

WORKSHOP
ON
WATER RESOURCES AND THE LAW IN INDIA
PAPER ON
"OPERATION OF INTERNATIONAL LAW RELATING TO
WATER RESOURCES IN INDIA" *

I. Constitutional Provisions and International Obligations

A. Basic Norms in the Preamble for building up a Welfare States.

1.10. Although the Preamble of the Constitution of India does not say it in so many words it envisages the creation and the nourishing of a welfare state in India. By solemnly resolving, on behalf of the people of India, to secure to all its citizens, social, economic and political justice as also the liberty of thought, expression, belief, faith and worship coupled with the resolve to secure equality of status and opportunity for all the citizens and further assuring the dignity of the individual, the Founding Fathers of the Constitution have, through the medium of the Preamble, not only conceptually laid down the foundations of welfare State but rather provided a workable and practical framework for its accomplishment.

1.11. Sikri J. rightly pointed out that "the Preamble of our Constitution is of extreme importance and the

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Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble".¹ There may be a controversy about the thesis whether Preamble is technically a part of the Constitution or not but there are no two opinions regarding the view that the Preamble is a mirror which reflects the objects and policy which the Constitution is designed to achieve and by declaring the aim of securing social, economic and political justice, liberty of thought, expression, belief, faith and worship equality of status and opportunity and assuring the dignity of individual the Preamble prepared the Indian polity for maturing into an ideal welfare state.

1.12. By prescribing the goal of securing justice and by guaranteeing various liberties the Preamble set-forth, for the constitution, the objectives of development of a sound personality for the humanfolk and by making the procurement of equality of status and opportunity and through assuring the dignity of the individual the horizons were opened for the development of a progressive and prosperous society comprising freely thinking and acting individuals and social groups.

1. Keshvanand Bharati v. State of Kerala, AIR 1973 SC 1461, at p.1506, para 121.

B. Directive Principles of State Policy Show the Way.

1.20 Taking a clue from the Preamble, Article 38 of the Constitution laid down a directive for the state "to secure a social order for the promotion of welfare of the people" by prescribing that

"(1) 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.

(2) The state shall, in particular strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

1.21. It is correct to say that it is only Article 38, contained in Part IV of the Constitution, which expressly refers to justice, social, economic and political but it will not be correct to infer that the concept of justice is limited to directive principles only. Within the fold of the Fundamental Rights also there are provisions which, without expressly saying so strengthen the concept of justice e.g., inter-alia, Article 14, through the guarantee

of right to equality before law, Article 17 by abolishing untouchability and Article 20 (1) by prohibiting ex-post-facto-law, all lead us towards the domain of justice. The Fundamental Rights have also a social content and the conferment of Fundamental Rights on the individuals promotes the social, political and economic objectives of the Constitution,² which ultimately contribute towards the establishments of a welfare state.

C. Norms for procuring adequate means of livelihood, just and equitable distribution of material resources and prevention of concentration of wealth.

1.30. Article 39 prescribed, inter-alia, three basic norms for the Indian polity, under clauses (a), (b) and (c). It prescribed 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; and

(c) that the operation of the economic system does not result in the concentration of the wealth and means of production to the common

2. For similar views (see also, Seervai (H.M.) Constitutional Law of India" (3rd edition - 1984) Vol.II, p.2686.

detriment."

1.31. Article 39 amplifies the concept of justice by providing that the state shall especially direct its policy towards securing the objectives set-out in clauses (d) to (f) of the said Article, out of which clauses (a) to (c) are directed towards economic equality, social well-being and collective prosperity. In nutshell these provisions aim at an "egalitarian setting and operation of the economic system."³

1.32. Article 39 (b) and (c) has been given the most liberal and the widest interpretation so as to comprehend within its scope, inter-alia, land distribution, acquisition of bus permits and agrarian reforms. This Article has also been used to seek help in construing the meaning and scope of "public purpose" and "public interest" and for testing the reasonableness of restrictions on Fundamental Rights.⁴

1.33. While interpreting and relying upon Article 39 (b) and (c) Mahajan and Das JJ held in State of Bihar v. Kameshwar Singh that "the acquisition of, and doing away with, big blocks of land and to bring about a reform in the land distribution system for the general benefit of the community, and Bihar Land Reforms Act, 1950, was a public purpose."⁵ Das J. even observed: "we must regard

3. For similar views and comments see "Constitutional Law of India", Vol.I, 1984 (published by the Bar Council of India Trust) Editor-in-Chief - M.Hidayatullah, p.682 ff.

4. See *ibid*, p.683 and *V.Parathasarathi v. State of Tamil Nadu*, AIR 1974 Mad.76 and *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252 (at p.311).

5. *Ibid.*, pp.274 and 290.

as a public purpose all that will be calculated to promote the welfare of the people as envisaged in these (Article 38 and 39 (b) and (c)) directive principles of State policy".⁶

D. Norms for fostering respect for International Law.

1.40. As a measure for "promotion of international peace and security" Article 51(c) prescribes that the state shall endeavour to "foster-respect for international law and treaty obligations in the dealings of organised peoples with one another."

1.41. Under Article 253 of the Constitution the Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

1.42. Entry 14 of the Union List (List I) of the Seventh Schedule gives the Parliament exclusive powers to make law regarding "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries".

Thus, guided by the directives of Article 51(c) and on the basis of powers conferred on it by Article 253 read with Entry 14 of List I (Union List) the Parliament can adopt legislative measures and the state, namely,

6. Ibid, p.290.

India can take any other appropriate steps for fostering respect for international law. The fact that Article 51(c) forms only a part of "directive principle", and is, as such, not technically enforceable, does not mean that India is not free to absorb international law, in its domestic corpus-juris, when it is not inconsistent with or does not clash with Indian Municipal Law.

1.43. Even otherwise, by virtue of Article 253 read with Entry 14 of List I, Indian Parliament is empowered and in some given situation, as a matter of necessity, obliged to adopt necessary legislative measures for the implementation of treaties, agreements or some pertinent decisions taken at some international conventions or conferences. This process itself will set into motion a phenomenon for fostering respect for international law and treaty obligations by India in her dealings with other members of the community of Nations. India is naturally expected to respect and implement those provisions of international law and treaty obligations which are directed towards promoting the welfare of its citizens as members of a welfare state.