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September, 2007

# Socialism and the New Economic Order: Constitutional Perspectives

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## Socialism and the New Economic Order – Constitutional Perspectives<sup>1</sup>

India ordains itself to be a ‘Sovereign Socialist Secular Democratic Republic’. The socialist agenda was one of the primary considerations in the minds of the Constitution makers at the time of its drafting as can be seen from the chapter on Directive Principle of State Policy in Part IV of the Constitution which talk about the socio-economic rights.

The principle of socialism— that the State should strike to achieve the greatest good for the greatest number is a sacrosanct principle which is essential for the purpose of establishing an egalitarian society. This understanding assumes a lot of importance especially in the Indian socio-economic scenario which is ridden with gross inequalities. Although the word socialist did not find mention in the original Preamble as was drafted, the socialist agenda was looming large and the same was affirmed by the Constitution (Forty-Second Amendment) Act, 1976, by which the word ‘Socialist’ was added to the Preamble thereby formally recognizing the constitutional goal.

The Indian Constitution makers opted for a path involving slow, regulated and planned growth as opposed to *laissez faire* economy.<sup>2</sup> This is evident from thoughts echoed by the Indian National Congress at its Avadi session before the Constitution was brought into force, where it had recognized and committed itself to the adoption of Socialism as its goal. Such an approach inevitably meant considerable state intervention in the functioning of the economy as a whole. The state had been asserting its socialist stand through various efforts at nationalization as is evidenced by a plethora of events occurring in the 1970s and 80s. However, with the advent of globalization, the State has sought to pursue a goal of a new liberal economy by adopting a hands off policy. In other words, the New Liberal Economy being pursued now aims at increased privatisation, more private sector industries, denationalization, decontrol, and so on, and is patently not in favour of state-ownership or state-control of trade, business or industry. So the

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<sup>1</sup> Pratap Kumar (IV year) and Aditya Swarup (II year), NALSAR University of Law.

<sup>2</sup> Constituent Assembly of India Debates, Vol. VII, 2<sup>nd</sup> Dec. 1948.

question that arises is whether the economic policy of liberalization is violative of “socialism”, which is a basic feature of the Constitution? If it is so, even a Constitutional Amendment would not be adequate to sustain this economic policy because, as ruled in a number of cases, the basic features of the Constitution cannot be altered, damaged, destroyed or, in any way, affected by any Amendment.

*Hence this paper seeks to review the interplay between the constitutional goal of socialism and the presently pursued economic policy of privatization. In the interests of state, economy and society can the very fundamentals of our constitution be ignored? Should the needs of the society tailor state action and governance? These are some of the key questions that this paper endeavours to answer.*

### ***Socialism: Concept and Treatment***

The Preamble of the Constitution aims at making India a sovereign, socialist, secular, democratic republic. The term ‘socialist’ indicates the incorporation of the philosophy of socialism in the Constitution.<sup>3</sup> During the debates preceding the drafting of the constitution, KT Shah had proposed the inclusion of this word in the Preamble, but Pandit Jawaharlal Nehru had strongly opposed it because according to him, they had already provided for the substance of economic democracy in the Constitution in chapters on Fundamental Rights and Directive Principles of State Policy and there was no need for the inclusion of such terms that were likely to be interpreted differently by different people.<sup>4</sup>

The Constitution does not define the term ‘socialism’. However, it has been subject to scholastic and judicial interpretation. According to former Justice O. Chinnappa Reddy,

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<sup>3</sup> When the Constitution was framed, Dr. B. R. Ambedkar, declared that there was ‘complete absence’ of one thing in Indian society — equality and that “on the Economic Plane, we have a Society in which there are some who have immense wealth as against many who live in abject poverty”. In India, “social” and “economic” justice cannot but mean justice to the weaker and the poorer sections of the society. And Article 38(2) has now specifically provided that the mandate is to “minimize the inequalities of income and “eliminate inequalities in Status”. **All these cannot leave any room for any doubt that the Directive Principles, which are declared in Article 37 to be “fundamental in the governance of the country” are socialistic.** A. M. Bhattacharjee, “The Constitutional dilemma -- Liberal or socialist economy?”, The Hindu Business Line, Jan. 25, 2002.

