


Constitutional vision of Social Justice

Role of the Labour Courts in the evolving economic environment



Justice K Chandru

THE CONSTITUTION OF INDIA

 THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN DEMOCRATIC REPUBLIC** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

**Dr. AMBEDKAR'S LAST SPEECH IN THE CONSTITUENT
ASSEMBLY ON ADOPTION OF THE CONSTITUTION
25.11.1949**





On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value.”

“How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which is Assembly has to laboriously built up.”



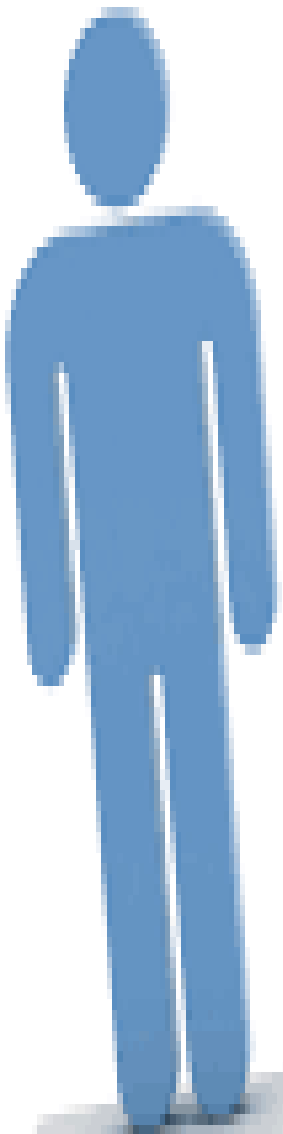
Article 14

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

EQUALITY

Article 15(1)

The State shall not discriminate against any citizen on grounds **only** of religion, race, caste, sex, place of birth or any of them





Article 16(2)

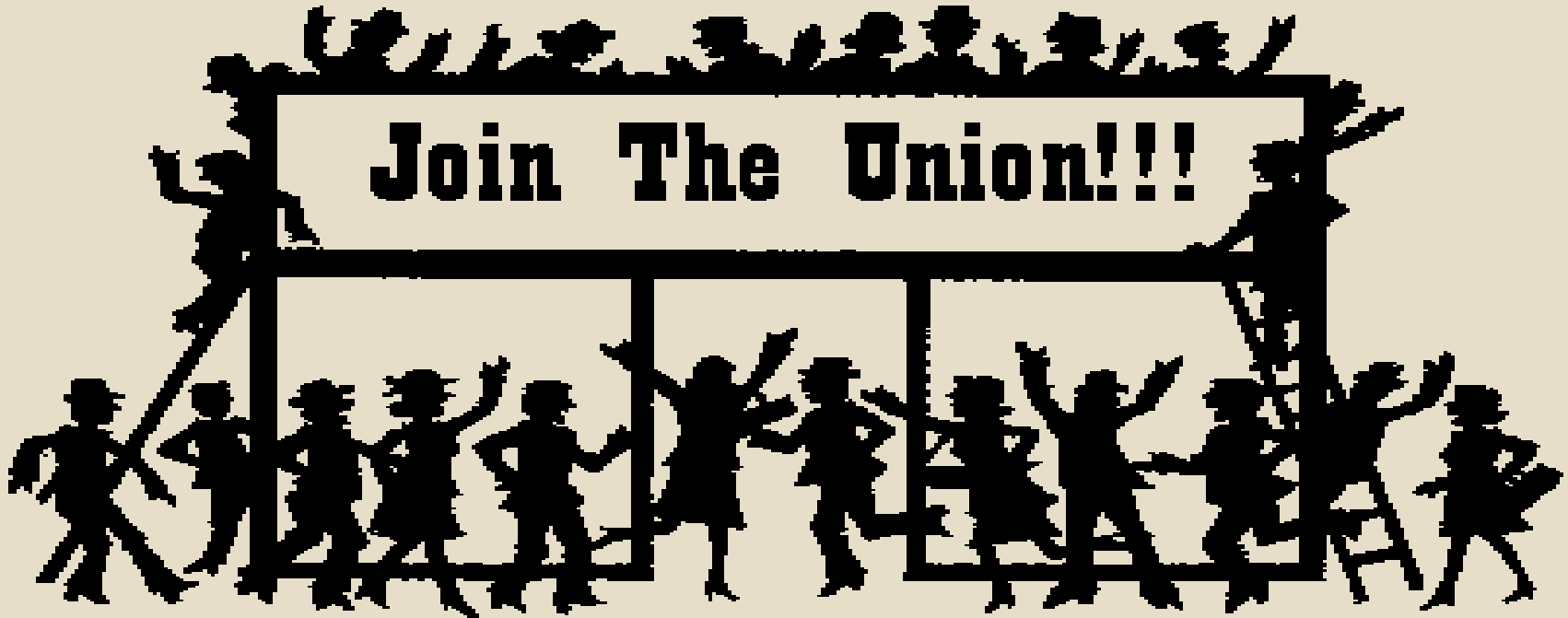
No citizen shall, on grounds **only** of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

