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11. The Relevance of Social Justice in the Present Context of Indian Constitution

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Abstract

Social justice is an aspiration of the Indian constitution to achieve those objects in its preamble. The Indian Republican constitution based on the four Principal pillars namely democracy, social justice, federalism and secularism. It is said that the social justice was a doctrine of social philosophy. Through social justice and political justice were secured the equality and liberty. This present research has relied upon various research articles, law books, law journals and Supreme Court Cases.

Keywords: Preamble, social justice, economic justice, political justice, judicial.

Introduction

Social justice is an important ingredient of the Indian constitution which covers not only scheduled castes and OBCs but also women and children. The oppressed class needs some special protection, those who are educationally and socially backward. The relevance of social justice in the present context needs a political freedom which was only a means to achieve social justice. The Constitution of India promises not only political but also social democracy. B.R.Ambedkar explained the democracy in his historic speech in the constituent Assembly: "Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, Equality and fraternity which are not to be treated as separate items in trinity; they form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, and equality cannot be divorced from liberty, nor can liberty and equality be divorced from fraternity".

Social justice should be taken in broader perspective. While lauding Indian culture and civilization, there were also various evils which proved detrimental to the interests of the country. Similarly, many social reformers highlight the various social evils based on caste basis. It referred to various articles of the constitution to establish the importance of social justice. The policy of liberalization against the principle of social justice and equal opportunities to all, and

therefore according to article 14 declared that “the state shall not deny to any person equality before the law of the equal protection of the laws within the territory of Indian” and this provision would have ended in great inequality due to great disparity existing in the country. Similarly, the children and women were also socially, educationally, and economically backward.

The philosophy of our Constitution is proclaimed in its preamble. Before Liberty, Equality, and Fraternity, Justice is acclaimed as the foremost objective of the Constitution: Justice, Social, Economic and Political, and these great articles of faith have been woven into the fabric of the Constitution, and in particular in the fundamental rights and the directive principles. The Preamble embodies the aims and the aspirations of a people freed from their bondage.

Meaning and Concept of social justice

The concept of social justice thus takes within its sweep the objective of removing all inequalities and affording equal opportunities to all Citizens in social affairs as well as Economic activities, therefore social justice is based on the equal distribution of justice. However, the concept of social justice in India is related most significantly with equal distribution of rights without discrimination of gender, caste, creed or economic status. The main purpose of social justice is to maintain the equality and restore the equilibrium in the society. It also envisages giving of all persons in equally or essentially equal circumstance. Social solidarity is also brought into the concept of social justice. The Indian Constitution has given the significant place of social justice in the preamble, fundamental Rights and Directive Principles of the state Policy. The concept of social justice takes within its sweep the objective of removing inequalities and affording equal opportunities to all citizens in social, economic and political aspects.

Social justice is a revolutionary ideal which included social, economic, political and cultural justice. The term social justice helps to avail the concession, benefits, facilities privileges and special rights reserved for disadvantaged groups. Social justice is compensatory justice to set off accumulated disabilities suffered by historically disadvantaged groups for thousand years without education and opportunities for advancement in their life. Unfortunately, even seventy five years after Independence of India, social Justice has still remained a distant dream and has not reached the weaker section of the society.

The Greek philosophers and many thinkers have contributed to the development of the concept of social justice. The concept of social justice is based on the concept of each according to his ability and each according to his need. It further stated that justice is the real foundation of society and No society exists without a just system. Similarly Aristotle said that concept of

social justice was a radical one and he divided justice into two parts i.e universal justice and particular justice. In the latter he divided it into distributive justice and corrective justice. According to Aristotle the concept of social justice essentially deals with equal distribution of goods among people and wanted to make balance of interested between difference sections of people. However, Cicero was in favour of equal law i.e law based on equality, and therefore, his concept of Social justice was based on Equality.

