons
who
are the
citizen
s of
India.
It had
an
additio
nal
liabilit
y
having
regard
to its
right
of
extensi

ve
supervi
sion
over
the
affairs
of the
compa
ny.

32. In
relatio
n to
statuto
ry
authori
ty, the
State
had
also
the
requisi
te to
issue
necess
ary
directi
ons
which
were
bindin
g upon
them,
as for
exampl
e,
Sectio
n 79(c)
of
Electri
city
(Suppl
y) Act.

33.
The
State
having

regard
to its
right
of
supervi
sion
and/or
deep
and
pervasi
ve
control
,
cannot
be
permitt
ed to
say
that it
did not
know
the
actual
state of
affairs
of the
State
Gover
nment
undert
akings
and/or
it was
kept in
dark
that
the
salarie
s of
their
emplo
yees
had
not
been
paid
for
years

leading to starvation death and/or commission of suicide by a large number of employees. Concept of accountability arises out of the power conferred on an authority.

34. The State may not be liable in relation to the day to day functioning of the Companies, but its liability

y
would
arise
on its
failure
to
perform the
constitutional
duties
and
functions by
the
public
sector
undertakings,
as in
relation
thereto
the
State's
constitutional
obligations.
The
State
acts in
a
fiduciary
capacity. The
failure
on the
part of
the
State
in a
case of
this
nature
must
also be

viewed
from
the
angle
that
the
statuto
ry
authori
ties
have
failed
and/or
neglect
ed to
enforc
e to
social
welfar
e
legislat
ions
enacte
d in
this
behalf
e.g.
Payme
nt of
Wages
Act,
Minim
um
Wages
Act
etc.
Such
welfar
e
activiti
es as
adumb
rated
in Part
IV of
the
Constit
ution

of
India
indispu
tably
would
cast a
duty
upon
the
State
being a
welfar
e State
and its
statuto
ry
authori
ties to
do all
things
which
they
are
statuto
rily
obligat
ed to
perfor
m.

35. In
"The
constit
ution,
social
rights
and
liberal
politic
al
justific
ation".
Frank
I,
Michel
man,
publish
ed in

International
Journal
of
Constitutional
Law,
Volume I,
page
13, it
is
stated:

"What
ever
else it
may
also
be, a
country's
written
constitutional
bill of
rights
is a
high-
ranking
regulatory
law, a
"statute"
fraught
with
direct
legal
consequences
.
Granted, the
constitution
may

not be
"simply" that.
No
doubt
it may
figure
as
something
beyond
positive law :
"a
`mirror
reflecting the
national
soul",
perhaps; an
expression of
national
ideals,
aspirations,
and
values
expected, as
such,
to
"permeate and
permeate the
processes of
judicial
interpretation
and
judicial

discretion" throughout the length and breadth of the national legal order. But had bills of rights not also always registered as direct, regulatory legislation - as laws to be enforced like other laws - jurists and scholars the world over would not have conducted their debates over the

constitutional
ization
of
social
rights
in the
terms
that we
have
grown
used
to.

Constitutions,
to be
sure,
are
regulatory
laws of
special
kind,
setting
terms
and
conditions for
the
making
and
execution of
all
other
laws.
Typically,
although not
necessarily,
some
of the
terms
and
conditi

ons are
cast in
the
form
of a
bill of
rights;
a list
of
certain
interest
s of
person
s, upon
whom
are
conferr
ed
what
are
consid
ered to
be
legal
rights,
not
just
backgr
ound
moral
claims,
to have
these
interest
s at
least
negativ
ely
respect
ed, and
maybe
positiv
ely
secure
d and
redeem
ed, by
the

state's
legislat
ure
and
other
actions
yet to
come."

36.
The
power
of the
State
in the
sphere
of
exercis
e of its
constit
utional
power
includi
ng
those
contain
ed in
Article
298 of
the
Constit
ution
of
India
inheres
in it a
duty
toward
s
public,
whose
money
is
being
investe
d.
Article
298 of

the
Constitution
of
India
confers
a
prerogative
upon
the
State
to
carry
on
trade
or
business.
While
doing
so the
State
must
fulfil
its
constitutional
obligations. It
must
oversee
protection
and
preservation
of the
rights
as
adumb
rated
in
Article
s 14,
19, 21
and

300-A
of the
Constitution
of
India.

37.
Even
before
India
became
independent,
our
leaders
started
thinking
in
terms
of
eradication of
poverty and
discrimination
as well as
uplift
of
down-trodden.
At
the
time of
framing of
the
Constitution,
the
Constitution
makers
had
before

them
the
harrow
ing
tales of
starvati
on
deaths
and
particu
larly
the
infamo
us
Bengal
famine
.

38. If
it is
consid
ered to
be the
duty of
the
citizen
to
remind
himsel
f of the
aspirati
ons of
the
Constit
ution
makers
, the
State,
in our
opinio
n,
cannot
be
permitt
ed to
say
that it
has no

such
duty
toward
s its
own
citizen
s.

39.
Clause
s (a)(b)
and (h)
of
Article
51-A
of the
Constit
ution
of
India
read as
under :

"Art.
51A. It
shall
be the
duty of
every
citizen
of
India -

(a) to
abide
by the
Constit
ution
and
respect
its
ideals
and
institut
ions,
the
Nation
al Flag
and the

Nation
al
Anthe
m;

(b) to
cherish
and
follow
the
noble
ideals
which
inspire
our
nationa
l
struggl
e for
freedo
m.