Article 17

caste

Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

Article 19(1)



All citizens shall have the right
(a) to freedom of speech and expression;
(c) to form associations or unions;



a trade union does not have the concomitant right to collectively bargain and there is no fundamental right involved.

AIBEA Vs.N.I.T. & Ors.

AIR 1962 SC 1967



- There is no fundamental right for anyone to hold meetings in government premises...The fact that those who work in a public office can go there does not confer on them the right of holding a meeting at that office even if it be the, most convenient place to do so.
- freedom to form- associations or unions does not mean that they can exercise those freedoms in whatever place they please.

Railway Board Vs Niranjn Singh

1969 SCC (1) 502







- The Royal Commission on Labour under the chairmanship of J.H whitley was appointed in 1929 to enquire into and report on the existing conditions of labour in industrial undertakings, plantations, mines etc. The Commission made in-depth survey of different aspects of health, welfare, standard of living etc.

“Everything that we have seen in India has forced upon us the conviction that the need of organisation among Indian workmen is great. . . . Nothing but a strong Trade Union movement will give the Indian workman adequate protection. . . . It is in the power to combine that labour has the only effective safeguard against exploitation, and the only lasting security against inhumane conditions.”

Report of the Commission, Chapter XXI.

A photograph showing a brick-making site. In the foreground, a worker in a bright orange jacket is kneeling in a muddy area. To their right, another worker in a light-colored shirt is also kneeling, working with a brick mold. The ground is covered in mud and scattered bricks. In the background, there is a small pool of water and the lower legs of another person standing. The overall scene depicts a labor-intensive and possibly exploitative work environment.

Article 23(1)

Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

Article 24

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment



Children in match factories in Tamil Nadu

“Employment of children within the match factories directly connected with the manufacturing process upto final production of match sticks or fireworks should not at all be permitted. They can, however, be employed in the **process of packing** which should be done in an area away from the place of manufacture to avoid exposure to accident.”

M.C. Mehta vs State Of Tamil Nadu And Ors

1991(1) SCC 283

Justice M.M.Punchi :

“As a concept it may be good to say that child labour should be eliminated altogether. The realities of the Indian situation however may permit tolerable exceptions. We have prevailing extreme poverty With a view to feed himself and to be able to contribute to the family it may become imperative for a child to work and earn for survival. To eliminate child labour altogether at the present juncture might then be harsh.”

1996(1) Labour Law Journal (J-1)



Part IV

Directive Principles of State Policy

Article 37 :

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws

Article 38

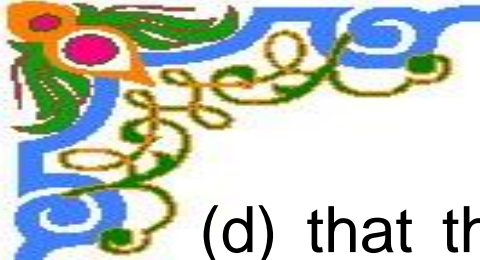
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor 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

Article 39

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 to 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) that 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



The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities



Article 39A

Article 41



The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

Article 42

The State shall make provision for securing just and humane conditions of work and for maternity relief

