Disinvestment in the Petroleum and Mining Sector: A Critical Analysis

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INTRODUCTION

The previous decade, which ushered in the new economic policy tailored towards liberalisation, saw a momentous shift in the policy towards government owned and controlled enterprises popularly known as Public Sector Undertakings [hereinafter *PSUs*]. The earlier protectionist regime gave way to a scenario wherein the State, realising the need for withdrawing from economic activities, began handing over the control of these PSUs to private bidders. This process of deregulation through the mechanism of disinvestments has brought to the fore several questions as to its legal validity vis-à-vis safeguarding the constitutional credo of socialism and the vision of our founding fathers to ensure state control of key economic sectors. Lately, the process of disinvestments has been extended to crucial sectors of the economy such as the petroleum and mining sector and thus is likely to have an impact on the lives of millions of people.

Be that as it may, the objective of this paper is limited to a technical examination of the constitutional validity of the disinvestments process in the petroleum and mining sector and not to weigh the pros and cons of the process. This assessment shall be made at three levels. Firstly, in Part I the paper seek to examine the scope of the powers of the higher judiciary to adjudicate upon the executive policy decisions in general and in particular to set limits, if any, to the tide in favour of disinvestments. Secondly, in Part II the paper attempts to analyse the constitutionality of the process of disinvestment on the anvil of socialism, which appears in the preamble to the Constitution as one of its cherished ideals. The process is examined in light of the meaning of the term socialism as interpreted by the Supreme Court so as to gauge the extent to which private enterprise can be allowed in the Indian economy as per the Constitutional scheme. In Part III we

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shall assess the constitutionality of disinvestments in these crucial sectors in the background of the right to life and the right to subsidized oil and gas. Part IV concludes the discussion and seeks to provide an insight into whether PSUs in the petroleum and mining sectors can be disinvested.

I.

DISINVESTMENT POLICIES: EXTENT OF JUDICIAL REVIEW

A. JUDICIAL REVIEW OF GOVERNMENT POLICIES.

Over the years the Indian judiciary has come to acknowledge and fine-tune the legal proposition that the framing of policy is within the exclusive domain of the executive and the Courts, including a Writ Court, cannot interfere with the same in the exercise of their power of judicial review.[2] In *R.C Cooper v. Union of India*,[3] the Supreme Court, while considering the *vires* of the law on Bank Nationalisation, expounded that, "*The Court will not sit in appeal over the policy of the Parliament* in enacting of law". The inclination of the judiciary to distance itself from the executive policy making is also apparent from the judgment in *Bennett Coleman Co. v. Union of India*[4] wherein the Newsprint Policy of the government was impugned. On that occasion too the reasoning was clearly that the dispute concerned a matter of government policy and ordinarily the Court could not adjudicate on such policy measures.

Therefore, the key tenet of the principle of judicial restraint vis-à-vis government policies is that the Courts *cannot strike down a policy decision taken by the government merely because*

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[2] *See e.g., Shrilekha Vidyarthi v. State of U.P.*, AIR 1991 SC 537; *Government of A.P. v. M. Shrinivasa Reddy*, (1998) 8 SCC 765; *Bihar State Electricity Board v. Usha Martin Industries*, AIR 1997 SC 2489- It was held that relief under Art 226 is not available to interfere with the matters of government policy; *State of A.P. v. Subbarayudu, (*1998) 2 SCC 576- It was held that the Courts cannot interfere in the transfer policy. *See generally, Zippers Karmachari Union v. Union of India,* (2000) 10 SCC 619. *See generally,* D.D. BASU, SHORTER CONSTITUTION OF INDIA 809 (Wadhwa & Co., 13th ed. 2002).

[3] (1970) 1 SCC 248.

[4] (1972) 2 SCC 788.

they feel that another policy decision would have been fairer or wiser or more scientific or logical.[5] In this regard, in *Delhi Science Forum v. Union of India*,[6] wherein the decision to grant licence to private players for conducting business in telecommunication system in pursuance of the government policy of privatisation of telecommunications was impugned, it was held that "*the Courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not*."