(c) to
promot
e
harmo
ny and
the
spirit
of
comm
on
brother
hood
among
st all
the
people
of
India
transce
nding
religio
us;
linguis
tic and
region
al or

section
al
diversi
ties; to
renoun
ce
practic
es
deroga
tory to
the
dignity
of
women
;"

40. In
its
attemp
t to
interpr
et a
statute
in the
light of
the
constit
utional
schem
e, this
Court
has
time
and
again
interpr
eted a
statute
particu
larly in
the
light
thereof
. [See
A.I.I.
M.S.
Studen
ts

*Union
v.
A.I.I.
M.S.
and
others,
2002(1
) SCC
428].*

41.
The
Univer
sal
Declar
ation
of
Human
Rights,
1948
enume
rates at
least
27
broad
rights
includi
ng the
right to
life,
freedo
m
from
slavery
and
forced
labour.
The
Protect
ion of
Human
Rights
Act,
1993
defines
Human
Rights
to

mean
the
rights
relatin
g to
life,
liberty,
equalit
y and
dignity
of the
individ
ual
garan
teed by
the
Constit
ution
or
embod
ied in
Interna
tional
Coven
ant on
civil
and
politic
al
rights
and
Interna
tional
Coven
ant on
Econo
mic,
Social
and
Cultur
al
Rights
which
were
adopte
d by
the
Genera

1
Assem
bly of
United
Nation
s on
16.12.
1966.
The
said
Act
was
made
by the
Parlia
ment
"havin
g
regard
to the
changi
ng
social
realitie
s and
growin
g
concer
n in
India
and
broug
ht about
issues
relatin
g to
Human
Rights
with a
view
to
bring
about
greater
accoun
tability
and
transpa

rency
in
enforc
ement
of laws
of the
nation.
"

42.
Parts
III and
IV of
the
Constit
ution
of
India
contain
a large
numbe
r of
rights
which
guaran
tee
human
rights,
some
of
which
are
akin to
the
rights
enume
rated
in
Interna
tional
Treatie
s and
Chapte
rs.
Article
11 of
Interna
tional

Covenant in Economic, Social and Cultural Rights, 1966 reads thus :

"1. The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the

continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Coven

ant,
recogn
izing
the
funda
mental
right
of
everyo
ne to
be free
from
hunger
, shall
take,
individ
ually
and
throug
h
interna
tional
co-
operati
on, the
measur
es,
includi
ng
specifi
c
progra
mmes,
which
are
needed
.

(a) To
improv
e
metho
ds of
produc
tion,
conser
vation
and

distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;"

43.
This
Court
in
***Chame
li
Singh
and
others
v.
State
of U.P.
and
Anoth
er,
1996(2
) SCC
549***
referring to
Article
11 of
the
International
Covenant on
Economic,
Social
and
Cultural
Rights,
1966
held
that
the
State
parties
recognize
"the
right to
everyone to
an
adequa

te
standar
d of
living
for
himsel
f and
for his
family
includi
ng
food,
clothin
g
housin
g and
to the
contin
uous
improv
ement
of
living
conditi
ons".
Indisp
utably,
the
State
parties
were
to take
approp
riate
steps
to
ensure
realizat
ion of
this
though
t.

44.
Justice
Holme
s
expres

sed the
followi
ng
view
in
in
*Misso
uri v.
Hollan
d, 252
US
416(43
3):*

"When
we are
dealing
with
words
that
also
are a
constit
uent
act,
like
the
Constit
ution
of the
United
States,
we
must
realise
that
they
have
called
into
life a
being
the
develo
pment
of
which
could
not

have
been
foreseen
completely by
the
most
gifted
of its
begetters. It
was
enough
for
them
to
realise
or to
hope
that
they
had
created
an
organism, it
has
taken a
century and
has
cost
their
successors
must
sweat
and
blood
to
prove
that
they
created
a
nation.
The

case
before
us
must
be
considered in
the
light of
our
whole
experience
and
not
merely
in that
of
what
was
said a
hundred
years
ago."

45.
Justice
Frankf
urter
elucida
ted the
interpr
etive
role in
"Some
Reflect
ions on
the
Readin
g of
Statute
s" :

"There
are
varyin
g
shades

of
compu
lsion
for
judges
behind
differe
nt
words,
differe
nces
that
are due
to the
words
themse
lves,
their
setting
in a
text,
their
setting
in
history
. In
short,
judges
are not
unfette
red
glossat
ors.
They
are
under
a
special
duty
not to
overe
mphasi
ze the
episodi
c
aspects
of life
and

not to
underv
alue its
organi
c
proces
ses -
its
contin
uities
and
relatio
nships"
.

46. In
*Jagdis
h
Saran
and
others
v.
Union
of
India,
1980(2
) SCC
768*, it
is
stated :

"Law,
constit
utional
law, is
not an
omnip
otent
abstrac
tion or
distant
idealiz
ation
but a
princip
led,
yet
pragm

atic,
valued
-laden
and
result-
oriente
d, set
of
propos
itions
applica
ble to
and
conditi
oned
by a
concret
e stage
of
social
develo
pment
of the
nation
and
aspirati
onal
impera
tives
of the
people.
India
Today
- that
is the
inartic
ulate
major
premis
e of
our
constit
utional
law
and
life."