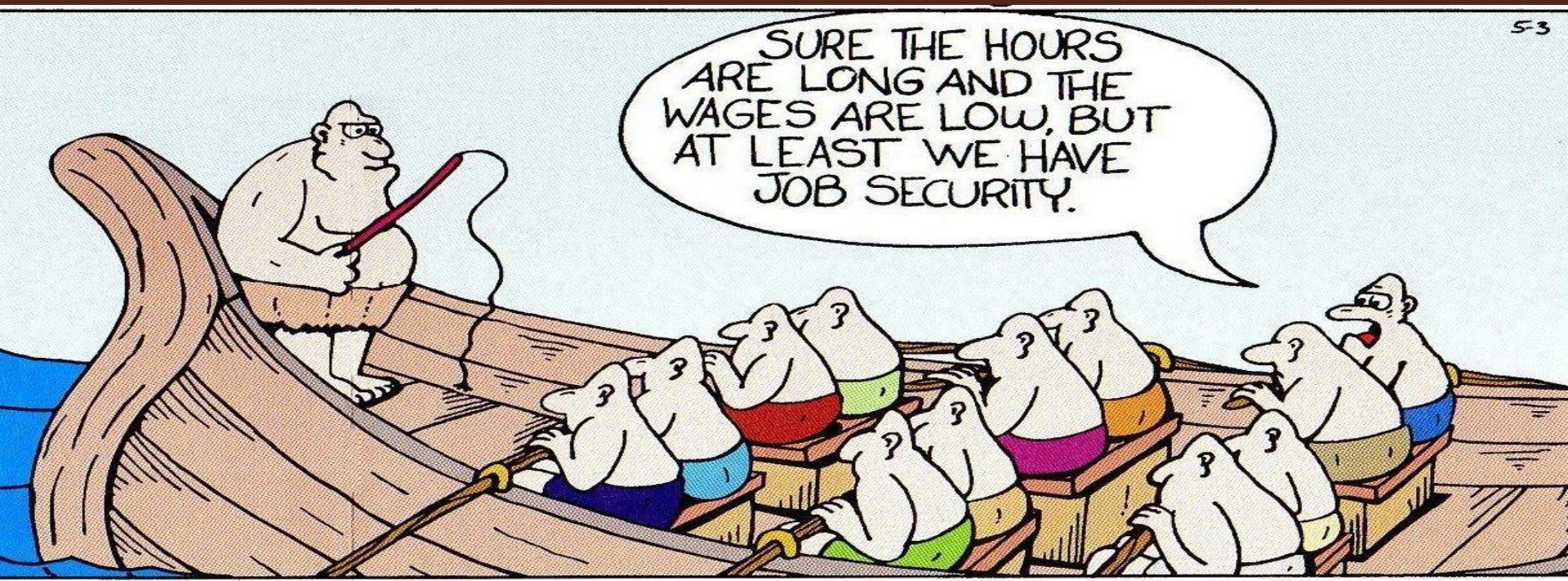


Article 43

The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas

Article 43A

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

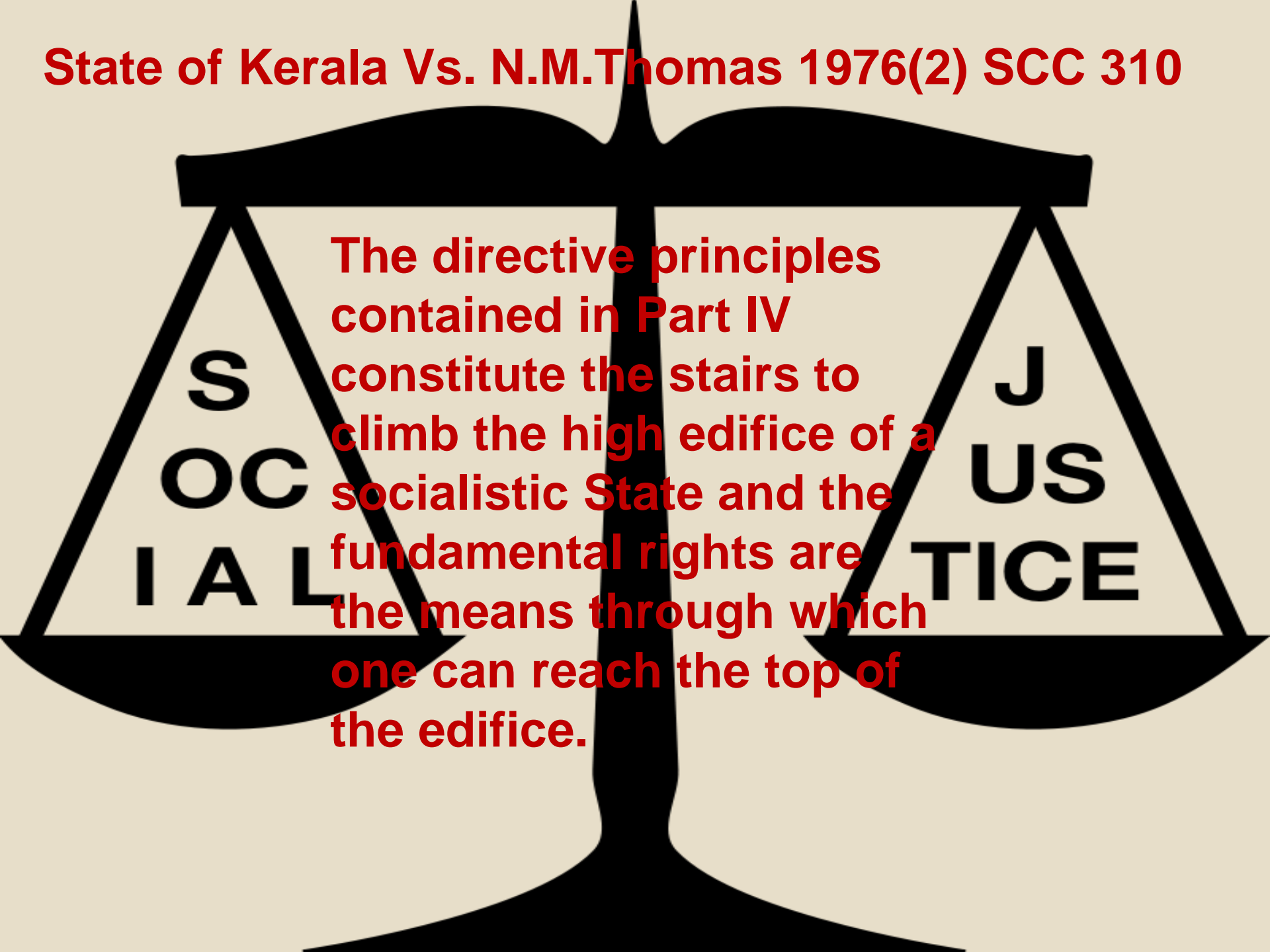


Article 51A : Fundamental duties

It shall be the duty of every citizen of India:-

- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement

State of Kerala Vs. N.M.Thomas 1976(2) SCC 310



The directive principles contained in Part IV constitute the stairs to climb the high edifice of a socialistic State and the fundamental rights are the means through which one can reach the top of the edifice.

