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# **Shift from welfare to free market economy: Journey of the Indian constitution and the role of the supreme court**

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**Abstract**--There has been a series of incidences which triggered the movement from welfare economy to free market economy in India, but it is really difficult to comprehend them and to know which Supreme Court verdicts played important role in such a transition and what were the changes made due to that. It appears that the role of the Supreme Court is highly significant in the transition of the Indian Economic structure from Welfare to Free Market. This research work aims at finding the key judgements and jurisprudence of the Supreme Court of India regarding the said shift.

**Keywords**---market economy, supreme court, constitution.

**Introduction**

India has the most comprehensive and longest Constitution in the world, which was the result of the constant perseverance and intense work of the members of Constituent Assembly, which was constituted after the long freedom struggles and movements. The Constituent Assembly took two years eleven months and seventeen days to complete the text of the Constitution of India, and on the eighteenth day it was finally signed. It was the consummation of long drawn freedom fight against the British Colony and was drafted immediately after the frightening communal carnage. Due to these quiver experience and the extensive history of the Country, Democracy, Integrity, Equality of all religions and state having no religion of its own, Preservation of Political Freedom, Rule of Law, Independent Judiciary find the pride places in the Indian Constitution and are strikingly significant for the new convention which is established for India.

In the Constituent Assembly debates under the discussion of Article 1, Dr B.R. Ambedkar argued against the inclusion of the term 'Socialist' because it was redundant; he stated that if the Directive Principles of State Policy were '*not socialistic in their direction...and content, I fail to understand what more socialism can be.*' He held similar beliefs on the inclusion of 'Secular' as well, i.e. that the entire Constitution embodied the concept of the secular state. There was little opposition to his statements in the Assembly. The governance of the economic system which the country adopted in order to cope up with the low economic development and mass poverty at that time was the socialistic measures. This was practiced securing the economic prosperity and to uplift the downtrodden from their then situations. It is assumed by many scholars that the strong 'state' that was deemed vital and suitable for safeguarding the integrity of India got written into the Constitution in the economic realm too, for the same reason.<sup>1</sup> Perhaps this is why, on several occasions, the courts have upheld the insertion of 'Socialist' and 'Secular' in the Preamble: from the Supreme Court in *Minerva Mills*<sup>2</sup> describing this as '*not only within the framework of the Constitution*' but also as one which gave '*vitality to its philosophy*'; to the 2016 judgment of the Allahabad High Court in *Hindu Front for Justice v. UOI*<sup>3</sup>, which held that '*these principles and ideals have always been ingrained in the constitutional scheme.*'<sup>4</sup>

### **The Concept of Globalization**

For many decades Indian economy remained mixed. The Government of India finally in 1991 boarded on the ship of the new economic policy (NEP), by offering market-oriented free economy popularly known as the "Free Market Economy" as its model. It swapped the system of controls or permit and Inspector Raj with liberalisation, which together with the globalisation has now become the catchphrase. This newer policy developed to accelerate economic development was supported as a result of the coming into existence of the World Trade Organisation (WTO) and other related agreements under its umbrella, such as TRIPS and TRIM.<sup>5</sup>

This term globalisation is a post-Soviet phenomenon. After the demise of Soviet Union, the world became aware of the need to shift to the free-market model to sustain, and India adopted the same measures. It altered the basic intellectual grasp of world politics and economy, apart from the global power-equations. It is the western modelled concept of free market economy. It basically removes the barriers relating to trade and commerce. It is associated with contemporary phenomenon of privatisation, de-regulation, the long-drawn-out provision of inducements for entrepreneurial behaviour, structural adjustment programs and related pressures on developing countries to open-up their markets for international financial institutions and developed countries. Globalisation, in economic terms, is the opening-up of the markets which will operate under

<sup>1</sup> K.P. Krishnan, "India's constitution and the economy" [https://india-seminar.com/2013/642/642\\_k\\_p\\_krishnan.htm](https://india-seminar.com/2013/642/642_k_p_krishnan.htm)

<sup>2</sup> AIR 1980 SC 1789.

<sup>3</sup> MANU/UP/0073/2016.

<sup>4</sup> Blog "Did the Framers think the constitution was 'Socialist' and 'Secular'?"

[https://www.constitutionofindia.net/blogs/desk\\_brief\\_\\_did\\_the\\_framers\\_think\\_the\\_constitution\\_was\\_\\_socialist\\_\\_and\\_\\_secular\\_\\_](https://www.constitutionofindia.net/blogs/desk_brief__did_the_framers_think_the_constitution_was__socialist__and__secular__) (Last Accessed on 3 Dec 2021).