47. It

is also well-settled that a statute should be interpreted in the light of the International Treaties and Conventions. In ***Chairman, Railway Board and others v. Mrs. Chandrima Das and others, AIR 2000 SC 988 = 2000(2) SCC 465*** this Court stated the law thus :-

"24. The Interna

tional
Coven
ants
and
Declar
ations
as
adopte
d by
the
United
Nation
s have
to be
respect
ed by
all
signato
ry
States
and the
meanin
g
given
to the
above
words
in
those
Declar
ations
and
Coven
ants
have to
be
such as
would
help in
effecti
ve
imple
mentat
ion of
those
rights.
The
applica

bility
of the
Univer
sal
Declar
ation
of
Human
Rights
and the
princip
les
thereof
may
have to
be
read, if
need
be,
into
the
domest
ic
jurispr
udence
."

48. In
'Huma
n
Rights
and
Indian
Values'
Justice
M.
Rama
Jois
noticed
the
Ancien
t
Indian
Texts
in the
followi
ng
words

:

SAMA
NI
PRAP
A
SAHA
VONN
BHAG
A
SAMA
NE
YOKT
RAY
SAHA
WO
YUNI
SM
ARAH
NABH
IMIVA
BHIT
E :

"All
have
equal
rights
in
articles
of food
and
water.
The
yoke
of the
cariot
of life
is
placed
equally
on the
should
ers of
all. All
should
live
togethe

r with
harmony
supporting
one
another
like
the
spokes
of a
wheel
of the
chariot
connecting
its
rim
and the
hub.
(Atharvanaveda-
Samjnanasukta)
".

49.
Thus,
the
right to
equality
of all
human
beings
has
been
declared
in
the
Vedas,
which
are
regarded
as
inviolable.
In
order

to
empha
size
the
dignity
of the
individ
ual, it
was
said
that all
are
brother
s as all
are the
childre
n of
God.
No one
is
inferio
r or
superio
r.
Simila
rly, the
Atharb
vanved
a
stresse
d that
all
have
equal
right
over
natural
resourc
es and
all
were
equally
import
ant
like
spokes
in a
wheel.

Both the Rigved and Atharvaveda declare that co-operation between individuals is necessary for happiness and progress. It is also of utmost importance to note that right to equality was made a part of "Dharma" long before the State came to be established.

50. It is equally interest

ing to
refer to
the
content
s of
Article
s 1 and
7 of
the
Univer
sal
Declar
ation
of
Human
Rights
(1948),
whcih
read :

"All
human
beings
are
born
free
and
equal
dignity
and
rights.
They
are
endow
ed
with
reason
and
consci
ence
and
should
act
toward
s one
anothe
r in a
spirit

of
brother
hood."

"All
are
equal
before
law
and are
entitle
d
withou
t any
discri
minati
on to
equal
protect
ion of
the
law.
All are
entitle
d to
equal
protect
ion
against
any
discri
minati
on in
violati
on of
this
Declar
ation
and
against
any
incite
ment
to such
discri
minati
on".

51.
This
declara
tion is
similar
to the
declara
tion of
equalit
y made
in the
Rigved
a.

52.
After
the
establi
shment
of the
State,
the
obligat
ion to
protect
the
right to
equalit
y was
cast on
the
Rulers.
It was
made a
part of
the
Rules
of Raja
Dharm
a, the
Constit
utional
Law.

YATH
A
SWAR
IN

BHUT
ANI
DHAR
A
DHAR
YATE
SAMA
M

TATH
A
SWAR
IN
BHUT
ANI
BIBH
ARTE
PART
HIVM
VART
AM

"Just
as the
mother
earth
gives
equal
suppor
t to all
the
living
beings,
a king
should
give
suppor
t to all
withou
t any
discri
minati
on"

(Manu
IX 31)

This
also

meant that the kings were required to afford equal treatment to all the citizens in the same manner in which a mother treats all her children"

53. Prof. Upendra Baxi in his book entitled 'The Future of Human Rights' stated :

"The processes of globalization, thriving upon the heavily

critique
d
ideolo
gies of
develo
pmenta
lism
and its
eventu
al
demise
, seek
to
reprod
uce the
soft
state.
That
notion
is,
howev
er,
now
reconst
ructed
in
several
import
ant
ways.
the
'progr
essive
state',
at least
in, and
for, the
South,
is now
concei
ved
not as
a state
in its
interna
l
relatio
ns with

its own
people
but in
relatio
n to
the
global
comm
unity
of
foreign
investo
rs. A
progre
ssive
state is
one
that is
a good
host
state
for
global
capital
against
politic
al
instabil
ity and
market
failure
s. A
progre
ssive
state is
one
that
represe
nts
accoun
tability
not so
much
directl
y to its
people
s, but
to the

World
Bank
and
International
Monetary
Fund.

A
progressive
state is
one
that
instead
of
promoting
world
visions
of a
just
international
order
learns
the
virtues
of debt
repayment
on
schedule.

Finally
, a
progressive
state is
one
that
gleans
conceptions
of
good
governance

neither
from
the
histori
es of
struggl
es
against
coloniz
ation
and
imperi
alism
nor
from
its
interna
l social
and
human
rights
move
ments
but
from
the
global
institut
ional
gurus
of
globali
sation.