<sup>4</sup> Constituent Assembly of India Debates, Vol. VII, 15<sup>th</sup> November, 1948.

Indian Socialism is about what the Constitution of India wants to have for the people of India, i.e, the establishment of a welfare state. The Constitution makers were aware that mere adherence to an abstract democratic ideal was not enough and that it was necessary to secure to the people economic, social freedom in addition to political freedom. Though the word ‘Socialist’ was introduced into the Preamble by a late amendment of the Constitution, that socialism has always been the goal is evident from the Directive Principles of State Policy and some of the Fundamental Rights. That is what Indian socialism is about.<sup>5</sup>

The Supreme Court has also made similar observations when it states that the philosophy of socialism existed in the constitution even before the 42<sup>nd</sup> Amendment.<sup>6</sup> On one such occasion, it opined that “the mandate for a social order and securing the welfare of the people and the directions prescribed in Article 39<sup>7</sup> are nothing but the essential qualities of socialism in our Constitution.”<sup>8</sup> In this sense, socialism is more of an economic doctrine that the Constitution prescribes the state to follow. The Amendment was only to emphasize the need for ownership, control and distribution of national productive wealth for the benefit and use of the community and the rejection of a system of misuse of its resources for selfish ends.<sup>9</sup> Furthermore, the word ‘socialism’ is inextricably related to state ownership and social welfare of the people and nationalisation is a means of

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<sup>5</sup> Interview with former Justice O. Chinnappa Reddy on 09-08-06; On record with the authors of this paper.

<sup>6</sup> *Akadasi Pradhan v. State of Orissa*, AIR 1963 SC 1047.

<sup>7</sup> Article 39 of the Constitution lays down, that the State shall, in particular, direct its policy towards securing - (a) that the citizens, men and women equally, have the right to an adequate means of livelihood, (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, (d) that there is equal pay for equal work for both men and women, (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, (f) the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

<sup>8</sup> *Srninvasa v. State of Karnataka*, AIR 1987 SC 1518. In *Dharwad Employees Union v. State*, (1990) 2 SCC 396, the Court held that the right to equal pay for equal work enshrined in article 39 gives essence to the constitutional goal of a socialist economy. It also stated that Article 39 in a sense prescribes directions for the achievement of a socialist ideal.

<sup>9</sup> *Sanjeeva Coke Manufacturing Co. Vs. Bharat Coking Coal Ltd*, AIR 1983 SC 239.

securing the goals enshrined in the Constitution and the social, economic and political rights of the people<sup>10</sup>.

What then is the position of 'socialism' in the present legal system? Do we look at it as a mere directive that is non justiciable in nature or something that is essential in the making of the economic policy of the State? While socialism did exist in the Constitution before 1976, it would be right to say that it gained huge importance after its inclusion in the preamble. The state and the people then, 'have solemnly resolved to constitute India into a sovereign socialist secular democratic republic'.<sup>11</sup> These objectives specified in the preamble do constitute a part of the basic structure of our constitution.<sup>12</sup> As a result, such principles and objective cannot be amended through an Amendment under Article 368 of the Indian Constitution.<sup>13</sup> This invariably further affirms the notion that the principle of socialism enshrined in our constitution is extremely significant and cannot be abrogated.

However, the point to be noted is that the social and economic goals enshrined in part IV are non justiciable in nature. This means that, unlike fundamental rights, these directives cannot be enforced in a court of law. Although there are many cases that have harmonized the directive principles of state policy with fundamental rights, in their very nature, they are only meant to act as mere directives that the state may consider in the formulation of a policy.<sup>14</sup> On the other hand, according to Article 13 (2), a law that violates any of the rights mentioned in part III of the Constitution is liable to be struck down. So, in theory, unless socialism can be inferred from part III, state action that is against the goal of socialism is still enforceable as no rights in part III are violated and the directive principles are non justiciable. The above will become clearer after an

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<sup>10</sup> *Akadasi Pradhan v. State of Orissa*, AIR 1963 SC 1047.