B. JUDICIAL REVIEW OF ECONOMIC POLICIES.

The dicta against judicial tinkering of government policies stands at a much higher pedestal when the concerned policy has economic implications. A string of judicial expositions stand before us where the judges have been more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other area.[7] The genesis of this proposition can be traced to the often quoted rumination of FRANKFURTER, J. in the 1957 U.S Supreme Court ruling in *Morey v. Doud*[8] wherein, while refusing to invoke the Court's review powers, it was held, *"In the utilities, tax and economic regulation cases there are good reasons for judicial self-restraint to legislative judgment."*

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5 *See, Permian Basin Area Rate cases*, (1968) 20 Law Ed 2d 312; *BALCO Employees' Union (Regd.) v. Union of India*, AIR 2002 SC 382; *Premium granites v. State of T.N*., (1994) 2 SCC 691- "It is not the domain of the Court to embark upon uncharted ocean of public policy in an exercise to consider as to whether the particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be…"

6 (1996) 2 SCC 405.

7 *See*, *Amrit Banaspati Co. Ltd. V. Union of India*, AIR 1995 SC 1340; *G.K. Krishan v. State of Tamil Nadu*, AIR 1975 SC 583; *P.B. Samant v. Union of India*, AIR 1994 Bom 323. *per* PENDSE, J., -"*It is not appropriate for the Courts in exercise of their jurisdiction under Art. 226 to disturb such policy decisions."*

8 (1957) 354 U.S. 457.

This principle of law was upheld and further expanded by the Supreme Court of India in *R. K. Garg v. Union of India*[9] wherein BHAGWATI, J. held that laws relating to economic activities should be "viewed with *greater latitude than laws touching civil rights"* and that this power of the Parliament "*should not be subject to mathematical judicial scrutiny"*.[10]

Further, the process of policy formulation involving complex economic issues has increasingly been held by the judiciary to be the responsibility of experts in the respective fields which has significantly limited the reach of judicial review.[11] Thus, the oft-repeated position of the Court remains that it is not the function of the Courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. Hence, a wide degree of latitude has been conferred upon the Government with respect to the framing of economic policies.

C. EXCEPTIONS TO RULE OF JUDICIAL RESTRAINT VIS-À-VIS GOVERNMENT POLICIES.

The power of Judicial Review is part of the basic structure of the Constitution of India.[12] The Supreme Court has held in *S.R Bommai v. Union of India*[13] that it is a cardinal principle of our Constitution that no one can claim to be the sole judge of the power given under the Constitution. This essentially implies that no law can be enacted to stand in conflict with the power of the

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9 AIR 1981 SC 2138.

10 *See, Union of India v. Elphinstone Spinning and Weaving Co. Ltd.*, AIR 2001 SC 724.

11 *See, Peerless General Finance & Investment Co. Ltd. v. Reserve bank of India,* (1992) 2 SCC 343; *State of Punjab v. RL Bagga,* (1998) 4 SCC 117; *Bhavesh D. Parish v. Union of India,* (2000) 5 SCC 471- "In the context of the changed economic scenario the expertise of the people dealing with the subject matter should not be lightly interfered with."

12 *See, S.R. Bommai v. Union of India,* AIR 1994 SC 1918, para. 215. *See also, Addl. Secy to the Govt. of India v. Alka Subhash Gadia (Smt),* 1992 Supp (1) SCC 496; *K. Veeraswami v. Union of India,* (1991) 3 SCC 655; *Subhash Shama v. Union of India,* AIR 1991 SC 631, para. 44; *Shri Kumar v. Union of India,* (1992) 2 SCC 217, para. 339. *See generally,* Dr. Baldev Singh, *Jurisprudential Basis of Judicial Review in India,* 21 IND'N BAR REV. (1994).

13 (1994) 3 SCC 1, para. 256.

courts from exercising judicial review over governmental action, including a policy matter when called to do so. A natural corollary of this would be that *there cannot possibly be an absolute bar to the power of the court from exercising its rightful jurisdiction* on the pretext of the subject matter falling within the domain of executive alone.