54.
The
constru
ction
of
'progr
ess' is
animat
ed by a
post-
Fukuy
ama
world
in

which
there is
no
Other
to
Capital
ism,
writ
globall
y
large.
Of
course,
the
contra
diction
s
betwee
n
democ
racy
and
capitali
sm are
once
again,
recogn
ized,
but
these
two
are
reconst
ructed,
for
exampl
e, as
follow
s :

War
against
hunger
gets
transfo
rmed
in the
1998

Rome
Declar
ation
on the
Right
to
Food
into
the
free
market
oriente
d state
and
interna
tional
manag
ement
of food
securit
y
system
;

The
struggl
e
against
homele
ssness
and for
shelter,
in the
1998
United
Nation
s
Social
Summi
t at
Istanbu
l,
becom
es a
series
of
mandat
es for

the
constru
ction
industr
ies and
urban
develo
pers;

`Sustai
nable
develo
pment',
becom
es an
instru
ment
of
policy
for the
promot
ion
and
protect
ion of
corpor
ate
govern
ance
practic
es of
`green
washin
g';

The
UNDP
inspire
d
`mains
treami
ng' of
human
rights
`missio
n'
envisa
ging

the raising of a billion dollars for the Global Sustainable Development Facility has already been subscribed to by way of seed money by some of the most egregious multinational enterprise corporate human rights offenders."

55. In the 12 Misconceptions About the Right to Food (FIAN

) it is
inter
alia
stated :

"What
does
the
Right
to
Food
mean?
Can be
existen
ce of
this
Right
cause
lazines
s
among
people
? The
Right
to
Food
is
about
respect
ing,
protect
ing
and
fulfilli
ng
access
to food
produc
ing
resourc
es and
work.
Theref
ore,
the
Right
to
Food

doesn't
make
people
lazy
but
busy,
enablin
g them
to feed
themse
lves.

Would
the
Right
to
Food
be
asking
for too
much
from
the
govern
ment,
and
advoca
ting
for big
govern
ment?
The
Right
to
Food
in th
context
of
Human
Rights
doesn't
mean
tha the
state is
a
super-
entrepr
neur

determining and carrying out economic activities determining and carrying out economic activities according to its own wisdom. It means the Right to Feed Oneself, which emphasizes dignity and self-reliance, very different from command economics of big government.

Does the Right to Food require a mortal revolution of society, allowing human rights to become the foundation of interpersonal ethics? The Right to Food does require a moral revolution. However, this moral revolution does not concern interpersonal ethics, but the duty to

operationalize the state's obligations under Economic and Social Human Rights.

Is hunger a violation of Human Rights ? Lack of access to food can have many reasons. If the state fails to respect, protect or fulfill this access, unless for lack of resources in a society, this must be

termed
a
violati
on of
the
human
right to
food.
Very
often,
the
obligat
ions of
states
vis-a-
vis the
vulner
able
groups
and
person
s are
obviou
s and
so is
the
availab
ility of
resourc
es in
society
.

Is the
Right
to
Food
about
good
govern
ance?
Good
govern
ance is
negotia
ble.
Human
Rights

are not. The central concept for human rights is the concept of "violation", referring to the suppression of vulnerable groups and individuals, whereas the concepts of good governance all too often deal with political theory and statistical indicators. If a country has the

resources, but people get marginalized or continue in deprivation, this is not bad government, but oppression, intentional or not.

Is the Right to Food realized if nobody is hungry anymore? No necessarily. the Right to Food not only means that hunger and malnutrition

are eradicated, but that future malnutrition can be eradicated by court action or other comparable mechanisms holding the state accountable on its obligations under the Right to Food."

56. In *Kishen Pattna yak and another v. State of Orissa, 1989 Supp(1) SCC 258, a*

Division
Bench
of this
Court
while
considering
poverty and
starvation
deaths
in
drought
prone
districts
of
Kalahandi
and
Koraput
in
the
State
of
Orissa
having
regard
to the
report
of the
District
Judge
of
Kalahandi
noticed
that
Natural
Calamities
Committee
had
been
constit

uted at
the
district
s level
of
Kalaha
ndi
and
Korap
ut
directe
d the
Gover
nment
of
Orissa
to
recom
mend
at least
five
person
s
belong
ing to
the
recogn
ized
volunt
ary
organi
zations
like
Saryod
aya
Gandhi
Peace
Found
ation,
Ramak
rishna
Missio
n,
Bhart
Sewa
Sangha
and
registe

red
volunt
ary
agenci
es as
membe
rs of
the
said
Natura
l
Calami
ties
Comm
ittee.
The
Court
monito
red for
a long
time
the
measur
es
taken
by the
State
for the
purpos
e of
mitigat
ing
hunger
,
povert
y,
starvati
on
deaths
etc., of
the
people
of
Kalaha
ndi
and
Korap
ut. It

opined that if such measures are taken, there can be no doubt that it will alleviate to a great extent the miseries of the people of Kalahandi. It was directed :

".....
The Natural Calamities Committee shall also keep a watch over the working of the social welfare

measures which are being taken and may be taken in future. Shri Pattana yak also does not dispute that such measures are continued to be taken it will be a great relief to the people of Kalahandi and Koraput. We hope and trust that in view of the prompt action that has

been taken by the government, soon the miseries of the people of these two districts will be over."

57. Yet again in *M/s Shanti star Builders v. Narayan Khimalal Totame and others*, 1990(1) SCC 520, this court observed :-

"Basic needs of man have traditionally been

accepted to be three - good, clothing and shelter. The right to life is guaranteed in any civilized society . That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in...."

58. This Court upheld the

right to
shelter
in *P.G.
Gupta*
v.
*State
of
Gujara
t and
others,*
1995
Supp(
2)
SCC
182,
*Chame
li
Singh*
(*supra*
) and
*Ahmed
abad
Munic
ipal
Corpor
ation*
v.
*Nawab
Khan
Gulab
Khan*
and
others,
1997(1
1)
SCC
121.