<sup>11</sup> Preamble, Constitution of India.

<sup>12</sup> *Keshavananda Bharti v. State of Kerala*, AIR 1973 SC 1461 : *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299 : *Minerva Mills v. Union of India*, AIR 1980 SC 1789; That socialism is a part of the basic structure of the Constitution has been acknowledged by the Supreme Court in the case of *Sanjeev Coke Manufacturing v. Bharat Coking Coal Ltd.*, AIR 1983 SC 239, where the Court opined that 'socialism' is no doubt a part of the basic structure of our constitution and acts as a fundamental directive in the policy of the State. It also affirmed that the principle of nationalization in Article 39 (b) echoes the notion of socialism in the Constitution.

<sup>13</sup> Article 368, Constitution of India. See also, Anuranjan Sethi, "Basic Structure Doctrine: Some Reflections", (October 25, 2005). Available at SSRN: <http://ssrn.com/abstract=835165>.

<sup>14</sup> *Waman Rao v. Union of India*,\_\_\_\_\_.

analysis of some important cases that have dealt with the concept of socialism in the Constitution.

The issue of socialism vis-à-vis the state's policy of privatization was considered by the Supreme Court in the case of *Excel Wear v. Union of India*<sup>15</sup>. The Court, by adopting a *via media* approach, interpreted the Constitutional provision of Article 39 such, so as to strike a balance between the competing claims of nationalisation and state ownership of industries on the one hand and privatization on the other. The court stated,

*“That the concept of socialism or a socialist State has undergone changes from time to time, from country to country and from thinkers to thinkers. But some basic concepts still hold the field. The amendment made by the Legislature in Article 19(6) shows that, a law relating to the creation of State monopoly should be presumed to be in the interests of the general public.”*<sup>16</sup>

The Court took note of the reality that the private sector occupied an overwhelmingly large sector of India's economic structure and proceeded to distinguish between a private sector undertaking and a public sector undertaking. It observed nationalization as a necessary ingredient in the economic development of the country as it has the objective of a public control over resources and greater accountability without a profit motive so that the economic inequality is reduced to the minimum and the goal of socialism is furthered.

Further, the underlying idea behind the issue of socialism was again considered in *D.S. Nakara and Ors. v. Union of India*<sup>17</sup>. In this case, the court was of the opinion that the basic framework of socialism is to provide a decent standard of life and security to the working people. The Court also underlined the role of state in achieving the goal of socialism. It noted that the State shall direct its efforts towards equitable distribution of income and maximisation of production, which are the basic objects of socialism, to

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<sup>15</sup> AIR 1979 SC 36.

<sup>16</sup> Ibid, at paragraph 24 and 25

<sup>17</sup> AIR 1983 SC 130.

solve the problems of unemployment, low income and mass poverty and to bring about a significant improvement in the national standard of living. The same line of thought is also reflected in the Supreme Court's decision in *State of Karnataka v. Shri Ranganatha Reddy*<sup>18</sup>. In this case, the court considering the issue of nationalization of contract carriages, opined that the aim of socialism is the distribution of the material resources of the community in such a way as to subserve the common good.<sup>19</sup>