Labour Laws



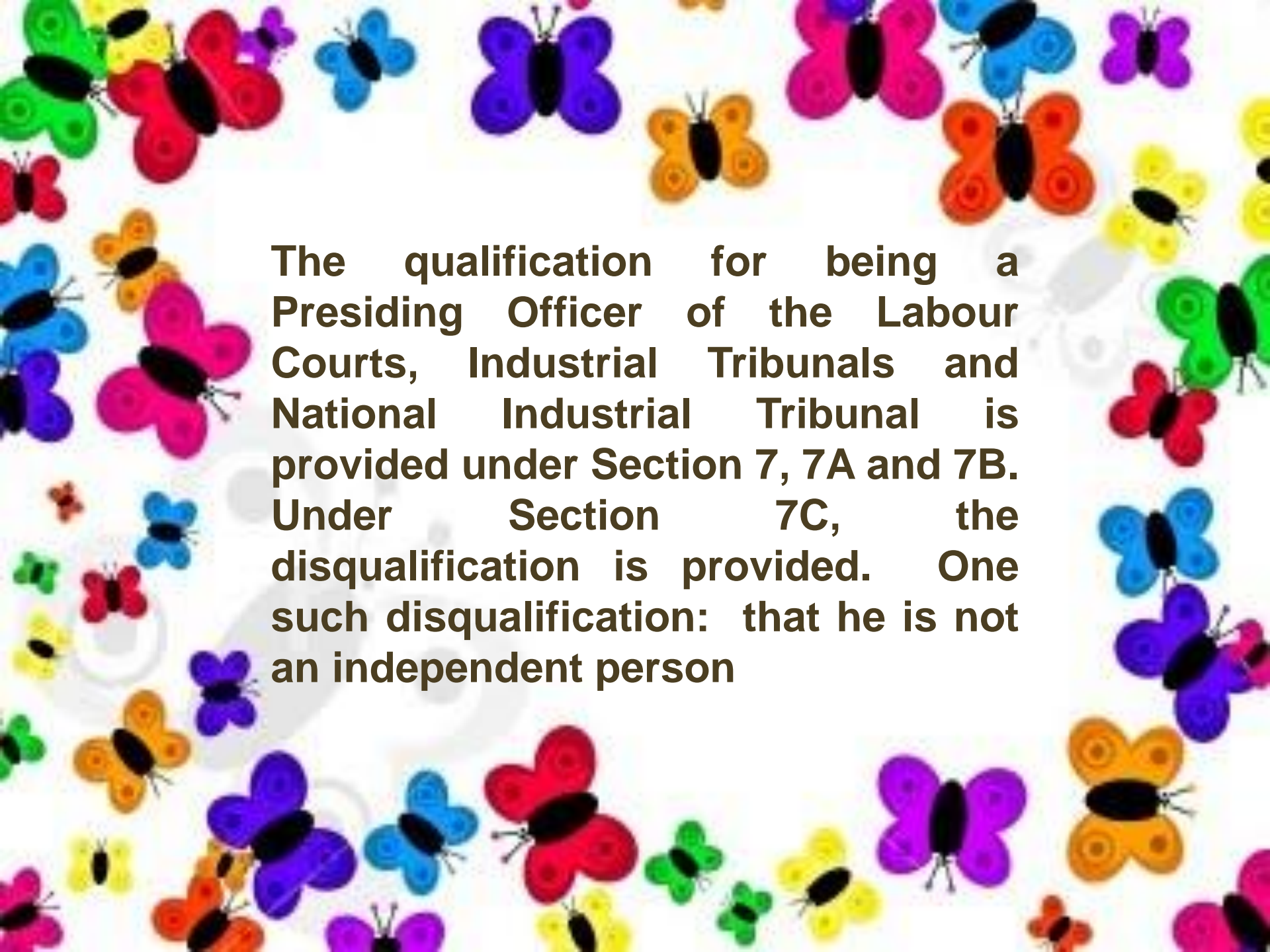
1. Bombay Industrial Relations Act, 1946
2. Industrial Disputes Act, 1947





The aim of the ID Act is to investigate and settle Industrial Disputes. The settlement of a dispute can be done by either conciliation or adjudication. Adjudication is done by the Labour Courts/Industrial Tribunals/National Industrial Tribunal.





The qualification for being a Presiding Officer of the Labour Courts, Industrial Tribunals and National Industrial Tribunal is provided under Section 7, 7A and 7B. Under Section 7C, the disqualification is provided. One such disqualification: that he is not an independent person

Section 2(i) of the I.D.Act, 1947

a person shall be deemed to be "independent" for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute:

PROVIDED that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate government the nature and extent of the shares held by him in such company

Basic Rules of Evidence

Rule 15. Evidence : - A Board, Court, Labour Court, Tribunal or National Tribunal or an Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it /him and in such manner as it/he may think fit



Award can be made unenforceable

By making a declaration that it will be inexpedient on public grounds affecting national economy or social justice and by issuing a notification the govt. can make the award unenforceable. (section 17A)

**Power of the Labour Court
right from the inception of the Act
was set out
by the Federal Court**

**Western India Automobile Association
Vs.
Industrial Tribunal, Bombay & Ors.
(AIR 1949 F.C. 111)**

HELD :


(1)

“although the employer may be unwilling to do so, there will be jurisdiction in the Tribunal to direct the employment or non-employment of the person by the employer. This is the same thing as making a contract of employment when the employer is unwilling to enter into such a contract with a particular person. Conversely, if a workman is unwilling to work under a particular employer a trade union may insist on his doing so and the dispute will be about the employment of workman by the employer and thus become an industrial dispute subject to the award of the Tribunal.”

HELD :

(2)

“Therefore if the bringing about of such relationship is within the jurisdiction of the Industrial Tribunal, because such disputes are covered by the definition of the expression ‘industrial dispute’ there appears no logical ground to exclude an award of reinstatement from its jurisdiction. It can equally direct in the case of dismissal that an employee shall have the relation of employment with the other party, although one of them is unwilling to have such relation.”