<sup>5</sup> Verma, S. K. (2000). GLOBALISATION, MARKETISATION AND CONSTITUTIONAL MANDATE. *Journal of the Indian Law Institute*, 42(2/4), 395–408. <http://www.jstor.org/stable/43953819>

market forces, where state will have a very little to no role to play. Liberalisation is also a by-product of globalisation. But there is a subtle difference between liberalization and marketisation; Liberalization is to keep the red-tapism to the minimal level and there will be no excessive regulations and rigidity to adhere with the formal rules and Marketisation is when the state controls the markets. Liberalization means reducing the burden on the state with least interference from the government, marketisation increases the burden of the state for regulating the market. Under the pressure from the international financial institutions and the new exemption of the WTO, privatisation and structural adjustment policies have been imposed or adopted by many countries in Africa, Asia and Latin America, thereby diminishing the economic role of the state in framing its policies or setting its development goals. State sovereignty is no more fundamental and absolute now, when it comes to economic policies, which are dictated by international financial institutions or by donor countries. All these changes do result in marketization internationally under which the domestic economy is entirely dependent over the supply of capitals, services and goods by the external countries and organizations as there is removal of the national barriers.

Globalization has been represented as a phenomenon to uplift entrepreneurs across the globe and to elevate the economic activities supported by the laws of both an individual country and internationally. Earlier there was the system of comparative advantage under which two countries made compatible policies to promote each other's MNC's in both the countries. The financial markets around the globe have created the element of insecurity in the economic system of the world due to which the still developing countries find difficult to march with the set flow. The Human Development Report (HDR) which came in 1999 has emphasised and brought this fact into notice.<sup>6</sup>

The theories which concern the role of the State in Economic matters are many; The first one is based on the laissez faire model where the expectation is the complete exclusion of the State from the Market Affairs and regulatory system. This is the concept of the classic market economy model, which affirm that state does not own any right to act as stimulus on the economic scheme and that the economic existence is completely determined by market instincts. The second view is entirely the opposite of the former. Its substance is that the state must takes the major role in deciding the schemes relating to the economics and the policies and the role of the market forces is reduced to minimal. This view, however, has experienced a serious blow in the context of historical perspective. The third one is the dual concept, which is a blend of the above two. It implies that the state has a serious role to play in the regulation of the market forces. The state can never be excluded from having the influence in the economic development though the market and its self-regulatory regime will always be in play and shall have the final say. The third theory is the one which is accepted the most. State's role is limited to the administrative and legal domain in relation to regulation and not in laying direct hand in economic system.<sup>7</sup>

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<sup>6</sup> *Supra* note 8.

<sup>7</sup> Ghosh, Arun. "State Intervention versus Free Market." *Economic and Political Weekly*, vol. 27, no. 27, Economic and Political Weekly, 1992, pp. 1365–68, <http://www.jstor.org/stable/4398578>.

The point of concern is that which model fits in which state? The answer to this concern is that there is no straight jacket formula which can be applied in each case, but it depends on country to country, its history, structure of state and choice of policies. All this must be studied prior to the selection of a country. Hence the western model cannot be made pertinent over all the countries. This global influence in the market world is shaped by promoting economic development and setting its directions. Investment policy has a very significant role to play. On the other hand, the international allocation of labour and the foreign trade structure does have a crucial impact on the development of the economic policies of a nation.<sup>8</sup>

### **Challenges and Opportunities Posed By Globalization On The Indian Constitution**

The role of state in the market forces is dependent over the constitution and the regulations operated from the specific provisions of the constitution and the notion of human dignity. The Indian constitution in the present accepted form seems to not accept the notion of capitalistic measures of the market forces, the tilt is towards the socialistic means pertaining to justice and equality. Economic Constitutionality is the very basis of the basic economic and social rights which the citizens of a country are guaranteed. There must also be the promise of social security and the notion of equality in social opportunities. Among these rights, few mentioned have more importance: the right to work, the right of free selection of profession and workplace, the right to social security, to leisure, the right to strike, and furthermore the right to establish organizations for representing interests.