One common thread running through the above judgments is that the courts seek to underline the importance of deliberate and purposive action on the part of the state. However, the point to be noted is that in all the above cases, the violation of the goal of socialism in the Constitution was closely related to the violation of fundamental rights enshrined in part III of the Constitution. During the 1970s and 80's when the State pursued a policy of nationalization, socialist ideals enshrined in part IV were used as a justification to validate such state action<sup>20</sup>. Whereas, in the 1990s, the absence of socialism in Part III of the Constitution and the reluctance of the courts to interfere in economic policy matters has facilitated the government in pursuing the goals of disinvestment and privatization by abrogating the socialist values underlying the Constitution.<sup>21</sup> This dichotomy is further avowed by the recent Supreme Court's judgment in *M Nagaraj v. Union of India*<sup>22</sup>, where in the Court noted that principles of federalism, secularism, reasonableness and socialism etc. are beyond the words of a particular provision. They are systematic and structural principles underlying and connecting various provisions of the Constitution. They give coherence to the Constitution. They make the Constitution an organic whole. It also noted that for a constitutional principle to qualify as an essential feature, it must be established that the

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<sup>18</sup> AIR 1978 SC 215.

<sup>19</sup> The principle embodied in Article 39(b) of the Constitution is one of the essential directives to bring about the distribution of the material resources. It would give full play to the distributive justice. It fulfils the basic purpose of re-structuring the economic order. Article 39(b), therefore, has a social mission, it embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to subserve the common good.

<sup>20</sup> *Excel Wear v. Union of India*, AIR 1979 SC 36 : *DS Nakara v. Union of India*, AIR 1983 SC 130.

<sup>21</sup> *All India ITDC Worker's Union v. ITDC Ltd.*, AIR 2007 SC 301 : *BALCO Employees Union v. Union of India*,

<sup>22</sup> AIR 2007 SC 71.

said principle is a part of the constitutional law binding on the legislature<sup>23</sup>. No doubt, socialism is merely enshrined in the Directive Principles and is not binding on the legislature. It is not justiciable in a Court of law. Thus, what importance do we give to one of the most essential principles of the Constitution, which in practice remains merely a directive that the States are not obliged to follow in an era of liberalization, is a question to be answered.

Keeping all the above as the backdrop, the issue which actually forms the focus of this paper is the seeming conflict between the concept of socialism *vis-à-vis* the economic policy of liberalization. Can the policy be rendered unconstitutional because they go against the constitutional prescription? This is a very interesting question and before one deliberates on it, it is necessary for us to get a basic idea of the issues of liberalization, separation of powers and the extent of the power of judicial review because it is the latter that actually has the force to render the policy void as being violative of a constitutional prescription which is also a preambular goal.

### ***Concept of Liberalization***

The word "Liberalization" derives from liberty. It believes in the attainment of welfare goals with minimum external constraints<sup>24</sup>. Society is there to serve the individual and not the other way round as communism or socialism try to make out. In a sense, it refers to a relaxation in government restrictions in areas of social or economic policy.<sup>25</sup> Such policy seeks to secure the interests of private players and does not incorporate the interests of the poor and larger sections of the society<sup>26</sup>. In an era where the general notion is that state industries are inefficient, loss making and filled with bureaucratic hassles, disinvestment and liberalization seem to be the answer to government policy. At

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<sup>23</sup> Ibid at para 20.

<sup>24</sup> JD Greenstone, "Against Simplicity: The Cultural Dimensions of the Constitution", 55 *U. Chi. L. Rev.* 428.

<sup>25</sup> Ibid.

<sup>26</sup> While this was the Classical view of liberalism as propounded by Adam Smith, later writers emphasize that one of the essentials of a liberalist economy is the goal of community good. This has to be read in light of Constitutional principles. See RL West, "Liberalism Rediscovered: A Pragmatic Definition of the Liberal Vision", 46 *U. Pitt. L. Rev.* 673.

some instances then, liberalization was a solution to the removal of red-tapism and corruption that most industries are accused of in India.

While a lot can be said about liberalization and its origins in law today, this paper would proceed to analyze the attitude of Indian policy towards liberalization.

