

SOCIAL JUSTICE UNDER INDIAN CONSTITUTION

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Abstract:

The notion of justice is most commonly associated with an underlying assumption that justice equates to equal rights, access, and fair treatment in the legal system. The concept of social justice is the necessary implication of welfare state. The scheme of social Justice is very well incorporated in the various provisions of the Indian Constitution. The Preamble of the Constitution includes the terms like 'Socialist', 'Social and Economic Justice', 'Equality' etc., which specify that the state would extensively involve in social welfare of people, and would try to establish an egalitarian society. Moreover a distinct chapter of Directive Principles of State Policy has been dedicated towards the welfare responsibilities of the government, which lays down the norms of ideal governance for people's welfare. Various fundamental rights and its subsequent amendments also intended to ensure social justice to the disadvantaged citizens. The paper discusses the concept of social justice and the provisions of Indian Constitution underlying the concept of social justice with the judicial interpretation which expend and contribute in the realization of the same.

Concept of Social Justice:

The concept of social justice emerged out of a process of evolution of social norms, order, law and morality. It laid emphasis upon the just action and creates intervention in the society by enforcing the rules and regulations based on the principles in accordance with social equality. The term 'social' as we can understand, is concerned with all human beings within the society and term 'justice' is related with liberty, equality and rights. Thus social justice ensures liberty, equality and maintains their individual rights in the society. In other words, securing the highest possible development of the capabilities of all members of the society may be called social justice. In dealing with the concept of social-justice, it becomes essential to differentiate between the traditional idea of 'justice' and modern idea of 'social justice' intended to establish an egalitarian society. The notion of social justice, however, is relatively recent phenomenon and largely a product of the

modern social and economic developments. The traditional idea of justice which is described as often conservative approach, focused on the qualities of 'Just' or virtuous man, while the modern idea of social justice assumes a Just-society. In ancient Greek and Hindu approach, the justice is concerned with functioning of duties, not with notion of rights. Both Plato and Aristotle hold the state to be prior to the individual.¹ Under ancient Indian tradition, Dharma is another name of code of obligations and justice is nothing but virtuous conduct with dharma.²

In modern liberal philosophy "justice" is defined in terms of rights not as duties. The source of such rights is the state legislation which limits the state power non-infringing or taking away fundamental rights. In modern societies, almost all constitutions guarantees such rights and ensure their effective implementation. In this sense justice becomes a disposition to give everyone's his rights. The modern liberal view of justice has been developed in the writings of various thinkers including John Locke, Bentham, John Stuart Mill, Spencer and Adam Smith. According to Rousseau men are equal by nature but the institution of private property has made them unequal and further perpetuated inequalities. Therefore, the perfection of man lies in the improvement of society that can be done by observing cultivating natural feelings and sentiments which guarantee equality and social-justice. According to Marxist analysis, the source of injustice is the private ownership of the means of production, which creates the social divisions into bourgeoisie and proletariat classes. To establish of the ideal state of justice it is necessary to abolish private property and to create a classless society.³

The objective of social justice is to organize the society so as to abolish the source of injustice in social relations, such as discrimination on the basis of caste, sex, religion, race, region etc. whereas social justice may also require protective discrimination in favor of the downtrodden, underprivileged and weaker sections of the society. The concept of social justice is an evolving concept and despite various efforts, it is problematic to define the same. Each conceptualization is concerned with the distributive character of imparting justice. Thus the notion of social justice requires the equal distribution of economic goods and opportunities. More recently the development of the notion of justice may be found in the work of John Rawls and Robert Nozick. They also emphasized on the distributive character of justice. In the opinion of Nozick, historical entitlement is a significant component of distributive justice where the

¹ S. R. Myneni, Political Science, Allahabad Law Publication, Faridabad (2008) p. 207.

² Ambikesh K. Tripathi, Concept of Social Justice in Political Thought with Special Focus on Gandhi and Ambedkar, Vol. 3 No. 7, Shodh Drishti, (2012) pp 37-38.