New developments have been continuously imbibed as India must not be left behind in the arena of economic development, the new laws and policies are framed in this direction to integrate Indian economy and market with the global economy, but nothing has been done to ensure that the individuals, particularly downtrodden sections of society, do not agonise from the assault of these developments and their human rights are safeguarded. Thus, the fundamental challenge before the government is that while it should march with the world economic order, it should not be left behind on the human resource development, by providing a conducive socio-legal and economic conditions. For this reason, the constitutional mechanism on the regulation must be provided to ward off the ill effects of globalisation and to reap its benefits. It may be relevant to note that India's economy is primarily agricultural, and majority of its population lives in villages. A large segment of the society is illiterate and lives below the poverty line. The notion of literacy is also very minimal in India, which is a person who can read and write with understanding that particular language. Hence, it is required that the economic policy of the government should be more focused with definite aims, otherwise the development will never be wholesome, and the market forces will spell a havoc for the Indian state.

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<sup>8</sup> Abhay Thomas, "Transition of India from socialism to Capitalism" Legal service India  
<https://www.legalserviceindia.com/legal/article-4895-transition-of-india-from-socialism-to-capitalism.html>

## **Movement from welfare economy to free market economy; judicial precedents**

There are few phases related to the shift of the Welfare to Free Market Economy. In the first phase under the pre-modern state welfare functions were performed. The social ties were strong and important to people, and they took care of the people. Cast religion and localities were the backbone of the people. Under the second phase After the Industrialization, local unities were broken as people moved for employment. The solidarity was broken. In the third phase there was the birth of 'Individual', no strong belongings were left. If a person is cut off his ties, he must become morally autonomous. Under the fourth phase, now markets became stronger than ever, entities managed all things and not the states. States again came down to managing law and order. Public private partnerships came into trend.<sup>9</sup>

The constitution though still maintains that India is a Socialist country under the preamble, but the reality has been hanged after the New Economic Policies of 1991. This movement has been supported and countered by the Indian Judiciary as well. Few cases have been mentioned in this regard to understand the shift.

1. Delhi Science Forum v. Union of India<sup>10</sup>

Government policy was that the country needs efficient telecom system and connectivity. Privatization was being preferred at this time which was thought to be arbitrary as earlier the era was of nationalization. The Supreme Court redefined Arbitrariness under Article 14 and held that only if the policy is derived by ill faith it can be termed arbitrary.

2. Reliance Airport Developers Pvt. Limited v. Airport Authority of India<sup>11</sup>

There was a statutory obligation created by the Act of Parliament that all Airports in India must be constructed by the Airport Authority of India with Private Partnership. It was also decided that the two major airports of India i.e. Delhi and Mumbai must be developed and modernised. The Delhi Airport was to be easily modernised, but problem was faced with the Mumbai Airport as it was in the middle of the city and was surrounded by houses. After bidding development of Delhi Airport went to GMR Infrastructure and Mumbai to GVK Infrastructure. The other bidder was Anil Ambani Controlled Reliance Airport Developers, but their bid was rejected.

The argument was on what grounds was the bid given to GVK and GMR. The Supreme Court held that the policy to decide the bid was transparent. Court also commented that it must not interfere unless it is done intentionally. Court also laid down three stages of evaluation under such circumstances. 1<sup>st</sup> is Identification of key factors; 2<sup>nd</sup> is what relative weightage to be given to what factors and 3<sup>rd</sup> is that the factors must not be deviated. These stages of evaluation were only advisory, and the contract was not changed.

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<sup>9</sup> Rangarajan, C. "State, Market and the Economy: The Shifting Frontiers." *Economic and Political Weekly*, vol. 35, no. 16, Economic and Political Weekly, 2000, pp. 1386–90, <http://www.jstor.org/stable/4409176>.

<sup>10</sup> 1996 SCC (2) 405.

<sup>11</sup> Appeal (civil) 2515 of 2006 Decided On, 07 November 2006, INSC 758.

3. Bharat Aluminium Co. Ltd v. Kaiser Aluminium Technical Service Inc<sup>12</sup> AKA Balco Case

The government wanted to disinvest in the Bharat Aluminium Ltd. and to sell the shares to Sterlite. Against such a decision of the government the employees of BALCO moved to the Supreme Court. Their major arguments included; Article 14 was not followed, It is a very irrational decision of the government and that the Rules of Natural Justice were not followed as before taking any decision the workers must have been consulted.

All these arguments were rejected by the Supreme Court and they expressed disagreement with the Samatha case as well though it was not overruled.

The court further said that the applicability of Article 14 is at the places where the action was motivated by ill will. It also held that the economic policy of the government are immune and that the workers do not have the right to be heard.