In
Chame
li
Singh's
case
(*supra*)
, this
Court
held :

"In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achiev

e this
object.
Right
to live
guaran
teed in
any
civilize
d
society
implies
the
right to
food,
water,
decent
enviro
nment,
educati
on,
medica
l care
and
shelter.
These
are
basic
human
rights
known
to any
civilize
d
society
....."

It
procee
ded to
held :

"Right
to
shelter
when
used as
an
essenti

al
requisi
te to
the
right to
live
should
be
deeme
d to
have
been
garan
teed as
a
funda
mental
right.
As is
enjoine
d in
the
Directi
ve
Princip
les, the
State
should
be
deeme
d to be
under
an
obligat
ion to
secure
it for
its
citizen
s, of
course
subject
to its
econo
mic
budget
ing. In
a

democratic society as a member of the organized civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental

Duties
and to
be a
useful
citizen
and
equal
partici
pant in
democ
racy.

The
ultimat
e
object
of
makin
g a
man
equipp
ed
with a
right to
dignity
of
person
and
equalit
y of
status
is to
enable
him to
develo
p
himsel
f into a
culture
d
being..
....."

59.
The
term
'life'
used in

Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so many other facets thereof. "Life", as observed by Field, J. in ***Munn v. Illinois***, ***1877(94) US 113*** means something more than mere animal existence and the inhibiti

on
against
the
depriv
ation
of life
extend
s to all
those
limits
and
faculti
es by
whcih
life is
enjoye
d. [See
***Board
of
Truste
es of
the
Port of
Bomba
y v.
Dilipk
umar
Ragha
vendra
nath
Nadka
rni
and
others,
1983(1
) SCC
124***
and
***Olga
Tellis
and
others
v.
Bomba
y
Munic
ipal
Corpor***

*ation
and
others,
1985(3
) SCC
545.*

60. In Nadkar ni's case (supra) , this Court was dealing with the right of a workman.

61. Expansion of the right to life and personal liberty under Article 21 of the Constitution has been made by implicating :

(i)
Right
to

travel -
Manek
a
Gandh
i v.
Union
of
India,
AIR
1978
SC
597;
Satwa
nt
Singh
v.
A.P.O.
New
Delhi,
AIR
1967
SC
1836.

(ii)
Right
to
privac
y -
Khara
k
Singh
v.
State
of
U.P.,
AIR
1963
SC
1295;
Shard
a v.
Dhara
mpal,
JT
2003(3
) SC
399.

(iii)
Right
to
speedy
trial -
**Comm
on
Cause,
a
Regist
ered
Society
v.
Union
of
India,
AIR
1997
SC
1539.**

(iv)
Right
to
prison
er to
intervi
ew -
**Prabh
a Dutt
v.
Union
of
India,
AIR
1982
SC 6.**

(v)
Right
to fair
trial -
**Police
Comm
issione
r,
Delhi
v.**

**Registrar,
Delhi
High
Court,
AIR
1997
SC 95.**

(vi)
Right
against
torture
and
custodi
al
violenc
e -

**D.K.
Basu
v.
State
of
West
Bengal
, AIR
1997
SC 10.**

(vii)
Right
to free
legal
aid -

**State
of
Mahar
ashtra
v. M.P.
Vashi,
AIR
1996
SC 1.**

(viii)
Right
to
primar
y

educati
on -
***Unnik
rishna
n v.
State
of
A.P.,
1993(1
) SCC
645;
T.M.A.
Pai
Found
ation
v.
State
of
Karnat
aka,
2002(8
) SCC
481.***

(ix)
Right
to
health
and
medica
l care -
***CERC
v.
Union
of
India,
AIR
1995
SC
922;
State
of
Punja
b v.
M.S.
Chawl
a, AIR
1997***

**SC
125.**

(x)
Right
to
polluti
on-free
enviro
nment
- **M.C.
Mehta
v.
Union
of
India,
AIR
1987
SC
965.**

(xi)
Right
to Safe
drinkin
g
water -
**APPC
B v.
M.V.
Naidu,
AIR
1999
SC
822.**

(xii)
Sexual
harass
ment
of
workin
g
women
-
**Visakh
a v.
State
of**

***Rajast
han,
AIR
1997
SC
3011;
AEPC
v. A.K.
Chopr
a,
1999(2
) SCC
34.***

(xiii)
Right
to a
quality
life -
***Hinch
Lal
Tiwari
v.
Kamal
a Devi
and
others,
2001(6
) SCC
496.***

(xiv)
Right
to
Family
Pensio
n -
***S.K.
Masta
n Bee
v.
Gener
al
Manag
er
South
Centra
l***

***Railways,
2003(1)
SCC
184.***

62.
While
dealing
with
the
right
of the
workmen,
again
this
Court
in
***People
's
Union
for
Democratic
Rights
and
others
v.
Union
of
India
and
others,
1982(3)
SCC
235***
and in
***State
of
Gujarat
v.
Hon'ble High
Court
of
Gujarat,***

1998(7)
) SCC
392
held
that
constit
utional
provisi
ons
must
be so
interpr
eted so
as to
advanc
e its
socio
econo
mic
objecti
ves. In
no
uncerta
in
terms,
this
Court
held
that
exactio
n of
labour
and
service
s
against
payme
nt of
less
than
the
minim
um
wages
amoun
ts to
forced
labour

within
the
meanin
g of
Article
23 of
the
Constit
ution
of
India.