Therefore, the protection conferred upon government policies in general has to give way at times and the veil of judicial impenetrability will be lifted in extraordinary circumstances, especially in situations where it is shown that the decision is either unfair, discriminatory, *mala fide* or contrary to any statutory directions.[14] Consequently, in cases where *constitutional provisions are violated*,[15] or where the policies are *unreasonable or against public interest*,[16] they can be struck down by the courts. This includes those cases where the policy is without the authority of law or is *ultra vires* the parent Act in case of delegated legislation.[17] To cite an instance, in the *Bennett Coleman case*[18] the Newsprint policy passed by the government under the

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[14] *See, Sher Singh v. Union of India*, (1995) 6 SCC 515. See also, *State of MP v. Nandlal Jaiswal*, (1986) 4 SCC 566- It was held, in relation to the state policy on liquor trade, that in a matter of economic policy the Court would hesitate to strike down what the State government has done, unless it appears to be plainly arbitrary, irrational or *mala fide*; *Bennett Coleman Co. v. Union of India*, (1972) 2 SCC 788; *GB Mahajan v. Municipal Council*, (1991) 3 SCC 91; *Permian Basin Area Rate cases*, (1968) 20 Law Ed 2d 312.; *MP Oil Extraction v. State of MP*, (1997) 7 SCC 592.

[15] See *G.B. Mahajan v. Jalgaon Municipality*, (1991) 3 SCC 91. See also *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664, 762- "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"; *BALCO Employees Union (Regd.) v. Union of India*, AIR 2002 SC 350; *Federation of Railway Officers Association v. Union of India*, (2003) 4 SCC 289; *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117; *M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592; *Delhi Science Forum v. Union of India*, AIR 1996 SC 1356.

[16] *See, State of U.P. v. U.P. University Colleges Pensioners Association*, (1994) 2 SCC 729, 738. *See also, State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566.

[17] *See, Bennett Coleman Co. v. Union of India*, (1972) 2 SCC 788. *See generally* 1 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 911 (Universal, 4th ed. 1993)

[18] *Bennett Coleman Co. v. Union of India*, (1972) 2 SCC 788

Imports Control Act, 1947 was held to be violating Articles 19(1)(a) and 14 constitution and struck down.

Barring these conditions, the Courts will be precluded from meddling in the policy of the government merely on the ground of change in policy. The aforementioned proposition flows from the well-settled precept that the Courts are not concerned with the merits of any policy decision, though may still investigate into the manner in which the decision was taken.[19] Hence, it is not within the domain of any Court to weigh the pros and cons of the policy or to pour over it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning.

D. JUSTIFIABILITY OF DISINVESTMENT POLICIES.

The government policies on disinvestment of public sector undertakings have been taking shape with the realization that the state needs to withdraw from non-strategic sectors to give a free hand to private undertakings operating in the area. Another reason for this exercise is that many such loss making public undertakings have for long had a parasitic relationship with the state exchequer which cannot be sustained for long periods of time. The implementation of the economic policy of disinvestment has conjured up unavoidable questions with regard to the debate on judicial reviewability of disinvestment policies.

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[19] *See, Fertilizer Corporation Kamgar Union (Regd.), Sindri v. Union of India,* (1981) 1 SCC 568- It was held that if the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration then the Court cannot scrutinize the merits of the decision. *See also, Delhi Science Forum v. Union of India,* (1996) 2 SCC 405-"No direction can be given or is expected from the Courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The Court cannot review and examine as to whether the said policy should have been adopted. Nevertheless, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court."

The issue was mooted at length in the recent *BALCO case*[20] wherein KIRPAL, J. reiterating the principles of judicial restrain mentioned above upheld the proposed disinvestment on the rationale that *the policies of the government ought not to remain static and with the change in economic climate, the wisdom and the manner for the government to run commercial ventures may require consideration*. Hence, when the government takes a policy decision that it is in public interest to disinvest a PSU a petitioner *may not be allowed to impugn the change in the character of the concern.*[21] The line of reasoning proposed by the Court was that while it was a policy decision to set up a PSU, a shift in the policy led to the taking of a decision in favor of disinvestment. Further, as the initial decision could not be validly challenged, the decision to disinvest too could not be impeached under the new circumstances till it could be shown that the same was *mala fide* or contrary to law. The Court also acknowledged that the process of disinvestment is a policy decision involving complex economic factors, and that in such matters; the government has, while taking a decision, a *right to trial and error*.

