



THE TOPIC: SHIFT FROM LAISSEZ- FAIRE TO WELFARE - STATE UNDER THE
LABOUR LAW

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ABSTRACT:

The relation between welfare state and globalization is quite complex, it changes from time to time. The “welfare state” nowadays encompasses and connects a large number of policy fields, and some parts of the welfare state are likely to be affected differently by globalization from others. This paper basically focuses on understanding the transition of the concept of laissez- faire to the welfare state. We shall also see the impact of globalization on the sovereignty of a state. We shall see how rule of law is institutionalized in a modern welfare state.

Administrative law is recognised as the most outstanding legal development of the 20th century. The 19th century was characterised by the welfare state wherein there was minimum government control, free enterprise, contractual freedom, etc. Individualistic theories flourished in this period. The state played a negative role. It was primarily a police state which helped in the maintenance of law and order, protecting the nation from external aggression, dispensing justice to its citizens and collecting taxes for financing such activities. However, in the 20th century, the evils of this system were realised.

Keywords: Laissez faire, welfare state, globalization, sovereignty, rule of law.”

INTRODUCTION:

Due to contractual freedom and freedom of enterprise, there was an unequal distribution of wealth. This led to several socialist movements especially ones in which the grievances of labourers was voiced. Thus, a need was felt that the state shall be more than a police state. It shall help in alleviating the poor, regulating individual enterprise and most importantly bringing about social justice. This led to the establishment of the social welfare state. This may be seen even in the case of India. Before independence, India was essentially a police state as the British were more interested in furthering their own interests rather than working for the welfare of the people.

However, the concept of social welfare was taken up immediately after independence especially after the adoption of the constitution. The preamble to the constitution states that India shall be a socialist, secular, democratic, republic and must provide justice, equality, rights, freedom, etc. to all. Also, the right to free and compulsory education for children up to 14 years is now a fundamental right. Further, various social legislations such as the Factories Act, Minimum Wages Act, etc. have come into the picture.

Change in the concept of state-from laissez- faire to Social Welfare state. Administrative law is recognised as the most outstanding legal development of the 20th century. The 19th century was characterised by the welfare state wherein there was minimum government control, free enterprise, contractual freedom, etc.

The first movement of 'laissez faire' promoted widely by the doctrine of natural. The laws of nature that govern the state with economic activity, the life, liberty and property should be protected in order to allow interference. This was the cause of the nation's economic and financial chaos suffered under the Statute of the Union. The aim was to ensure that the loss of political independence won dearly economically by being financially dependent on the authorities and the princes. The police power of the state is a party usually a single arbitrary exercise of police repression by the political, economic, and social and government control over aspects of life as a result within a society become a welfare state.

WHAT IS LAISSEZ- FAIRE ALL ABOUT?

Laissez-faire is a French phrase that translates to allow to do. It refers to a political ideology that rejects the practice of government intervention in an economy. Further, the state is seen as an obstacle to economic growth and development.

The term originated in the 18th century during the Industrial Revolution. French industrialists used the term in response to the French government's voluntary aid to promote business. The phrase is traditionally attributed to French businessman M. Le Gendre from when he responded to a Mercantilist minister, Jean-Baptiste Colbert.

The laissez-faire theory mainly advocates government non-intervention. Economic theorist Adam Smith believed that the optimal functioning of markets needed minimal government intervention. However, Smith did raise concerns about the drawbacks of the theory, particularly in relation to the possibility of creating an indolent, lazy, but financially powerful feudal class.

Basic Principles of a Laissez-faire Economy:

- The individual is the basic unit in society, i.e., the standard of measurement in social calculus.
- The individual enjoys a natural right to freedom.
- The physical order of nature is a harmonious and self-regulating system.

The basic purpose of the laissez-faire economy is to promote a free and competitive market that demands the restoration of the order and natural state of liberty that humans emerged from. A laissez-faire economy is thus characterized by the free movement of forces of supply and demand, free from any form of intervention by a government, a price-setting monopoly, or any other authority.

Advantages of Laissez-faire

Laissez-faire offers the following benefits:

1. Autonomy

A laissez-faire economy gives businesses more space and autonomy from government rules and regulations that would make business activities more difficult to proceed. Such an

environment makes it more viable for companies to take risks and invest in the economy. Moreover, it provides companies with a greater incentive to try and maximize profits.