³ J. P. Suda, Modern Political Thoughts, K. Nath & Co., Meerut, p. 306.

society is aware of its wrongs and has an increased interest in compensation. John Rawls conceptualizes justice as fairness where there is desirability of advantage for the marginalized groups in some respect.⁴ In the broader perspective, social justice deals with the regulation of wage; profits and protection of individual rights through the legal system of allocation of goods and resources. In other words social justice means availability of equal social opportunities for the full development of human personality to all the people in the society, without any discrimination on the ground of caste, sex or race etc. Therefore, the notion of social justice is associated with social equality and individual rights. Social justice can be made available only in a social system where the exploitation of one human being by another human being is absent, and where privileges of the few are not built upon the miseries of the many.⁵

Despite various attempt to define the term 'social justice', it is a very vague concept and cannot be captured empirically. Krishna Iyer⁶ in his work 'Justice and Beyond' rightly proclaims "social justice is not an exact static or absolute concept, measurable with precision or getting into fixed world. It is flexible, dynamic and relative." In fact, the emergence of just man, just action and just state of affairs in society seems to be a manifestation of social justice. In the view of former Chief Justice of India Justice Gajendragadkar, the concept of social justice has dual objectives of 'removing all inequality' and affording equal opportunities for 'economic activities of all the citizens.'⁷ The core element of social justice is equal social worth which required that citizens be guaranteed certain social rights as well as the civil and political rights. The idea of social justice demands freedom, equality and other human rights to secure the greatest happiness and common good of human beings. In *D. S. Nakara v. Union of India*⁸, the Supreme Court has held that the principal aim of a socialist state is to eliminate inequality in income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially in terms of security from cradle to grave. Amongst there, it envisaged economic equality and equitable distribution of income.

Social Justice under Indian Constitution:

⁴ Tripathi, supra n. 2.

⁵ Dias, Jurisprudence 5th Edition, Butterworth & Co. (1985) pp. 481-482.

⁶ Krishna Iyer, Justice and Beyond, Deep and Deep Publication, New Delhi (1982) p. 63.

⁷ Gajendragadkar, 'Law Equality and Social Justice', (Bombay: Asian Publication, 1969) p. 47.

⁸ (1983)1 SCC305

Indian Constitution, the cornerstone of the nation was intended to promote social transformation in view of Granville Austin.⁹ India was acquainted with positive discrimination even prior to independent in 1947. During British regime, the government had introduced reservations in favour of the lower caste as well as tribals. These policies created new administrative categories which tended to refashion the old notions of untouchables. The word backward classes was first used in the 1870 by the Madras administration in the framework of an affirmative action policy in favour of under-educated groups. When the list of backwards enlarged and expanded, growing from 39 to 131 communities in 1920s, the untouchables claimed the right of being treated as a distinct class. Hence the sharing out of the 'backward' between 'depressed classes' (untouchables and tribals) and 'caste other than depressed classes' that was decided in 1925.¹⁰

For depressed classes seats in local and national assemblies were reserved from 1919 onwards. However, after Government of India Act, 1935, the untouchables were designated as Scheduled Castes and the denomination spread in the providence of British India. After independence, this group was officially recognized by constituent assembly, whereas the rest of the former depressed classes group was reclassified in to a new category, the other backward classes. Both such groups were supposed to benefit from programme of positive discrimination under the scheme of Indian Constitution.¹¹

At the time of independence, the constitution makers were highly influenced by the feeling of social equality and social justice. For the same reason, they incorporated such provisions in the constitution of India. Social Justice is the foundation stone of Indian Constitution. Indian Constitution makers were well identified to use the various principles of justice. They wanted to search such form of justice which could fulfill the expectations of whole revolution. Pt. Jawaharlal Nehru suggested an idea before the Constituent Assembly: "First work of this assembly is to make India independent by a new constitution through which starving people will get complete meal and cloths, and each Indian will get best option that he can progress himself."¹² The idea of social justice found its resilience in nationalist thinking before it could

⁹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (New Delhi: Oxford University Press, 1999) p. 11

¹⁰ P. Radhakrishnan, *Backward Classes in Tamil Nadu: 1872- 1988*, *Economic and Political Weekly*, 10 March, 1990 pp. 509-517.