The Religious thinker St. Thomas Aquinas talked about the concept of social justice based on everyone gets his due and he mostly talked about the distributive or cumulative justice. During the classical era, Hugo Gortius, Hobbs, Locke, Rousseau were Philosophers and Supporters of the Natural law School. According to Hugo Gortius used to construct the social contract, which create the duty of the government towards people and government, would ensure the balance between the right and duties of Citizens. Thomas Hobbes was also a propounder of social contract theory. Similarly Locke base of social contract theory provides the social justice to the society and also favours Legal Sovereignty. Rousseau was in favour of popular sovereignty and his gave concept of General will, which was based on the social Consciousness and social justice. Another important jurist, Roscoe Pound founder of American sociological jurisprudence based it on the balance of interest. According to him there are three types of interest in the society namely, Individual Interest, Public Interest and Social interest.

The Economic thinkers Karl Heinrich Marx regarded social justice was based on each according to necessity and each according to his ability. And also pigous' welfare economy is based on maximum welfare of society. The content of social justice was best expressed by Nehru; the service of India meant the service of millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of great man of our generation has tried to wipe the tear from every eye. That may be beyond use but as long as there are tears and sufferings our work will not be over.

Mahatma Gandh's concept on social justice is based on the removal of untouchability means Removal of social barriers and inequalities. According to Gandhi's view Equality and justice are based on the concept of social justice. Ambedkar view on social justice provides social, Economic, Political Equality to downtrodden classes. According to justice Krishna Iyer's social justice is abolition of various types of discrimination. He very and strongly supported of abolition of all social, political and economical discrimination.

Preamble and social justice

The preamble of the Indian Constitution has inserted word of justice in three distinct forms i.e Social, Economic, and Political. The aspect of Social, Economic, and Political justice was secured through Various Provisions of Fundamental Rights and Directive Principles. The preamble of the Constitution of India seeks "to secure to its entire Citizens; including the Scheduled Tribes, a right of justice-social economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote these among them all. And fraternity, assuring the dignity of the individual and the unity and integrity of the nation. The court held that the preamble is the part of the Constitution.

The Constitution of India to protect the social, economic, and political Justice of all Citizen of India; and social justice abolition of all sorts of inequalities on ground of wealth, opportunity, status, race, religions, caste title etc. The constitution of India lays down the Directive principle of state Policy in the part IV of the constitution to achieve the ideal of social justice.

Social justice and fundamental right

The principle of social justice of welfare state demands for fulfilment of Constitutional Objectives, including with equality before law and equality of opportunity for all individuals, castes and classes. Every welfare state also requires to takes the positive measures for promoting the education, health, employment opportunity and economic condition generally of the comparatively backward or weaker sections of the society.

The Constitution of India guarantees Articles 14 that the state shall not deny to any person equality before the law or equal protection of the law within territory of India and enjoins upon the State not to discriminate against any citizen on grounds of caste (Art. 15 (1). Similarly, clause 2 Article 15, declared that no citizen shall be subjected to any disability, liability, restriction or condition with regards to- (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing Ghats, roads and places public resort maintained wholly or partly out of state funds or dedicated to the use of the general public. However, Article 15 clause 3 the states have empowered to make special provision for Women and children including scheduled tribes. Article 15(4) and (5)), provides special provision for the advancement of any socially and educationally backward classes of citizens or SC/STs and protective discrimination respectively and in appointments for posts in favour of SCs (Art. 16 (4), 16(4A), 16(4B). It also stated Article in 335 to provided that the claim of the members of the SC/STs shall be taken into consideration consistently with the maintenance of

efficiency in the administration, in the making of appointments to services and posts in the Centre and State level.

Reservation of seats for SC/STs in the Lok Sabha is provided under Article 330, in the State Assemblies under Article 332 and in the Local Self-Governments bodies under Articles 243D and 340T. In addition, the Parliament has enacted the Untouchability (Offences) Act, 1955, renamed as Protection of Civil Rights Act, in 1976, to check and deter the atrocities against Scheduled Castes and Scheduled Tribes. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has also been enacted. The practice any form of Untouchability arising out then it is forbidden and it also would be an offence punishable in accordance with law as provided by Article 17 of the Constitution.

Article 19(1)(f) granted the fundamental right to all citizens to acquire, hold and dispose of property, subject only to reasonable restrictions that may be imposed by law in the interests of the general public. However, the every citizen of India have the right including scheduled tribes to exercise of the right to freedom of speech and Expression; right to assemble peaceably and without arms; right to form association or union or cooperative Societies; right to move freely throughout the territory of India; right to reside and settle in any part of the territory of India; and right to carry on any profession or any occupation, trade or business.