A decorative border of pink daisy flowers surrounds the text. The flowers are arranged in a continuous pattern along the top, bottom, and sides of the page, with some larger flowers prominently displayed at the corners.

The Supreme Court recognised the fact that the common law limitation which debarred the specific performance of a contract of personal service was not applicable to industrial adjudication

L
P
G

Liberalization
Privatization
Globalization

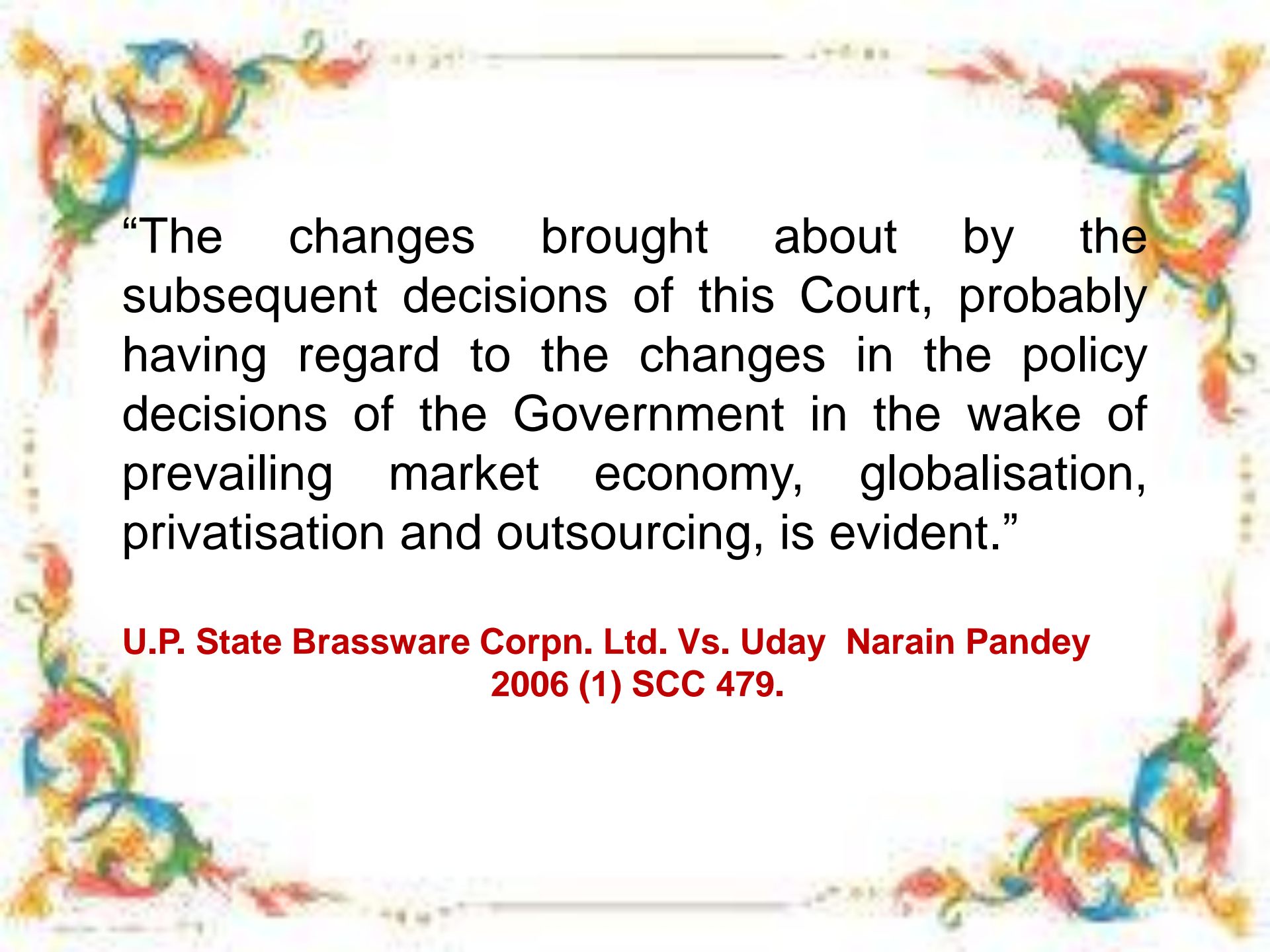


The image features a pair of golden scales of justice on the left, with two pans hanging from a central point. Below the scales, a wooden gavel rests on a wooden block. A thick, silver metal chain is wrapped around the gavel and the block, and a large black padlock is attached to the chain, symbolizing restriction or a legal barrier.