63.
Explai
ning
the
rights
of a
citizen
under
Article
21 of
the
Constit
ution
of
India,
this
Court
in
***S.M.D.
Kiran
Pasha
v.
Gover
nment
of
Andhr
a
Prades
h and
others,
1990(1
) SCC
328obs
erved
that
Article***

226 of
the
Constitution
of
India
would
be
maintainable
also
when a
right is
threatened
as
contradistinguished
from
the
right
when
infringed.
This
Court
held :

"In the
language
of
Kelsen
the
right
of an
individual
is
either
a mere
reflex
right -
reflex
of a
legal
obligation
existing

toward
s this
individ
ual; or
a
private
right in
the
technic
al
sense -
the
legal
power
bestow
ed
upon
an
individ
ual to
bring
about
by
legal
action
the
enforc
ement
of the
fulfill
ment
of an
obligat
ion
existin
g
toward
s him,
that is,
the
legal
power.
From
the
above
analysi
s it is
clear

that in
the
instant
case
the
appella
nt's
funda
mental
right to
liberty
is the
reflex
of a
legal
obligat
ion of
the rest
of the
society
,
includi
ng the
State,
and it
is the
appella
nt's
legal
power
bestow
ed
upon
him to
bring
about a
legal
action
the
enforc
ement
of the
fulfill
ment
of that
obligat
ion
existin

g
toward
s,
amoun
t to
denial
of his
right
of
enforc
ement
of his
right to
liberty.
....."

64. It
is also
well-
settled
that
interpr
etation
of the
Constit
ution
of
India
or
statues
would
change
from
time to
time.
Being
a
living
organ,
it is
ongoing
and
with
the
passag
e of
time,
law

must
change
. New
rights
may
have to
be
found
out
within
the
constit
utional
schem
e.
Horizo
ns of
constit
utional
law are
expand
ing.
The
necessi
ty to
take
recours
e to
such
interpr
etative
change
s has
recentl
y
found
favour
with a
Divisio
n
Bench
of this
Court
in the
*State
of
Mahar
ashtra*

*v. Dr.
Praful
B.
Desai,
JT
2003(3
) SC
382.*

"13.
One
needs
to set
out the
approa
ch
which
a court
must
adopt
in
decidin
g such
questio
ns. It
must
be
remem
bered
that
the
first
duty of
the
court
is to
do
justice.
As has
been
held
by this
Court
in the
case of
*Sri
Krishn
a Gobe*

v.
*State
of
Mahar
ashtra,
1973(4
) SCC
23*cour
ts must
endeav
our to
find
the
truth.
It has
been
held
that
there
would
be
failure
of
justice
not
only
by an
unjust
convict
ion but
also by
acquitt
al of
the
guilty
for
unjusti
fied
failure
to
produc
e
availab
le
eviden
ce. Of
course
the

rights of the accused have to be kept in mind and safeguarded, but they should not be over emphasized to the extent of forgetting that the victims also have rights.

14. It must also be remembered that the Criminal Procedure Code is an ongoing statute. The principles of interpr

eting
an
ongoing
g
statute
have
been
very
succin
ctly set
out by
the
leading
jurist
Francis
Bennio
n in
his
comme
ntaries
titled
"Statut
ory
Interpr
etation
", 2nd
Editio
n page
617 :

"It is
presum
ed the
Parlia
ment
intends
the
court
to
apply
to an
ongoing
Act a
constru
ction
that
contin
uously

update
s its
wordin
gs to
allow
for
change
s since
the Act
was
initiall
y
framed

.
While
it
remain
s law,
it has to
be
treated
as
always
speaki
ng.
This
means
that in
its
applica
tion on
any
day,
the
langua
ge of
the Act
though
necess
arily
embed
ded in
its own
time,
is
nevert
heless
to be

construed in accordance with the need to treat it as a current law.

.....
.....

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the original intention. Accordingly, the

interpreter is to make allowances for any relevant changes that have occurred since the Act's passing in law, in social conditions, technology, the meaning of words and other matters

That today's construction involves the supposition that Parliament was catering long

ago for
a state
of
affairs
that
did not
then
exist is
no
argum
ent
against
that
constru
ction.
Parlia
ment,
in the
wordin
g of an
enactm
ent, is
expect
ed to
anticip
ate
tempor
al
develo
pments
. The
drafter
will
foresee
the
future
and
allow
for it
in the
wordin
g.

.....

An
enactm
ent of

former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradua

l
adjust
ment.
It is
constit
uted
by
judicia
l
interpr
etation
, year
in and
year
out. It
also
compri
ses
proces
sing by
executi
ve
official
s."

15. At
this
stage
the
words
of
Justice
Bhagw
ati in
the
case of
*Nation
al
Textile
Worke
rs'
Union
v. P.R.
Ramak
rishna
n,
1983(1
) SCR*

**922 at
page
956,**
need to
be set
out.
They
are :

"We
cannot
allow
the
dead
hand
of the
past to
stifle
the
growth
of the
living
present
. Law
cannot
stand
still : it
must
change
with
the
changi
ng
social
concep
ts and
values.
If the
bark
that
protect
s the
tree
fails to
grow
and
expand
along

with
the
tree, it
will
either
choke
the
tree or
if it a
living
tree, it
will
shed
that
bark
and
grow a
new
living
bark
for
itself.
Simila
rly, if
the law
fails to
respon
d to
the
needs
of
changi
ng
society
, then
either
it will
stifle
the
growth
of the
society
and
choke
its
progre
ss or if
the

society
is
vigoro
us
enough
, it will
cast
away
the law
which
stands
in the
ways
of its
growth
. Law
must
therefo
re
consta
ntly be
on the
move
adaptin
g itself
to the
fast
changi
ng
society
and
not lag
behind
."