Again in, where the disinvestments of two oil PSUs, HPCL and BPCL, were challenged the court did not go into the question of reviewing the policy decision underlying the disinvestments, but struck down the disinvestments on the technical ground of non-compliance of the prescribed statutory procedures.[22]

The rule therefore is that disinvestment is a fundamental concept involving questions about the legislatures and executives powers to make economic decisions, which should not be subject to mathematical judicial scrutiny in such cases. The Courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such policy should have been adopted or not as the Courts cannot run the government, the same being expressly entrusted with other separate organs of the State. Any such Endeavour by the higher judiciary leading to alterations being grafted in the already proposed or existing policies

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20 *BALCO Employees' Union (Regd.) v. Union of India,* AIR 2002 SC 382.

21 *Id.*, para 50.

22 *Centre for Public Litigation v. Union of India,* (2003) 7 SCC 532

sans legislative or executive approval as being the case will run counter to the fundamental notions of our Montesquien system of separation of powers.

The proposition that can be culled out from the aforesaid decisions is that the only limited grounds on which the disinvestment policy can be challenged are *mala fide*, want of authority and jurisdiction, violation of Constitution and arbitrariness. Hence, it is pertinent to analyse the extent to which disinvestment policies can be challenged on the anvil of socialism.

II.

APPLICABILITY OF SOCIALISM IN THE INDIAN CONTEXT TO DISINVESTMENT POLICIES

It is clear from the preceding analysis that though Courts are generally not competent to go into the relative merits and demerits of different government policies,[23] in cases where *constitutional provisions are violated*,[24] or where the policies are *unreasonable or against public interest*,[25] they can be struck down by the Courts. This part seeks to examine the disinvestment of government undertakings in light of the socialist ideal contained in the constitution.

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[23] *See, R.C. Cooper v. Union of India*, (1970) 1 SCC 248, 294. *See also, State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566; *Sher Singh v. Union of India*, (1995) 6 SCC 515; *K. Narayanan v. State of Karnataka*, 1994 Supp (1) SCC 44; *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India*, (1992) 2 SCC 343; *Premium Granites v. State of T.N.*, (1994) 2 SCC 691.

[24] *See, G.B. Mahajan v. Jalgaon Municipality*, (1991) 3 SCC 91. *See also, Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664, 762- "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"; *BALCO Employees Union (Regd.) v. Union of India*, AIR 2002 SC 350; *Federation of Railway Officers Association v. Union of India*, (2003) 4 SCC 289; *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117; *M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592; *Delhi Science Forum v. Union of India*, AIR 1996 SC 1356.

[25] *See, State of U.P. v. U.P. University Colleges Pensioners Association*, (1994) 2 SCC 729, 738. *See also, State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566.

A. THE PRINCIPLE OF SOCIALISM IS PART OF THE BASIC STRUCTURE OF THE CONSTITUTION.

The word "socialist" was added to the preamble of the Indian Constitution in the year 1976 through the 42nd amendment to the Constitution. However, it seems evident that the constitution has contained the ideal of socialism from its very inception. The provisions of Part IV of the Constitution, namely the Directive principles of State Policy, though not directly enforceable form the basis of socialism in India. These provisions are directed towards the creation of an egalitarian society primarily through the distribution of material resources so as to best sub serve common good and by shaping of the economic system in a manner that does not result in the concentration of wealth. The preamble of the Constitution of India now explicitly recognises the objective of constituting India into a "sovereign *socialist* secular democratic republic".[26] The Supreme Court, in the landmark *Keshavananda Bharti* case[27] has held that the preamble is a part of the Constitution and that the *provisions of the Constitution should be read and interpreted in the light of the preamble*. Accordingly, the preamble in its entirety and its constituent elements separately form the very guiding principle of constitutional interpretation[28] and are part of the basic structure of the Constitution[29].

It is submitted that the principle of "socialism", which is an objective of the preamble[30] is part of the Basic Structure of the Constitution. Therefore, it is *obligatory for the government to conduct the affairs of the state in a manner that promotes the tenets of socialism* and that any deviation from this rule would render the conduct of the government unconstitutional. Two important issues arise for consideration at this stage: *firstly*, whether socialism, as adopted in the Indian Constitution envisages complete state ownership of property; and *secondly*, if private

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26 IND'N CONST., preamble.