The right life and personal liberty guaranteed under Article 21 of the Constitution which is applicable to every Citizen of Indian including disadvantage class. In case, Article 23 also prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention SC/STs but since the majority of bonded labours belong to SC/STs; this Article has a special significance. In pursuance of this article, Parliament has enacted the Bonded Labour System (Abolition) Act, 1976. For effective implementation of this Act, the Ministry of Labour is running a Centrally Sponsored Scheme for identification, liberation and rehabilitation of bonded labour, the efficacy of which is debatable to some extent. The Indian constitution under Article 24 also laid down provision that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Child Labour (Prohibition and Regulation) Act 1986 prohibits employment of children in certain hazardous occupation and processes, the violation of which is made punishable under the Act.

Article 25 guarantees to every citizen the right to freedom of religion including the disadvantage groups. Every Depressed class (like the non depressed class) has the “freedom of

conscience and the right to practice and propagate religion subject to proper order, morality and health. No depressed class can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group. Even the Depressed class also protects the right from deprivation of the right to the "language, script or culture. Even every citizen of India, have right to move the Supreme Court by appropriate proceeding for the enforcement of the fundamental rights conferred by part II of the constitution and it also applicable to depressed class.

Judicial view point on social justice

The term 'State' thus includes executive as well as the Legislative organs of the Union and states. In the same manner, in both Parts III of fundamental Rights and IV of Directive Principle of state Policy is possibly to an indication access the social justice of citizen of India. The Supreme Court in *Minerva Mills v. Union of India* observed the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles'. In case the social order through rule of laws is the basic structure of the constitution, and social justice and economic empowerment do constitute fundamental rights within the purview of Article 21 of the Constitution. The court stated that social justice is an integral part of justice in generic sense; the court observed that justice is one of its species. further the court rule out that social justice is not simple or single idea of society but it is an essential part and complex social change to relive the poor, etc. from handicapped penury to the ward-off distress and to make their life liveable. for greater good of the society at large.

The Supreme Court through its decisions has tried to force the government to realize this goal of constitutional justice and the new concept of social justice in the cases of *Bandhua Mukti Morcha v. Union of India*, the Court, while decrying in strongest possible terms the practice of bonded labour, held that Right to life, under Article 21 of the Constitution means right to live with dignity, and that this evil practice was a clear violation. Then in *Vishakha v. State of Rajasthan*, 14 it held that sexual harassment of a woman at workplace, is a denial of both her right to life and personal liberty under Article-21, as well as amounted to discrimination on the basis of sex, and thus violative of right to equality guaranteed under Articles 14 and 15. The Court went on to issue elaborate guidelines to protect women from sexual harassment at workplace.

In the cases of *Sunil Batra V. Delhi Adm*, the court held that continuously keeping a prisoner in fetters day and night reduces the prisoner from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the

constitution. However, the court held that non-payment of minimum wages to the worker employed in various Asia projects in Delhi was a denial to them of their right to live with basic human dignity and violative of article 2 of the constitution. In order to provide free legal aid and ensure that opportunities for securing justice are not denied any citizen on account of any disabilities. In the case the Court held that, right to life includes right to live in clean and healthy environment. Then in *Mohini Jain v. State of Karnataka* as well as *Unnikrishnan v. State of A.P* the Court held right to education flows directly from right to life, which was an essential ingredient for a dignified and meaningful life. In a very important case of the Supreme Court declared twenty seven percent reservations for socially and economically backward classes.

There are number of under trial prisoners who were in jails for years awaiting their trial and they need of proper legal aid, delay in conduct of trials, etc. The court held that right to speedy trial a fundamental right is implicit in the guarantee of life and personal liberty enshrined in article 21 of the constitution. The court also observed that the failure of the State to provide legal representation to accused person as an amounted denial of personal liberty without a just, fair and reasonable procedure established by law.

