

Right to equality: Privatization and its impact on affirmative action.

Introduction

Article 14 to 18 of the constitution guarantee the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons which is also one of the objects enshrined in the preamble of the constitution. The succeeding articles 15,16,17, 18 lays down specific application of the general rules laid down in Article 14. Article 15 relates to prohibition of discrimination on the grounds of race religion etc. Article 16 guarantees equality of opportunity in the matters of public employment. Article 17 abolishes untouchability. Article 18 abolishes title. Thus in short the constitution of India promotes equality in various respects. As we know that the state today is a welfare state and as such it has to promote the prosperity and well-being of the people for that under part IV of the constitution from Art. 36-51 certain directions are given to the states to perform affirmative action's so that welfare of the people can be secured and economic democracy can be achieved.

But however the state is gradually destroying the concept of welfare state by withdrawing itself from various affirmative actions.¹ under the grab of liberalization and globalization and thereby ultimately affecting objective of equality in various ways of dimensions.

Equality before law

Article 14 declares that- 'state shall not deny to any person equality before law and the equal protection of laws within the territory of India.' Thus article 14

uses and expression. 'equality before law' and 'equal protection of laws'. Thus it means among the equals the law should be equal and should be equally administered that like should be treated alike. But however this guarantee of equality is not and absolute one state can impose reasonable restrictions on the basis of intelligible differentia.

The state by liberalization is allowing the privatization in various sectors of public viz education, trade and commerce and proposed import export control and thereby denying the valuable rights given under the constitution relating to equality. By privatization the socially and economically weaker section is affected badly due to denial of reservation policy, subsidies and various other benefits.

In the case of BALCO Employees Union (Regd.) V/s Union of India

In this case the employees had challenged the decision of the central government to disinvest Majority of shares of Bharat Aluminium co. Ltd. (BALCO) to private party which is public sector undertaking. The government had taken a decision to disinvest majority of shares BALCO after detailed discussion and had complied with all procedural requirements. The workmen contended that they had been adversely affected by this decision to disinvest 51% of share in the favor of private party by. Which they have lost their rights and protections under Arts. 14 and 16 of the constitution.

A five judge Bench of S.C. unanimously held that process of disinvestment is a policy decision involving complex economic factors and thereby- restrained from interfering in economic decision of the government.

So this decision can be criticized in the ground of privatizing the public Industry and thereby losing its control and causing negation of the rights guaranteed under Art. 14 and 16 of the constitution.

As we know that on India due to intense discrimination and inequalities which were associated with the caste system and untouchability⁶. The Indian state has made explicit use of affirmative and positive action in the form of reservation policy in employment, reservation in education and other spheres with respect to discriminated groups such as schedule caste. Scheduled Tribes and other backward class. All these provisions are rightly made under article 16(4) and Art. 15 (3), 15(4) etc. of constitution but all seems to be going in vein due to privatization. State of Haryana V/s Rajpal Sharma Teachers employed in privately managed aided schools in the state of Haryana are entitled to the same salary and dearness allowance as is paid to teachers employed in Government schools.

⁶ *Sukhdeo Thorat, chairman of U.G.C. An article on 'Affirmative Action in Private Sector : Why and how'*

In B.C.P.P. Mazdoor Saungh V/s N.T.P.C.

The appellants who were employees of NTPC a public sector undertaking transferred to BALCO, a Private Company under the policy of dis-investment from retrospective effects challenged the validity of the agreement as illegal arbitrary and violative of Art.14 of the constitution. The employees were recruited and appointed by PSU (NTPC) and governed by service terms and conditions as applicable to NTPC employees.

The court held that the contract of service cannot be changed retrospectively without tri-partite agreement and pre-decision hearing to employees. The court held that it amounted of the constitution of India.

Before the 93rd Amendment Act of 2006, there was no provision providing for the reservation in private education institutions.

In T.M. Pai foundation and P. A. Inamdar Cases- It has been held that the state cannot make reservation of seats in admissions in privately run educational institutions.

But however after the amendment the effect is that now the state can make special provisions. Providing reservation to certain categories of persons in admission to private educational institution. This amendment is severely criticized as the politicians who claim to take the country to 21st century for which higher education based on merits is essential is taking retroactive step in providing reservation to less meritorious students to private educational institutions. This appeasements policy of the present UPA Government may get some benefits in elections but would be harmful to the Nation. It would damage the Hindu-Muslim unity which was the aim of the framer of the constitution towards making a united society in the country.

The Government of Indian cannot absolve itself from the responsibility of providing access to higher education to its citizen. The government must also try and improve the quality of higher education in India. Providing education to one and all has been constant endeavor and one of the prime duties of the Government.

As we know that providing free and compulsory primary education is one of the prime duties of the Government as enunciated in the constitution that is why government has been concentration more on primary education than on the higher education and accordingly has delegated it to the private sector During the 1990's with the gradual privatization of higher education, the budgetary allocation for higher education declared.