¹¹ Christophe Jaffrelot, *Containing the Lower Castes: The Constitution Assembly and the Reservation Policy*, p. 249-250, in *Supra* n. 9

¹² *Minarva Mills vs. Union Of India* (1980) 3 SCC 625

be formally incorporated into the Constitution. Rajeev Bhargava has argued that social justice formed one of the central organizing and mobilizing principles of the nationalist movement.¹³

The words, “Socialist” and “Secular” have been inserted in the preamble which reflects the idea social welfare state.¹⁴ The term ‘justice’ in the Preamble embraces three distinct forms- social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles. Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes and women. Economic justice denotes on the non- discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as ‘distributive justice’. Political justice implies that all citizens should have equal political rights and equal participation in the governance of the society. The Constitution has more than two dozen articles providing for compensatory treatment for disadvantaged citizens or for protecting them against discrimination. All these provisions and its subsequent amendments are intended to ensure the economic, social and political justice to disadvantaged citizens.¹⁵

The term ‘equality’ means the absence of special privileges to any section of the society, and provision of adequate opportunities for all individuals without any discrimination. The Preamble safeguards the equality of status and opportunity to all citizens of India. This provision embraces three dimensions of equality- civic, political and economic.¹⁶ The constitutional provisions¹⁷ that can help the lower castes to attain material benefits also involve

¹³Rajeev Bhargava, ‘Democratic Vision of a New Republic India, 1950’, in Francine Frankel, Zoya Hasan, Rajeev Bhargava, and Balveer Arora (ed.) *Transforming India*, (New Delhi: Oxford University Press, 2000) p. 26.

¹⁴By the 42nd Constitutional (Amendment) Act, 1976.

¹⁵ Granville Austin, *Working A Democratic Constitution: A History of Indian Experience*, (New Delhi: Oxford University Press, 1999) p.95

¹⁶ M. Laxmikanath, *Indian Polity* (2008) p. 29

¹⁷ There are certain Fundamental Rights guaranteed under the constitution which ensure civic equality i.e. Article 14 (Equality before the Law) states that: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India; Article 15(1) (Prohibition of discrimination on grounds of religion, race, caste, sex and place of birth) states that: 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 (1) (Prohibition of discrimination on grounds of religion, race, caste, sex and place of birth) states that: There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; Article 17 (abolition of titles) states that: “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of

a promise of the establishment of an egalitarian society. The constitution provides effective provisions to ensure social justice to the magnetized sections of the society. Article 15, 15(4), 16 (4) and 29 (2) as part of fundamental rights offer two folds advantages to SCs/STs and OBCs. Such provisions not only bans discrimination in government employment but permits the state to make any provision for the reservation in such employment. The Constitution provides reservation in many areas as education, employment, land allotment and housing etc. Article 330 and 332 of Indian Constitution provides reservation in political matters to margined sections of the society such as SC/ST in both houses of parliament. Such provisions reflect the idea of the distributive form of justice.¹⁸

These rights are protected in case of violation under Article 32 of the Constitution which in the view of Dr. Ambedkar is the soul of the constitution. There are two provisions in the Constitution that seek to achieve political equality. According to Article 325 no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex.