27 *See, Kesavananda Bharti v. State of Kerala*, (1973) 4 SCC 225.

28 *Id*.

29 *See, S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

30 *Dalmia Cement (Bharat) Limited v. Union of India*, (1996) 10 SCC 104, 118.

property can co-exist with public ownership, to what extent is private participation in the economy permitted.

The scope and ambit of socialism and the extent of private ownership of property allowed within the confines of the ideology of socialism assumes importance as these factors would determine the extent to which the state can disinvest PSUs. The Supreme Court has through its findings in various cases has provided an insight into the nature of Indian Socialism. As the following section would demonstrate, socialism in the Indian context is different from the traditionally understood concept of socialism as the Indian state has been devoted to the concept of mixed economy from its very inception and has allowed room for private initiatives in the economy.

B. SOCIALISM AS INTERPRETED BY THE SUPREME COURT ENVISAGES HARMONIOUS WORKING OF PUBLIC AND PRIVATE SECTORS.

In context of the interpretation of the term "socialism" as envisaged in the preamble, it has been held by the Supreme Court in *Samatha v. State of A.P.*[31] that the "*establishment of the egalitarian social order through rule of law is the basic structure of the Constitution*".[32] It was further held that socialism would include measures to provide a "*decent standard of living to the poor*" and to "*protect the interests of the weaker sections of society*".[33] Further, in *D.S. Nakara v. Union of India,*[34] a Constitution Bench of the Apex Court interpreted the principle aim of socialism as the *elimination of inequalities in income and standards of living*, so as to ensure equitable distribution of income and security. Again, in *State of Kartnataka v. Ranganatha Reddy,*[35] a Bench of nine judges held that one of the principal aims of socialism is the *distribution of material resources of*

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31 (1997) 8 SCC 191.

32 *Samatha v. State of A.P.*, (1997) 8 SCC 191, 248.

33 *Id*.

34 See *D.S. Nakara v. Union of India*, AIR 1983 SC 130.

35 (1977) 4 SCC 471.

the community in such a way as to subserve the common good, which is embodied in Article 39(b)[36].

The most significant aspect of socialism is that it envisages state ownership of industry, and hence the Supreme Court's findings on the extent of state ownership necessary for conformity with socialism will shed light on the constitutionality of the disinvestment process. In relation to state ownership of industry, it has been held by a Constitution bench of the Supreme Court in *Excel Wear v. Union of India*,[37] that the addition of "socialism" in the preamble "may enable the Courts to *lean more and more in favour of nationalisation and state ownership* of an industry".[38] Consequently, in *Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.*,[39] the nationalisation of a coal mine was upheld as a step towards socialism and it was held that the *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 is what socialism is about. Again, in the *Samatha* case,[40] it was observed that socialism envisages the *harmonious working of the public and private sector* and would *permit restrictions on the right to private property even to the extent of abolishing it where necessary in the social and public interest*.[41]

It is submitted that the common strand that is present in the dicta of the above-mentioned cases is that though private initiatives in the economy are permitted, the consideration of public interest is over-riding and on the grounds of sub serving the common good, nationalisation of certain industries may be allowed. It is therefore technically possible to challenge disinvestments

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36 *See* IND'N CONST., art. 39(b)- "The State shall, in particular, direct its policy towards securing- (…) (b) *that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good*; (…)".

37 AIR 1979 SC 25.

38 See *Excel Wear v. Union of India*, AIR 1979 SC 25, 36.

39 (1983) 1 SCC 147.

40 *Samatha v. State of A.P.*, (1997) 8 SCC 191.

41 See *Samatha v. State of A.P.*, (1997) 8 SCC 191, 262.

as running contrary to the concept of socialism prevalent in the Indian constitution since these could adversely impact the distribution of material resources.

However, many of these decisions have been in the context of nationalization of industries in an era where the policy was one of maximising state control in the economic sphere. The constitution itself being a dynamic document is likely to be interpreted differently in today's context, where otherwise much of the new economic policy would run against the concept of socialism. This seems to be evident from the decision rendered in *Centre for Public Litigation v. Union of India*[42] where the court struck down the proposed disinvestments of petroleum companies HPCL and BPCL. The court averred to the fact that these entities had been acquired under statutes with the objective of promoting the objectives of socialism. Yet, in striking down the disinvestments the court did so merely on the grounds that the statutory procedures were not followed and allowed the government the flexibility of continuing with the disinvestments as long as these statutory procedures were complied with by amending or repealing the statutes. It thus seems evident that the court was of the opinion that the socialist ideal would not come in the way of the disinvestments of these entities.