Since 1991, India has sought to push forward economic growth through the practice of liberalization as an ideal. While this has been the attitude of the government, it is now interesting to see how the Courts have adapted them self to this concept. Justice AR Lakshmanan in *State of Punjab v. Modern Breweries* stated that the globalization has brought radical change in the economic and social landscape of this Country and that the policy of liberalization has a significant impact on it.<sup>27</sup> The Judge later, also noticed that it had a significant impact on aspects of constitutionalism and the constitution though he did not elucidate on the same.<sup>28</sup> In the decade since liberalization, the judiciary seems to have adapted itself to the values which are espoused by the dominant sections of society<sup>29</sup>. More recently, the Court in *Ashoka Smokeless v. Union of India*<sup>30</sup>, held that policies formed to meet the liberalization demands of the country in respect of selling coal would be valid. In 1996, the then Chief Justice of the Supreme Court had in a lecture stated that "liberalization was consistent with socialism because equitable distribution first required wealth creation".<sup>31</sup> While the above quote seems stupendous in nature, the fact remains that in a series of cases<sup>32</sup>, the Courts have stated that liberalist goals are not violative of part III and matters of economic policy are not subject to judicial review.

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<sup>27</sup> *State of Punjab v. Devans Modern Breweries*, (2004) 11 SCC 26,.

<sup>28</sup> *Ibid*.

<sup>29</sup> In *Secretary HSEB v. Suresh*, AIR 1999 SC 1160, the Court held that in as much as liberalism is a part of Indian economic policy, social justice must not be compromised. Aspects of the Liberalist policy may also be seen in cases *BALCO Employees Union v. Union of India*, AIR 2002 SC 350 and *All India ITDC Worker's Union v. ITDC Ltd.*, AIR 2007 SC 301.

<sup>30</sup> *Ashoka Smokeless v. Union of India*, (2007) 2 SCC 640.

<sup>31</sup> Prakash Karat, "The Supreme Court in Liberalised Times", available at <http://www.countercurrents.org/hr-karat090803.htm> (last visited 1st April 2007).

<sup>32</sup> *Fertilizer Corpn. Kamnagar v. Union of India*, (1981) 1 SCC 568 : *BALCO Employees Union v. Union of India*, AIR 2002 SC 350 : *All India ITDC Worker's Union v. ITDC Ltd.*, AIR 2007 SC 301 : *Centre for Public Interest Litigation v. Union of India*, AIR 2003 SC 3277.

To explore this issue in detail, it is now pertinent to look at the issue of separation of powers.

### **Theory of separation of powers**

The theory of separation of powers is long known to the field of public law. In fact, some philosophers – Locke and Montesquieu – go to the extent of propounding that it is only through separation of powers that liberty can be attained. No democratic country can boast of a strict implementation of theory of separation of powers; and invariably all democratic States practice a tripartite division in discharge of public functions. From a more functional point of view, whether a public authority is acting ‘administratively’ or ‘legislatively’ or ‘judicially’, in all situations, there is some element of decision making. Every progressive civilization demands that decisions be taken impartially. In a democratic polity, the executive or the legislature cannot be totally impartial for obvious reasons of partisan political ideology. Therefore, the community requires a permanent non-political impartial institution to resolve social, political as well as the economic disputes and reserve a culture of rule of law.<sup>33</sup> This is where the judiciary steps in.

The judiciary in India has traversed a long way when it comes to judging the correctness of a particular administrative act. In fact, there are a myriad number of principles that have emerged in this field of administrative law, something that need not be considered at this point. However, it is pertinent for us to look at the issue of separation of powers and the power of judicial review of administrative action vis-à-vis the decisions on policy matters. The aspect that we are concerned with here is with respect to the boundaries of the judiciary and to what extent can the judiciary extend its tentacles lest it may violate the principle of separation of powers.

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<sup>33</sup> Some critics point out that by virtue of power to declare the act of legislature and the executive as contrary to law a superior power has been conferred upon the judiciary. However, this proposition was strongly refuted by Alexander Hamilton, one of the founding fathers of the American Constitution, wherein he stated “the exercise of judicial review only supposes that the power of the people is superior to both (court and legislature); and that where the will of the legislature declared in statute stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter rather than the former”.