4. T.K. Rangrajan v. Government of Tamil Nadu and Others<sup>13</sup>

Earlier the right to Strike was recognised under the Constitution as a right of labours. This was due to the idea of collective bargaining. If collective bargaining failed the last resort was strike which was also accepted as a legal right. But as foreign corporations wanted controlled labour, capital became more important than labour.

The court held; the labour does not have right to strike as loss is caused not only to employer but also to the society at large.

5. Secretary Ministry of Information and Broadcasting v. Bengal Cricket Association<sup>14</sup>

This case is popularly known as the Air waves case. Air waves was the monopoly of the government, and no one can interfere with the broadcasting without the permission of the government. Doordarshan did exclusive broadcasting of cricket matches but cricket association of Bengal did not want that as it was a very important source of economy. The Bengal association wanted to sell it to the private players to earn more profit, but Doordarsan had monopoly. Court had two distinct claims, contradictory to each other.

Television Airwaves spectrum is a public resource controlled exclusively by central government, but private broadcasters have a right under 19(1)(g) – So a compromise has to be done.

Court held, Doordarshan and Central government cannot claim monopoly. The court kept the right of government intact but to give the right to private players under Article 19(1)(g) Doordarshan was asked to give licence to the private players after receiving some fees from them. This case is important as private rights emerged in this case.

6. Narmada Bachao Andolan v. Union of India<sup>15</sup>

In this case there was the involvement of balancing of social interests. In this particular case the intention of Sardar Sarovar Dam construction was for irrigation of fields and production of electricity for industrial purposes. Interests of five parties was at stake: 1) Government 2) Farmers 3) Industries 4) Environmentalists 5) House residents. The Idea of

<sup>12</sup>Appeal (civil) 2515 of 2006.

<sup>13</sup> AIR 2003 SC 3030.

<sup>14</sup> 1995 AIR 1236.

<sup>15</sup> 10 SCC 664.

environmentalists was that the large size of the Dam would lead to destruction of ecology. House residents were to be uprooted and rehabilitated at a new place. The hon'ble Supreme Court held that the water in near future shall be the greatest problem of all the states, so for production of food and industrial purposes it is necessary that dams are constructed.

7. Tehri Bandh Virodhi Sangharsh Samiti v. State of Uttar Pradesh & Union of India<sup>16</sup>

Unlike the forest dwellers who were uprooted, in this case large portion of Tehri city will have to be submerged in the Dam. A proof of the seismology report said that Himalayan region is susceptible to earthquakes, large number of cities on the bank of Ganga - Haridwar, Rishikesh and many villages were at direct threat of being submerged in water.

The report of the environment committee of Government of India suggested that the Dam must not be constructed. One report by committee of secretary which was sent to Prof. from Roorkee suggested to go ahead with the construction. All these reports along with the report of the world bank were submitted to the Supreme Court. The Court expressed that these matters need technical expertise therefore the court agrees with the decision of the government. A clean chit was given. All these cases gradually accommodated the globalization by reduction in the role of state. The courts paved a way for and welcomed the free market economy policy, when a shift was thought of.

### **Judgements that went against the current**

1. Samatha v. State of Andhra Pradesh<sup>17</sup>

Supreme Court in this case held that; if an area is a scheduled area, then it cannot be overtaken by the government in guise of developmental purposes. Another alternative must be found.

2. Nandini Sundar and Ors. v. State of Chhattisgarh<sup>18</sup>

A lady was arrested by the Chhattisgarh Government considering the previous Naxalite activities. The Court expressed its opinion that due to the negative impact of globalization the Naxalites have grown. The government is needed to address this situation properly than to use the police force brutally.

3. T. N. Godavarman Thirumulkpad v. Union of India<sup>19</sup>

The apex court held that the core forest area is sacrosanct and commercial activities must be absolutely prohibited in that area.

### **Conclusion**

Decision making and individual rights are affected due to globalization. It is feared that under pressures of globalisation, the poor and downtrodden will further be marginalized. It is also feared that the small scale and cottage industry will lose-out to the competition. Whereas it shall be the duty to protect the

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<sup>16</sup> 606 1992 SCC.

<sup>17</sup> AIR 1997 SC 3297.

<sup>18</sup> AIR 2011 SC 2839.

<sup>19</sup> 1997 2 SCC 267.

interests of these entrepreneurs, it is also the duty of the state to provide adequate socio-legal framework in which the welfare of the deprived sections should be central to legal reforms. It is important to note that in the western countries, the society is individualistic, in contrast to Indian society based on collectivities, such as family, caste, village, etc. In western countries, the social security takes care of the needs of the individuals who have fallen on difficult times.

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