It may be concluded that though a challenge on the process of disinvestments is technically possible in view of the judgments rendered in the era of nationalisation the courts would be cautious and reluctant in imposing their interpretation of socialism on the wisdom of the executive and legislature by overruling economic policies.

III.

DISINVESTMENT OF PSUS IN THE PETROLEUM AND MINING SECTOR IN LIGHT OF THE RIGHT TO LIFE AND THE RIGHT TO SUBSIDIZED OIL AND GAS

42 (2003) 7 SCC 532

Deregulation of the petroleum and mining sector through the disinvestments of government holdings and the consequent liberalisation of these sectors for private players may possibly have the undesirable impact of an increase in prices of oil and gas. This likely phenomenon has resulted in fears being raised from several quarters and the concerns are amplified due to the fundamental nature of these commodities to the proper functioning of the economy and the daily lives of millions of people. Again, such disinvestments are likely to have a negative impact on the government's ability to subsidize the price of oil and gas, which is necessary for the very survival of many who still live below the poverty line. There is thus an urgent need to assess the validity of the disinvestments process in light of the constitutional rights of the citizens of India.

The right to life embodied in Article 21 of the Constitution has been given an expanded meaning and its scope has been extended to include the "*right to live with human dignity, and all that goes along with it, namely the bare necessities of life*".[43] In fact, the judiciary has used the right to life as a tool for expanding the scope of the fundamental rights to include several of the otherwise dormant provisions of the Directive Principles. Consequently, the courts have recognized that the right to life includes amongst others the right to an adequate level of nutrition[44] and the right to a decent standard of living.[45] It is perhaps possible to argue that a substantial increase in the price of oil and gas would affect the right to a decent standard of living thus rendering disinvestments as constitutionally invalid in the absence of any price control mechanisms. Yet, on a cautious note it may be observed that this issue has not be brought up in any of the disinvestments until now and it would be difficult to predict the reaction of the courts to this argument.

With respect to the issue of subsidization however it seems evident that the courts would not strike down disinvestments on this ground. It has been declared that a policy of subsidization

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43 *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, 1981 SCC (1) 608

44 *People's Union for Civil Liberties v. Union of India*, Writ Petition (Civil) No. 196 of 2001, order dated May 2, 2003.

45 Id.

does not create a legitimate expectation to receive such subsidy[46] and additionally it does not vest any legal right in the people receiving subsidies.[47]

IV.

CONCLUSION

There are a number of grounds upon which the disinvestments in the petroleum and mining sector may be challenged. Most crucially, the paper has revealed a distinct tension between the principles of socialism enunciated by the courts over the decades and the policy of disinvestments. Moreover, the paper highlights the possible options before the courts to provide a beneficial interpretation to Article 21 in striking down the disinvestments in crucial sectors of the economy. Yet, it remains doubtful that the courts would take such a step. Firstly, courts have followed the principle of judicial restrain when reviewing policies of the government, and this principle is more emphasized in the case of economic policies such as disinvestment. Secondly, the courts are likely to give a slightly different meaning to the socialist ideals contained in the constitution particularly in light of the new economic policy favoring liberalization. Finally, on an analysis of the disinvestment cases that have come up before the courts it seems evident that the courts are willing to give precedence to the economic judgment of the executive.

It is thus likely that the process of disinvestments would stand up to the technical test of constitutional validity. Yet, no one can brush aside the grave impact that concentration of wealth in the hands of a few private players could have on the poor. Therefore, it is for the government of

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46 Association of Industrial Electricity Users v. State of A.P., (2002) 3 SCC 711

47 Id.

the day to act according to the conscience of the nation and devise mechanisms that would control the negative impact of disinvestments. In particular, disinvestments in the petroleum and mining sector should, at least in the initial stages, be tempered by some price control mechanism that would allow the government to control the prices of these essential commodities affecting the lives of millions and the entire economy as a whole.