### ***Judicial review vis-à-vis policy matter***

It is common knowledge that Courts generally are very hesitant to rule on policy issues. In fact, courts refuse to intervene in such matters lest they may be accused of transgressing the boundaries within which they have to function.<sup>34</sup> There have been a lot of cases which have looked into this issue.<sup>35</sup> On a perusal of these cases, it can be aptly summarized that the courts would interfere with an administrative policy decision only if it is arbitrary, discriminatory, and mala fide or actuated by bias.<sup>36</sup> There is a plethora of case law and administrative law writing which goes on to reinforce the ratio of the Court in this case<sup>37</sup>

It may be observed that judicial review<sup>38</sup> of policy matters is concerned not with the ultimate decision or the merits of the case but the manner in which the decision has been made. It is not for the court to substitute one policy for another and substitute its own judgment for that of the administrative body, or it will be guilty of usurping power. The decision making process falls within the domain of judicial scrutiny. However, the Supreme Court has quashed policy decisions on the grounds of unreasonableness<sup>39</sup> and

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<sup>34</sup> “Judicial review is a great weapon in the hand of the judges; but the judges must observe the Constitutional limits set by the Parliamentary system upon the exercise of this beneficial power”- Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment*, (1986) 1 All ER 199.

<sup>35</sup> *Narmada Bachao Andolan v. Union of India*, (2000) 10 SSC 664; “It is now well-settled that the courts, in the exercise of their jurisdiction, will not transgress into **the field of policy decision.**”, *BALCO Employees Union v. Union of India*, AIR 2002 SC 350 : *All India ITDC Worker’s Union v. ITDC Ltd.*, AIR 2007 SC 301.

<sup>36</sup> *M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592; in this this case, it was held that the administrative bodies are entitled to pragmatic adjustments which may be called for by the particular circumstances. Therefore, for example, the courts have no authority to strike down the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, logical, or wiser. Hence, the court can interfere only when the policy decision is arbitrary, discriminatory or mala fide.

<sup>37</sup> *Narmada Bachao Andolan v. Union of India*, (2000) 10 SSC 664; “It is now well-settled that the courts, in the exercise of their jurisdiction, will not transgress into **the field of policy decision.**”

<sup>38</sup> “Judicial review is a great weapon in the hand of the judges; but the judges must observe the Constitutional limits set by the Parliamentary system upon the exercise of this beneficial power”- Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment*, (1986) 1 All ER 199

<sup>39</sup> Unreasonableness in the sense of the Wednesbury Principle of unreasonableness; *Associated Provincial Picture House Ltd., v. Wednesbury Corporation*, (1948) 1 KB 223

arbitrariness in various cases too, so it all depends on the facts and circumstances of each case.

Is it not worthwhile to question the wisdom not to interfere when the consequences of a particular policy decision can be disastrous? Policy decisions may occasionally operate as a smoke-screen claiming immunity from violation of rights. This is irrespective of the fact that a matter of policy decision for the executive must be generally left to the government. It is a matter for the executive to decide the quantum and the shape of the policies and normally policy matters are not interfered in with writ.

The above attitude of the courts where it has refused to interfere in an economic policy is clearly illustrated in the case of *BALCO Employees Union v. Union of India*<sup>40</sup>, wherein the Court held that the disinvestment policy of the Government cannot be challenged. Stating that the executive is the best judge in matters of economic policy, the court maintained that it would look into matters of economic policy only in case of a dereliction of constitutional or statutory obligations on part of the Government.<sup>41</sup> It further stated that Courts are not intended to conduct the administration of the Country and it should be highly reluctant in entertaining policy matters by way of a Public Interest Litigation. In essence, the Court gave way to a policy of liberalization irrespective of whether it is against a constitutional mandate of socialism. In fact, the issue of socialism was not even considered by the Court in the case.<sup>42</sup>

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<sup>40</sup> AIR 2002 SC 350.