65.
The
liabilit
y of
the
shareh
olders
or
even a
third
party
in a
given

case
would
depend
upon
the
nature
of the
situation and
the
extent
of the
statute
covering
the
same.
Participation
in the
functioning of
a
company has
led to
an
independent
liability
by
the
secured
creditors
under
the
Comprehensive
Environment
Response
Compensation
and
Liability

y Act,
if its
involv
ement
with
the
manag
ement
of the
facility
is
suffici
ently
broad
to
suppor
t the
inferen
ce that
it
could
affect
hazard
ous
waste
dispos
al
decisio
ns;
althou
gh it
was
not
current
ly an
owner
or
operati
on of
the
facility
within
the
meanin
g
thereof
in
United

States
v.
Fleet
Factor
s
Corpor
ation,
20
ELR
20832
:
(1990)
901 F
2d
1550.

Thus a liability can be fastened both upon the owner as also the operator of the company under certain situations.

66. The right to development in the developing countries is itself a human

right.
The
same
has
been
made a
part of
WTO
and
GATT.
In
`The
World
Trade
Organi
sation,
Law,
Practic
e, and
Policy
(Oxford) by
Mathu
sushita
Schoen
baum
and
Mauroi
dis at
page
389, it
is
stated :

"The
United
Nation
s has
proclai
med
the
existen
ce of a
human
right to
develo
pment.
This

right
refers
not
only to
economic
growth
but
also to
human
welfare,
including
health,
education,
employment,
social
security, and
a
wide-
range
of
other
human
needs.
This
human
right to
development
is
vaguely
defined
as a
so-
called
third-
generation
human
right
that
cannot

be implemented in the same way as civil and political human rights. Rather, it is the obligation of states and intergovernmental organizations to work within the scope of their authority to combat poverty and misery in disadvantaged countries.

[Emphasis supplied]

67.
The matter may be considered from another angle. While the State expects the industrial houses and multinational companies to take such measures which would provide a decent life to the persons living in the society in general and to their employees in particular and

in that
premise it is
too much
to ask the
State to
practice what
it preaches ?
This gives
rise to another
question. Can
the State be so
insensitive to
the plight of its
own citizens
in general
and the employee
of the public
sector undertakings
in particular ?

68.
The court

in a
situation
of
his
nature
is
obligated
to
issue
necessary
directions
to
mitigate
the
extreme
hardship
of
the
employees
involving
violation
of
human
rights
of
the
citizens
of
India
at
the
hands
of
the
State
of
Bihar
and
the
government
companies
and
corporations
fully
owned

or control led by it. A right to carry on business is subject to compliance of constitutional obligations as also limitations provided for in the Constitution.

69. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental

right
arises.
This
Court
has
been
highlig
hting
this
aspect
in the
matters
concer
ning
funda
mental
rights
and
mainte
nance
of
ecolog
y. [See
***Rural
Litigat
ion
and
Entitle
ment
Kendr
a and
others
v.
State
of
Uttar
Prades
h and
others,
AIR
1987
SC
359 =
1986
Supp.
SCC
517,
Munic***

*ipal
Counc
il,
Ratla
m,
1980(4
) SCC
162
and
B.L.
Wadhe
ra v.
Union
of
India,
AIR
1996
SC
2969.
In All
India
Imam
Organi
zation
and
others
v.
Union
of
India
and
others,
1993(3
) SCC
584,
this
Court
held;*

"6.....
Much
was
argued
on
behalf
of the
Union
and the

Wakf
Boards
that
their
financial
position
was
not
such
that
they
can
meet
the
obligations
of
paying
the
Imams
as they
are
being
paid in
the
State
of
Punjab
. It was
also
urged
that
the
number
of
mosques
is so
large
that it
would
entail
heavy
expenditure
which
the
Boards
of

different States would not be able to bear. We do not find any correlation between the two. *Financial difficulties of the institution cannot be above fundamental right of a citizen.* IF the Boards have been entrusted with the responsibility of supervising and administering the

Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created ."

[Emphasis supplied]

70. In *State of H.P. v. H.P. State Recognised and*

*Aided
Schools
Managing
Committees
and
others,
1995(4)
) SCC
507, it
was
opined
:*

"16.
The
constit
utional
mandat
e to
the
State,
as
upheld
by this
Court
in
Unni
Krishn
an case
- to
provid
e fee
educati
on to
th
childre
n up to
the age
of
fourtee
n -
cannot
be
permitt
ed to

be circumvented on the ground of lack of economic capacity or financial incapacity."

71. However, before we issue any direction, we may state that by no stretch of imagination, the liability of the State of Bihar can be shifted to the Union of India. Only because

e the
Union
of
India
alleged
ly is
reposit
ory of
funds
raised
by it
throug
h
Central
excise
and
other
levies
and
impost
, the
same
by
itself
would
not
mean
that it
is
indirec
tly or
vicario
usly
liable
for the
failings
s on
the
part of
the
State
Public
Sector
Undert
akings.
Either
preced
entia

y or
jurispr
udentia
lly the
Union
of
India
cannot
be held
liable
and no
such
directi
on can
be
issued
as has
been
submit
ted by
Mr.
Shanti
Bhush
an.

72.
The
invest
ments
made
by the
State
in the
public
sector
undert
akings
in
pursuit
of
social
justice
is from
public
accoun
t. It is
in this
behalf

accountable to the public through the legislature. If the State or the State agencies have failed to perform their duties, it cannot under the wrap of financial stringency seek to shift its liability to the Union of India or to the State of Jharkhand.