2. Innovation

“Driven by the need to provide their products with market advantage, companies are compelled to be more creative and innovative in their approach. The practice leads to technological advancement in addition to economic growth.”

3. Absence of taxes

Lastly, the absence of taxes leaves companies and employees alike with greater spending power. It also discourages corruption that can arise as a result of bureaucrats with limited knowledge but immense regulatory power.

Disadvantages of Laissez-faire

Along with its advantages, a laissez-faire economy comes with a few drawbacks:

1. Income inequality

According to Thomas Hobbes, the presence of absolute autonomy in a state-of-nature economy creates a situation of chaos for both producers and consumers. Such an economy can lead to inequality of income and wealth that may contribute to a vicious cycle wherein inheritance plays a key role in financial placement within society. As put forward by Adam Smith, monopolies can emerge wherein they control supply, charge higher prices, and pay lower wages to workers.

2. Failure to represent the interests of the entire society

A laissez-faire economy fails to be representative of the interests of all sections of a society; it may cater only to the majority of the affluent class. Thereby, public goods with positive externalities such as education and healthcare may not be equally distributed in society, whereas goods with negative externalities may be over-consumed.

Laissez-faire is now more an adjective to denote the prevalence of its associated features. Isolation, the economic theory can lead to huge gaps in wealth, injustices, and in some cases, recession. In the late 19th century, most economies in the West were dominated by liberal policies encouraged by laissez-faire.

The Transition of the doctrine of Laissez- faire to the welfare state with special reference to India

The concept of welfare state came up in the British historical setting from the ideas of liberalism, socialism and conservatism. The formative period of the concept involved an interesting application of empiricism and ideology to the problem of poverty. The welfare state, conceived within the liberal framework, involved a social consensus on a wide spectrum of socio- economic policies. Two sociological factors largely contributed to the growth of the concept: first, increasing prosperity that produced a revolution of rising expectations; and second, the hope and the fear generated by the newly acquired manhood franchise. The faith in piecemeal social engineering, bereft of dogma, set the precedent for expanding municipal activity and the government's interest in social reform. This, indeed, was an ominous beginning. State help and self- help, in this context, became the two focal points of the 'principled' discussion on the subject of the welfare state. Herbert Spencer's liberalism, an apotheosis of self- help, as a deductive system, had deeper implications for welfare state activity. The notion that Spencer was opposed to the welfare state is a false one. His doctrine of non-intervention and positivistic connotation, prima facie inconsistent with laissez- faire, but consistent with the view of state help as complimentary to self- help.

The concept of Laissez - Faire describes an environment where transactions between private parties are free from state intervention, including restrictive regulations, taxes, tariffs and enforced monopolies. The literal translation of this French phrase is "let it be". The British Political system, while bringing into force, the concept of a welfare state, has acquired a remarkable capacity of preserving a liberal identity against the ideas of the French and the German socialism. British resistance to utopian ideals and adaptation to new challenges and responsibility was phenomenal. Political leaders of all hues and complexions were falling prey to democratic compulsions and were redefining their ideals. In relation to matters affecting the labour and the poor, they were abandoning their pitched positions in response to pragmatism. Transport, banking, agriculture, industry, trade; in a word, a large segment of the economy, were subject to regulation.

The Indian economy experienced major policy changes due to the following reasons:

1. Liberalization;
2. Privatization; and
3. Globalization.

The phrase *Salus Populi est suprema lex* means that the happiness of the people is the supreme law. A welfare state has to serve the larger public interest. It denotes a concept of government in which the state plays a key role in the protection and promotion of the economic and social well-being of its citizens

WELFARE STATE:

A welfare state is a concept of government where the state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organization.

There are two main interpretations of the idea of a welfare state:

A model in which the state assumes primary responsibility for the welfare of its citizens. This responsibility in theory ought to be comprehensive, because all aspects of welfare are considered and universally applied to citizens as a right

Welfare state can also mean the creation of a "social safety net" of minimum standards of varying forms of welfare.

In the strictest sense, a welfare state is a government that provides for the welfare, or the well-being, of its citizens completely. Such a government is involved in citizens lives at every level. It provides for physical, material, and social needs rather than the people providing for their own. The purpose of the welfare state is to create economic equality or to assure equitable standards of living for all.