<sup>41</sup> The Court cited *Narmada Bachao Andolan v. Union of India*, (2000) 10 SSC 664, where it was held that the Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

<sup>42</sup> The Court in *BALCO Employees Union* also held that "*In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law.*"

In a timely manner, judicial sanction has been given to a liberalist policy in recent times. The essence of socialism in the constitution seems to be lost with such an attitude by the Courts. Governments are using the policy directive to violate the basic principles in the Constitution and such actions are being given judicial sanction.

**The issue that arises** in the light of the above is thus: where is the constitutional goal of socialism? Shouldn't policies that affect majority of the people in the country be in tune with the democratic and socialist ideals that govern the very functioning and administration of the country. Why can't the court declare such a policy unconstitutional on the ground that the state is abdicating its basic duty of trying to further the constitutional goals? We have pretty much seen the attitude that the court will portray should such a case be brought before it. There is but another dichotomy with this matter. We mentioned earlier that the Court in *M. Nagaraj v. Union of India*<sup>43</sup> stated that for something to be a part of the basic structure it has to be shown to be binding on the legislature to follow. The Courts have specifically stated in *Keshavananda Bharti*<sup>44</sup> that Socialism is a part of this basic structure but on the other hand a series of judicial dicta has not made this policy binding on the legislature. A lot of confusion then has arisen to the fore as to the place of socialism in the constitution.

We then notice that the Government is making use of this dichotomy as a double edged sword. When a question of nationalization arises, the Government uses Article 39(b) and the goal of socialism embodied in the Constitution as a reason to justify it. On the other hand, when they have to pursue privatization, they come upon to say that socialism is not binding on the legislature and since it is a policy matter, the Court cannot interfere. It then, becomes a double edged sword.

A balance then has to be struck. The State cannot have it both ways to their advantage. It is not intended to state that the judiciary should break barriers and hold an economic policy unconstitutional because it violates of one of the fundamental constitutional

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<sup>43</sup> AIR 2007 SC 71.

<sup>44</sup> *Keshavananda Bharti v. Union of India*, AIR 1973 SC 1470.

principles. One need not be inclined towards adopting any extreme view, but a realistic approach would provide a better solution; the realistic approach being the middle path. Considering the fact that efforts at nationalization in India have not been able to achieve the goals with which they had actually been introduced, it is after a series of continuous failures that the Indian government has found privatization to be the tool for achieving the required economic growth. Such a policy, it is submitted, is not antithetical to the concept of socialism. Socialism need not mean only state ownership and control of industries meant to raise the standard of living of the people. If the state feels that privatization, as a measure to boost economic growth and end red tapism and corruption, will work better in a particular situation as opposed to nationalization, then in the interests of the larger sections of the society, the move may be sound and rational. This then does not mean that the constitutional goal is demolished. The state, as is submitted, has to work in accordance with the changing needs of the society.

One of the possible mechanisms in such cases would be privatization with greater state control. Here, state control is not intended to mean ownership, but state control more in terms of rules and regulations for aspects that would affect the standard of living of the workers. For example, the state can formulate certain mandatory guidelines for the payment of wages, the conditions of work and other aspects and this can become a part of the whole privatization package. In this way, the state, as it has opted for a move of privatization, may be able to achieve what it could not have directly by taking over the industries by way of nationalization.

It is submitted that a fine balance has to be struck between the constitutional goal of socialism, the policy of nationalization and privatization. The state should, at each instance, sift and weigh out the pros and cons of each policy and then come to the most plausible solution. The Constitution is a living document that has to be interpreted according to the needs of the time. This is because, if the state cannot deliver the goods, then other constitutional goals will themselves be derogated. What is being fore grounded is the fact that adopting a policy of privatization does not mean that the state is making a

mockery of socialism. Socialism, in the Indian context, has various defining characteristics and the same can be modified to meet the needs of the society.