Judicial Review not permitted on
disinvestments by Public Sector

**Balco Employees Union Vs. Union of
India, 2002 (2) SCC 333**

**State of Punjab Vs. Devans Modern
Breweries Ltd., 2004 (11) SCC 26**

A decorative border with colorful floral and scrollwork patterns in shades of blue, red, yellow, and green, framing the central text.

“The changes brought about by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.”

**U.P. State Brassware Corpn. Ltd. Vs. Uday Narain Pandey
2006 (1) SCC 479.**

Right of development finds place in WTO and GATT. It takes into consideration globalisation and opening up of economy. Excellence in professional education must be viewed from the economic interest in the country. In order to compete with the other developed countries, GDP of India should be around 15% instead of the present rate of 5%.

Having regard to globalisation and opening up of the market, the State expects various medical colleges and educational institutions and universities to move in. Under WTO and GATT human development has taken its firm root. A decent life to the persons living in the society in general is perceived.”

Globalisation has brought a radical change in the economic and social landscape of the country. Its impact on the Constitution and constitutionalism is significant. As and when the occasion arises the interface between globalisation and constitutionalism whether from an economic perspective or human rights perspective is required to be seriously gone into. Often the economic changes in the country relating to regulation of markets brought about by competition law leading to substantial erosion of administrative law by private law, are matters which eventually would fall for our decision. The Court will have to take a realistic view in interpretation of the Constitution having regard to the changing economic scenario.

In fact, the States are encouraging liberalisation to such an extent that in the near future alcohol beverages may be allowed to be sold in small grocery shops. The executive authorities are contemplating to grant permission to open liquor shops at the airports. The society has accepted pub culture in the metros. A view in the matter, therefore, is required to be taken having regard to the changing scenario on the basis of ground reality and not on the basis of the centuries' old maxims.

307. Socialism might have been a catchword from our history. It may be present in the preamble of our Constitution. However, due to the liberalisation policy adopted by the Central Government from the early nineties, this view that the Indian society is essentially wedded to socialism is definitely withering away.

U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey
2006 1 SCC 479.

As part of pro-active changes in labour laws, the judiciary in India did not lag behind. The Factories Act 1948 which prohibited night employment for women was struck down by the Madras High Court (**see R.Vasantha vs Union of India – 2001 (2) LLN 354**). Net result the Indian female workers are also available for night shift in all factories contrary to the ILO norms.



Women can both serve and be served alcohol in India in a landmark ruling by the country's supreme court that dismissed a petition calling for a ban on female bartenders