The judicial activism is sharing the passion of Constitution for social justice to the citizen of India. In Earlier case the Court had held that a procedure under Article 21 must be a right, just, fair and a reasonable procedure and that it must also satisfy the test of reasonableness in Articles 14, as well as 19, besides Article 21.

Directive principle of state policy Provide Social and Economic Justice

The Directives Principles of state Policy are based on the social justice. The important Article 37, Art.38, Art.39, Art.39A, Art. 40, Art. 41, Art.42, Art.43 Art.51 are talk about the social and economic justice. There are some social, economic, Political and cultural rights listed as Directives Principles of state Policy also applicable to protection the interest of scheduled tribes.

Moreover, the Directive principles of State Policy can be used as guidelines by the government from time to time for welfare of disadvantages groups of the Society. It ensures that the government has the flexibility to undertake appropriate legislative and administrative measures to ensure Scheduled Tribes. The most important Article 38(1) the state shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all institutions of the national life, and Article 38(2) state also strive to minimize the inequalities income ad endeavour amongst individual but also amongst groups of people residing in different areas or engaged in different vocations.

The inter alia directs the state to protect the interest of all citizen, men and women including scheduled tribes their right to adequate means of livelihood and however, Article 39(b) (c) based on economic reforms and article 39(b) stated that the ownership and control of the material resources of the community should be so distributed as best to subserve the common good; and even article 39(c) operation of economic system should not result in the concentration of wealth and means of production to the common detriment; however, Article 39(d) there should be equal pay for Equal work for both men and women; and Article 39(e) also provide the good health and strength of workers , men and women, and the tender age of children are not abused and that Citizen are not forced by economic necessity to enter avocations unsuited to their age or strength.

However, Article 39(f), the 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 including scheduled tribes.

Under Article 39A to promote justice on the basis of equal opportunity for all citizen of India, and therefore it is duties of every state to provide equal justice and free legal aid for weaker section of the society. In Article 41, the state also has empowered to protect the interest of weaker section regarding to make effective provisions 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” . According to this article 41 of Indian constitution talk about the industrial justice on various labour law legislation such as Industrial Dispute Act, 1947, factory Act, 1948, Minimum wages Act 1948 .

However, Article 42 the constitution obligates sate to make provisions for securing just and human condition of work besides some maternity benefits. Under Articles 40 of Indian Constitution Which mandates the state to take steps to organize village Panchayat and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. This was achieved only by the 73rd and 74th constitutional amendments to the Scheduled areas through the provisions of the Panchayat (Extension to the Scheduled areas) Act, 1996 to ensure effective participation of the tribal in the process of planning and decision-making.

Article 45 requires the states to endeavour to provide early childhood care and education for all children below the age of six years. However, “the State shall promote with special care the educational and economic interests of the weaker sections of the people, and,

in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation". This is reaffirmed by Article 46, which directs the State to promote with special care the educational and economic interests of the weaker sections and in particular of the SC/STs. Article 47 of the constitution imposes on the Government a primary duty of the state to raise the level of nutrition and the standard of living of its people including children and to improve the public health. The Constitution of Indian are also enacted the laws in respect of abolition of Zamindari system.

Conclusion

The constitution mechanisms need to play very proactive role in order to achieve the objective of Indian Constitution. It needs to release of surplus food grains lying in stock for the use of people living in the drought affected areas. Therefore, every state needs to frame a fresh scheme for public distribution of food grain. It needs to focus to take a step to prevent the untimely death of women and children to provide the nutritious food and hygienic meal. Besides the there are important issue to provide the shelter to destitute and homeless children's in India. Every state to make the provision to provide free medical facilities to all the citizens including depressed classes irrespective of their economic condition. It is also duty to states to provide hygienic drinking water, to provide safety and secure living condition of citizen of India etc.

The constitution should be interpreted in such a manner to make it a living document in order to fulfil the aspirations of the people. In the field of distributive justice, the legislature and judiciary both are playing important role which lead the social justice to all the citizens. The judiciary has played a great role in updating the constitution through its positive interpretation and deliver compensatory or corrective justice to all the citizens. It needs to ensure to make proper balanced of implementation of policies because it can makes social justice an effective vehicle of social progress. It also ensure social justice through equalization or protective discrimination policy

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