The welfare state provides education, housing, sustenance, healthcare, pensions, unemployment insurance, sick leave or time off due to injury, supplemental income in some cases, and equal wages through price and wage controls. It also provides for public transportation, childcare, social amenities such as public parks and libraries, as well as many other goods and services. Some of these items are paid for via government insurance programs while others are paid for by taxes

TWO FORMS OF THE WELFARE STATE

There are two ways of organizing a welfare state:

According to the first model the state is primarily concerned with directing the resources to "the people most in need". This requires a tight bureaucratic control over the people concerned, with a maximum of interference in their lives to establish who is "in need" and minimize cheating. The unintended result is that there is a sharp divide between the receivers and the producers of social welfare, between "us" and "them", the producers tending to dismiss the whole idea of social welfare because they will not receive anything of it. This model is dominant in the US.

According to the second model the state distributes welfare with as little bureaucratic interference as possible, to all people who fulfil easily established criteria (e.g. having children, receiving medical treatment,). This requires high taxing, of which almost everything is

channelled back to the taxpayers with minimum expenses for bureaucratic personnel. The intended – and also largely achieved – result is that there will be a broad support for the system since most people will receive at least something. This model was constructed by the Scandinavian ministers Karl Kristian Steinke and Gustav Moller in the 30s and is dominant in Scandinavia.

DIRECTIVE PRINCIPLES OF STATE - POLICY AND WELFARE STATE

The Directive Principles of State Policy is guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. They are enumerated in part iv of the constitution of India. i.e. directive principles of state policy. They are the instruments of instruction in the governance of the country. The directive principles lay down certain economic & social policies to be pursued by the various governments in India. They are classified as social & economic charter, social security charter& community welfare charter.

These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the Directive Principles given in the Constitution of Ireland and also by the principles of Gandhism; and relate to social justice, economic welfare, foreign policy, and legal and administrative matters It is by enacting “directive principles of state policy” in part IV of the constitution that we endeavoured to create a welfare state.

In a sense the directive principles of state policy epitomize the ideals, the aspirations, the sentiments, the precepts, and the goals of our entire freedom movement. In another sense, they represent a compromise between the ideals and reality. In the initial stages of the constitution -making there was a strong current of opinion to make the directive principles as much justifiable as the fundamental rights. But it dawned on the constituent assembly that it would not be practicable to make the positive rights justifiable. Thus ultimately the non- justifiable directive principles were enacted in part IV of the constitution. T.T. Krishnamachari called the non- justifiable directive principle as “a veritable dustbin of sentiment sufficiently resilient to permit any individual of this house to ride his hobby- horse into it.

Socialist ideals and precepts of national movement found expression in a number of articles. Article 39 embodies the precepts of national movement thus: ‘the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The socialist ideals of the national movement and the national goals are embodied in article 39 which runs:

The state shall, in particular, direct its policy towards securing:

- i. That the citizens, men and women equally, have the right to an adequate means to livelihood;
- ii. That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

- iii. That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- iv That there is equal pay for equal work for both men and women;
- iv. 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 by their age or strength; and

Those children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral abandonment.



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INDUSTRIAL JURISPRUDENCE:

During the twentieth century a new branch of jurisprudence known as Industrial Jurisprudence has developed in our country. Industrial Jurisprudence is a development of mainly post-independence period although its birth may be traced back to the industrial revolution.

Before independence it existed in a rudimentary form in our country. The growth of industrial jurisprudence can significantly be noticed not only from an increase in labour and industrial legislations but also from a large number of industrial law matters decided by the Supreme Court and High Courts. It affects directly a considerable population of our country consisting of industrialists, workmen and their families. Those who are affected indirectly constitute a still larger bulk of the country's population.

This branch of law modified the traditional law relating to master and servant and had cut down the old theory of laissez-faire based upon the freedom of contract in the larger interest of the society because that theory was found wanting for the development of harmonious and amicable relations between the employers and employees. Individual contracts have been in many respects substituted by a standard form of statutory contract through legislation and judicial interpretation. The traditional right of an employer to hire and fire his workmen at his will has been subjected to many restraints.

Industrial Tribunals can be their award makes a contract which is binding on both the parties creating new right and imposing new obligations arising out of the award. There is no question of the employer agreeing to the new contract, it is binding even though it is unacceptable to him. The creation of new obligations is not by the parties themselves. Either or both of them may be opposed to it, nevertheless it binds them. Thus, the idea of some authority making a contract for the workmen and employer is a strange and novel idea and is foreign to the basic principle of the law of contract

Similarly, there is change in the concept of master and servant. One who invests capital is no more a master and one who puts in labour is no more a servant. They are employer and employees, the former may hire the latter but he can no more fire them at his will.