**Anuj Garg Vs. Hotel Association of India & Ors.,
2008 (3) SCC 1**

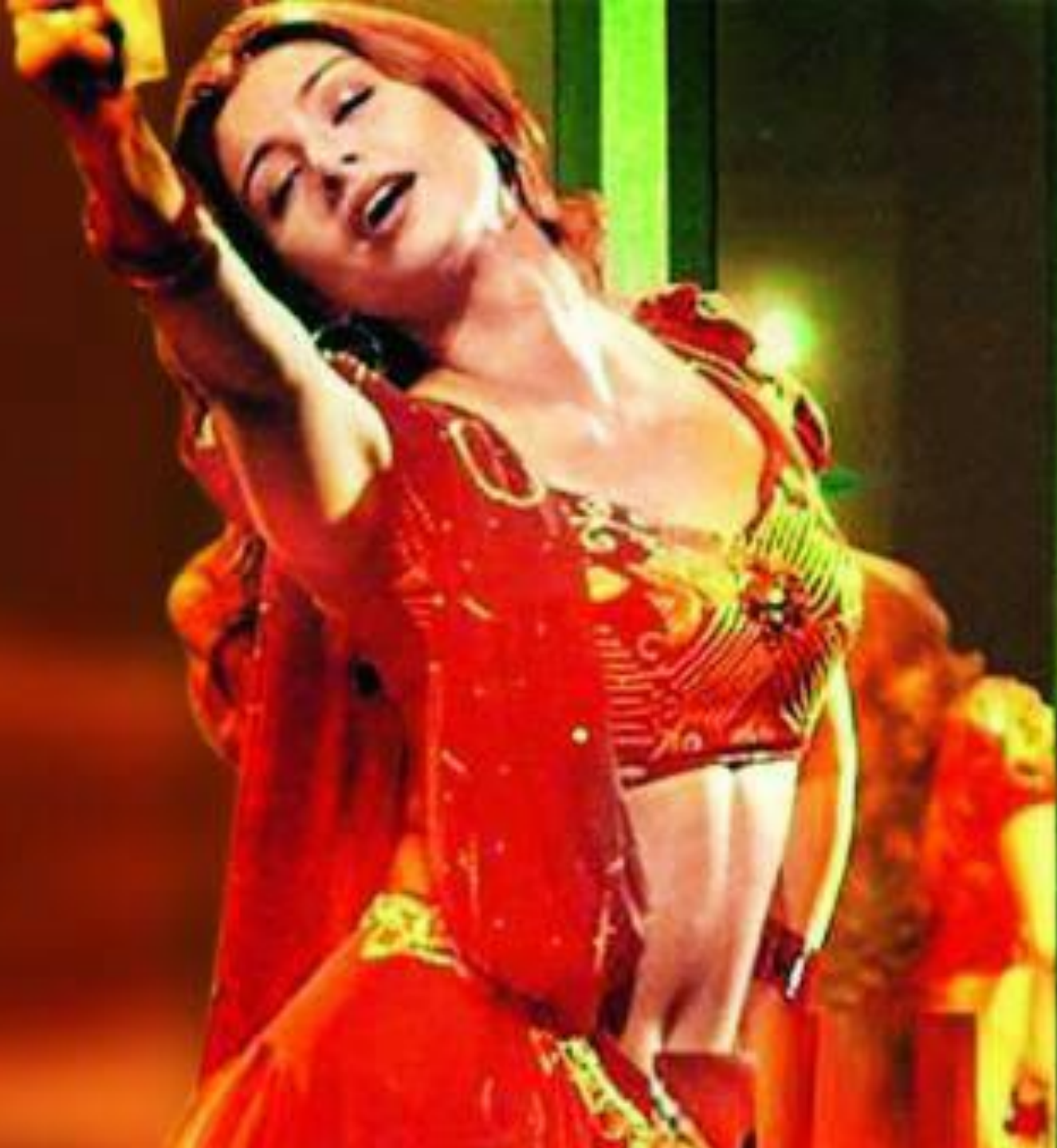


DANCING GIRLS IN BARS

Supreme Court in 2013(July) overturned an eight-year ban on dance bars in Mumbai imposed by the Maharashtra state government which said they were degrading and exploited women.

State of Maharashtra & Anr. Vs. Indian Hotel Restaurants Association & Ors.

2013(8) SCC 519



What is Plaquing?

The following ills are plaqueing the labour field:

- Outsourcing
- Corrupt labour bureaucracy
- Non-coverage of unorganized labour under these laws
- Laws delay
- LPG

- ▶ We have the lengthiest labour legislation in the world. Both the Federal(Union) government and various states have been empowered by the constitution to make laws regarding labour.
- ▶ But today, vast sections of the organized labour are not covered by any worthwhile labour legislation. Even the areas where legislation operates a large number of outsourced labour are unable to get any legal protection.

- While the trade unions of labour are seeking for a comprehensive labour legislation, their employers are seeking more and more deregulations(exemptions) from those laws.
- The Special Economic Zones (SEZ) have allowed industries with special incentives with a view to export goods are hardly regulated by these labour laws. This had set in large scale of demoralization of the workforce. These developments have also sometimes led to individual violence against officers/ managers. E.g (Maruti, Gurgaon)

- The enforcement machineries have become utterly corrupt and looks the other way when serious breach of labour legislations takes place.

The Multi Tier appeals system allows litigations to start from:

- Labour Court / Industrial Tribunals
- High Court (Single Bench)
- High Court (Division Bench)
- Supreme Court

This had really frustrated the fruits of labour legislations from reaching the working class.

WARNING

“Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the raison d’etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers.”

Harjinder Singh Vs. Punjab State Warehousing Corporation
2010 (3) SCC 192