Articles 36 to 51 incorporate certain directive principles of State policy which the State must keep in view while governing the nation, but by Article 37 these principle have been expressly made non-justiciable in a court of law.¹⁹ Although these principles are not judicially enforceable, yet they are not without purpose. These are intended for the guidance of the State. While these principles shall not be cognizable by any court in India but they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State.²⁰ According to Dr. B.R. Ambedkar, the Directive Principles of State Policy is a 'novel feature' of the Indian Constitution. They are enumerated in Part IV of the Constitution. They can be classified into three broad categories- socialistic, Gandhian and liberal- intellectual. The directive principles are meant for promoting the ideal of social and economic democracy. They seek to establish a 'welfare state' in India. However, unlike the Fundamental Right, the directives are non- justiciable in nature, that is, they are not enforceable by the courts for their violation. Yet, the Constitution itself declares that 'these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these

any disability arising out of "Untouchability"; Article 18 (1) states that: No title, not being a military or academic distinction, shall be conferred by the State.

¹⁸ Gopal Guru, *Constitutional Justice: Positional and Cultural*, p. 236 in Rajeev Bhargava (ed.) *Politics and Ethics of the Indian Constitution*, New Delhi: Oxford University Press, 2013

¹⁹ Article 37 states that: 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.

²⁰ Shivarao, *Select Documents*, Vol. II, p. 175.

principles in making laws'. Hence, they impose a moral obligation on the state authorities for their application. But, the real force (sanction) behind them is political, that is, public opinion.²¹ In *Minerva Mills case*²², the Supreme Court held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles'.

Under Indian Constitution the use of social justice is accepted in wider sense which includes both social and economic justice both. According to Justice Gajendragadkar, "In this sense social justice holds the aims of equal opportunity to every citizen in the matter of social & economical activities and to prevent inequalities".²³ The Constitution of India enshrined the concept of social justice according to Indian conditions. It includes both distributive and corrective justice in order to establish an egalitarian society. So that in one way it has been told about the value of Equality which is known as the declaration of equal behavior of equals to Aristotle, directs the state "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"²⁴ that is distributive justice. In the other way it has been told the protective discrimination by special provision for other underprivileged sections of the society such as SC, ST & socially and educationally back ward classes,²⁵ which is the attribute of corrective and compensatory justice.

To accept right to equality as an essential element of Justice, India Constitution prohibits unequal behavior on the grounds of religion, race, caste, sex. But constitution accepts that strict compliance of formal equality will lead to inequality. Differential treatment is a corollary to equality of treatment. Without extending such differential treatment which is preferential in relation to the non-disadvantaged there is no level playing field. The Constitution itself in several parts, particularly in the chapters of Fundamental Rights and Directive Principles of State Principle, spells out different kinds of disadvantaged citizens. Disadvantages could be based on untouchability, caste, community, gender, age, lack of productive resources, physical disabilities, condition of study and work, lack of skill or even regional disparity. Depending

²¹ Laxmikanath, supra n. 16.

²² AIR 1980 SC 1789.

²³ Gajendragadkar, supra n. 7, p. 77.

²⁴ Art 14 of the Indian Constitution

²⁵ Article 15(4) states that: Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes; Article 16(4) states that: Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

upon different kinds of disability, the Constitution suggests the kind of differentiated treatment.²⁶

But the system of special provision for backward classes of society, it is to try to make the principle of equality more effective. Under Article 15(4) the state shall make any special provision for the advancement of any socially and educationally backward classes of citizen or for the scheduled castes, and the Scheduled tribes and in the same manner by accepting the opportunity of equality to employment under state in Article 16 (1), it has excepted the principle of equalization under Article 16(4). If it is in the opinion of the state that any class of the citizens has not been adequately represented under state employment, state shall make any provision for the reservation of appointments. According to Art 46 the State shall promote with special care the educational and economic interests of weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

In *State of Uttar Pradesh Vs. Pradeep Tandon*,²⁷ the Supreme Court accepted reasonable classification justiciable on the basis of unequal behavior between unequal people. In a very important case of *Indra Shahani vs. Union of India*²⁸ the Supreme Court declared 27% reservation legal for socially and economically backward classes of the society under central services. The judgment contains learned discourse on the philosophy as well as methodology of protective discrimination of backward classes. The court has carefully balanced the competing interests of efficiency of administration and social justice.²⁹