The interest of the employees is in many respects protected by legislation. Both are now parties in an enterprise, without one yielding to the higher status of another but as co-sharer in the partnership. Even the right of labour participation in the management has been given legislative recognition to the utter despair of the capitalist. Most of the benefits claimed by a workman are not part of his bargain with the employer when the latter employed him or are not due to them on account of any contract but of status. The industrial society all over the world has been moving during the present century from contract to status and this status is a politico-socio-economic juristic status

What were the factors that lead to this departure from the old theories of the law of contract, and the law of Master and Servant? Industrialization in India, as in other countries, brings with it some new socio-economic problems. Those who control the industry have a natural tendency of multiplying their wealth and if this tendency is not checked the rich grown on richer and the poor become poorer day by day. The gap between the rich and the poor ultimately grows on to this extent that it develops into two distinct classes in any industrial society, a few of whom are Haves and others are Have-nots. This economic disparity leads to a struggle between Haves and Have-nots, the latter exploited.

Although this situation continues for some time and it had continued to be so in our country too, but gradually the workmen realized that they could put a better fight if they get united. This realization was closely followed by a period of industrial unrest leading to strikes and lock-outs. In conditions of disturbed the world has witnessed the horrors of the two world wars resulting in a spiral rise in the cost of living. With the rise in the cost of living there has been consistent demand from labour for an increase in wages. Democratic ideas have also grown simultaneously with the growth of industrialization in our country. These democratic ideals have pleaded for and have also helped in mass awakening and consciousness for greater power amongst the working class.

Out of the struggle between workers, demanding for a better share in the production and profit of the industry and the employer's hesitation to part with it beyond a certain limit. have grown the recognition of certain principles which are considered to be fundamental in almost all developed countries of the world.

CONCLUSION:

The traditional theory of 'laissez faire' has been a change in the role of government and thereby the transformation of the 'police state' to the 'welfare state' has necessitated the need for conferring more power on the administration and simultaneously the need for controlling this power. The welfare state in effectively carrying out these vast functions to attain socio-economic justice, inevitability will come in direct relationship and encounter with the private citizens. Therefore, the attainment of socio- economic justice, being a conscious goal of state policy, is a vast and inevitable increase in the frequency with which ordinary citizens come into a relationship of direct encounter with state power holders.

This paper has briefly explained the concept of the modern states and how they came into existence – the transition from Laissez faire to modern states. we have seen the constitutional provisions in India that are aimed at achieving modernization in the country. We have also seen how rule of law and its importance and how it is institutionalized in the modern welfare states. This paper has also covered the impact of globalization on the sovereignty of modern welfare states. It is important to note that for the modernization of a state it is important for the governments to make or amend the existing laws – as the labour laws, laws relating to taxation, social security, etc., as per the changing needs of the society. It is suggested that a country has to be in accordance (in making such laws) with the rest of the world, but at the same time, a nations' government has to be concerned about its people and the cultures prevalent in that nation.

SUGESSTIONS AND RECOMMENDATIONS:

There are many laws and Acts which have been made by way the of the Government, but their implementation has been a huge question. These legal guidelines are not at all applied to the level at which they have to be carried out. Especially in the rural areas, these legal guidelines are not in any respect taken care of and there is no person to supervise the law that is being implemented. Forget about the rural areas, these laws are being exploited even within the city areas that too to are considered to be extraordinary volumes. In current - day scenario the organizations, the firms, and many others, we see company working staff careworn like whatever, yet there may be no person to stop it. In the name of human- rights, rights are merely confined to paper- work and no longer ground- work. Working humans in groups of towns like Delhi, mainly ones running inside the corporate zone are mentally tortured with the aid of heavy work load, over- time working hours and many others. For which they may be not even be paid. That's clearly a large irony for the authorities which is only disregarded via the government.

Yet it's miles essential to note that those laws define labour situations to a prime volume and does wonders to labour conditions. They make labour situations, extraordinary to a chief volume. Employees have at the least some thing to depend upon and hence a few standing in the courtroom of regulation primarily based on the present legal guidelines, that is a remarkable factor as if this stuff weren't there, all personnel could had been exploited past creativeness (within the name of cash). These legal guidelines assist in giving structure to the labour situations which can be general in India. Hence it protects equity for the betterment of humans.

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