73.
The

matter
might
have
been
differe
nt, had
such
financi
al
assista
nce
was
require
d by
the
State
due to
a
natural
calamit
y or
cause
beyond
its
control
.

74.
The
State
must
thank
itself
for
having
placed
itself
in such
a state
of
affairs.
It at an
approp
riate
stage,
having
regard
to its

right
of
deep
and
pervasi
ve
control
over
the
Public
Sector
Undert
akings
it had
properl
y
supervi
sed the
functio
ning of
the
Gover
nment
Compa
nies
and
take
necess
ary
steps
to refer
the
sick
compa
nies to
BIFR
in
terms
of the
provisi
ons of
the
Sick
Industr
ial
Compa
nies
(Speci

al
Provisi
ons)
Act,
1985,
the
positio
n
might
have
been
differe
nt. It
even
failed
to take
any
positiv
e
action
even
after
comin
g to
know
the
starvati
on
deaths
and
immen
se
human
sufferi
ngs.

75.
The
States
of
India
are
welfar
e
States.
They
having
regard

to the constitutional provisions adumb rated in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and Part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain in the human dignity .

76. We are of the opinion that the State, thus, has made itself liable to mitigate the sufferings of the employees of the public sector undertakings or the government companies.

77. While passing an interim order, however, it is our duty to take into consideration the immediate

hardship
which
may be
faced
by the
State
of
Bihar
having
regard
to the
alleged
financial
stringency.

78.
We,
however,
hasten
to add
that we
do not
intend
to lay
down a
law, as
at
present
advised, that
the
State is
directly
or
vicariously
liable
to pay
salaries/
remuneration
of
the
emplo

yees of
the
public
sector
undert
akings
or the
Gover
nment
compa
nies in
all
situatio
ns.

We, as
explain
ed
herein
before,
only
say
that
the
State
cannot
escape
its
liabilit
y when
a
human
rights
proble
m of
such
magnit
ude
involvi
ng the
starvati
on
deaths
and/or
suicide
by the
emplo
yees
has

taken place by reason of non-payment of salary to the employees of Public Sector Undertaking for such a long time. We are not issuing any direction as against the State of Jharkhand and as no step had admittedly been taken by the Central Government in terms of Section 65 of the State

Reorganisation Act and furthermore as only four public sector undertakings have been transferred to the State of Jharkhand and in respect whereof the petitioner does not make any grievance.

79. In the peculiar facts and circumstance of this case in our opinion, interest of justice

shall
be
met, if
the
followi
ng
interim
directi
ons are
issued
for the
present
:

1. The
High
Court
may
strive
to
dispos
e of all
liquida
tion
procee
dings
in
respect
of the
Gover
nment
compa
nies
owned
and
control
led by
the
State
of
Bihar
as
expedit
iously
as
possibl
e. For
the

said
purpos
e
and/or
purpos
es
ancilla
ry to
or
inciden
tal
therew
ith, it
may
pass an
interim
order
and/or
orders
by way
of sale
and/or
dispos
al of
the
propert
ies
belong
ing to
such
public
sector
undert
aking
and/or
Gover
nment
compa
nies or
to take
such
measur
e or
measur
es as it
may
deem
fit and

proper.

2. For the aforementioned purposes a committee not consisting of more than three members chaired by a retired High Court Judge or a sitting District Judge may be appointed who may scrutinize the assets and liabilities of the companies and submit a report to the

High
Court
as
expedit
iously
as
possibl
e
prefera
bly
within
three
months
from
the
date of
constit
ution
of the
commi
ttee.
The
terms
and
conditi
ons for
appoin
tment
of the
said
Comm
ittee
may be
determ
ined
by the
high
Court.
All
expens
es in
this
behalf
shall
be
borne
by the
Stat of

Bihar.

3. The High Court shall be entitled to issue requisite directions to the said committee from time to time as and when it deems fit and proper.

4. The State for the present shall deposit a sum of Rs. 50 crores before the High Court for disbursement of salaries

s to the
emplo
yees of
the
corpor
ations.
The
amoun
t of Rs.
50
crores
be
deposit
ed in
two
instalm
ents.
Half of
the
amoun
t shall
be
payabl
e
within
one
month
and the
balanc
e
amoun
t
within
a
month
thereaf
ter.
The
High
Court
shall
see to
it that
the
sum so
deposit
ed
and/or

otherwise received from any source including by way of sale of assets of the Government Companies/Public Sector Undertakings be paid proportionately to the concerned employee wherefor, the parties may file their claims before it.

5. The High Court, however, in its discretion may

direct
disburs
ement
of
some
funds
to the
needy
emplo
yees,
on ad
hoc
basis
so as
to
enable
them
to
sustain
themse
lves
for the
time
being.

6. The
rights
of the
workm
en
shall
be
consid
ered in
terms
of
Sectio
n 529-
A of
the
Compa
nies
Act.

7. The
Central
Gover
nment

is hereby directed to take a decision as regards division of assets and liabilities of the Government Companies/Public Sector Undertakings in terms of the provisions of the State Reorganisation Act, 2000.

8. The State of Jharkh and is hereby implemented as a respondent. Let notice

be
issued
to the
newly
added
respon
dent.

80.
This
order
shall
be
subject
to any
order
that
may be
passed
subseq
uently
or
finally.

81. Let
the
matter
be
placed
again
after
six
months

.

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