Basically protective discrimination is used to fulfill those lacks which arise due to a long time deprivation. It is a part of corrective and compensatory justice. It has been told that people of backward class of society have been bearing injustice for generation to generation. Provisions of protective discrimination under the Constitution included for the benefit of these deprived people. Through equal opportunity on the basis of quality the Supreme Court has tried to make a reasonable balance between distribution of benefits and distributive justice.³⁰ In *M.R. Balajiv State of Mysure*,³¹ the Supreme Court has held that for the object of compensatory justice, limit

²⁶ Valerian Rodrigues, 'Citizenship and the Indian Constitution', in Rajeev Bhargava (ed.) *Politics and Ethics of Indian Constitution*, (New Delhi: Oxford University Press, 2013) p. 181.

²⁷ AIR 1975 SC 563

²⁸ AIR 1993 SC 497

²⁹ S. P. Sathe, *Judicial Activism in India*, New Delhi: Oxford University Press (2012) p. 60.

³⁰ Concept of Social Justice under Indian Constitution, Information available at: http://www.lawyersclubindia.com/articles/print_this_page.asp?article_id=3685.

³¹ AIR 1963 SC 649

of reservation should not be more than 50%. In *India Shahni vs. Union of India*³² full bench of nine judges approved this balance between distributive justice through quality and compensatory justice.

There are other provisions in the Constitution which ensure the concept of social justice i.e. Article 39(f) expected that the state shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and youth are protected against exploitation and against moral and material abandonment.³³ Under Article 41, it is expected that the State shall make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement. Further, Article 42 states that the state shall make provision for securing just and humane conditions of work and for maternity relief. In Article 43 it is expected that the State shall endeavor to secure, by suitable legislation or economic organization 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. In *PUDR vs. Union of India*,³⁴ the Supreme Court has held that minimum wages must be given and not to pay minimum wages is the violation of human dignity and it is also known as exploitation.

In India, courts have performed a great role to make the Social justice successful. It has given a principal and dynamic shape to the concept of social justice. Social justice has been guiding force of the judicial pronouncements. In *Sadhuram v. Pulin*,³⁵ the Supreme Court ruled that as between two parties, if a deal is made with one party without serious detriment to the other Court would lean in favour of weaker section of the society. The judiciary has given practical shape to social justice through allowing affirmative governmental actions are held to include compensatory justice as well as distributive justice which ensure that community resources are more equitably and justly shared among all classes of citizens. The concept of social justice has brought revolutionary change in industrial society by charging the old contractual obligations. It is no more a narrow or one sided or pedantic concept. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio- economic disparities and inequalities. In *J.K. Cotton Spinning and Waving Co. Ltd. V. Labour Appellate*

³²1992 Supp. (3) SCC 217.

³³Article 39 (f) states 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.

³⁴AIR 1982 SC 1473.

³⁵AIR 1984 SC 1471

Tribunal,³⁶ the Supreme Court of India pointed out that in industrial matters doctrinaire and abstract notions of social justice are avoided and realistic and pragmatic notions are applied so as to find a solution between the employer and the employees which is just and fair.

Conclusion:

Though there is a remarkable progress in the economy, science and technology, infrastructure development but the gap between the rich and poor is widening day by day. The socially excluded sections of the poor are systematically left behind from their countries' progress. Their excluded status is the product of multiple and intersecting inequalities. Though various initiatives have been taken by the government to achieve the target even though some of the targets are far from to achieve and still comprehensive programmes and policies are required to achieve these targets. The constitution should be interpreted in such a manner to make it a living document in order to fulfill the aspirations of the people. The judiciary has played a great role in updating the constitution through its positive interpretation. It is the collective effort of all the organs of government which lead the social justice to all the citizens. The need of hour is to ensure the proper and balanced implementation of policies so as to make social justice an effective vehicle of social progress.

³⁶AIR 1964 SC 737