

## THE CONCEPT OF SOCIAL JUSTICE & DISTRIBUTIVE JUSTICE UNDER INDIAN CONSTITUTION

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### INTRODUCTION

In 1947, India was an old nation but a new country. Poverty, illiteracy, ignorance and prejudices were in abundance in the country when we got freedom from British colonial rule. The transition of India from a feudal to a democratic order and from colonial bondage to a free society needed to protect individual's life, liberty and property by making it the primary responsibility of the state to maintain law and order so that the citizens can enjoy peace and security and of equality of status and opportunity. Hence, protecting the interest of the poorer section of the society was made the constitutional goal. The Indian Constitution has provided a well-knit provision of civil and political as well socio-economic rights for its citizens. The making of our Constitution had the blessings of an international environment of according respect to individual rights through proclamation of the Universal Declaration of Human Rights. Both part-III and part-IV of the Constitution were immensely benefited by the UDHR. It fine-tuned the concept of giving rights to the people. No other Constitution was benefitted in the manner the Indian Constitution was benefitted by the Declaration.<sup>1</sup>

Granville Austin says, Indian Constitution is first and foremost a social document.<sup>2</sup> Its founding fathers and mothers established in the Constitution both the nation's ideals and the institutions and processes for achieving them. The ideals were national unity and integrity and a democratic and equitable society.<sup>3</sup> The new society was to be achieved through a socioeconomic revolution pursued with a democratic spirit using constitutional, democratic institution. Thus unity, social revolution, and democracy, were goals, which were mutually dependent and had to be sought together and not separately.<sup>4</sup>

### PREAMBULAR RECOGNITION

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<sup>1</sup> Dr. Surya Narayan Misra, 'Constitutional Democracy, Judiciary and Social Justice in India', Odisha Review, Jan- 2013

<sup>2</sup> Granville Austin, 'Indian Constitution: The Cornerstone of a Nation', New Delhi, Oxford University Press 2007, p.50; Also see, *Minerva Mills Ltd. v. Union of India* AIR 1980 SC 1789 at pp. 1805-1810

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

Social Justice is an expression which has found its way in the words of the Constitution and has become a part of the Constitutional expression. The Constituent Assembly even before it set out to fulfill its task of framing a Constitution for India declared in the Objectives resolution passed by it that social justice is one of the goals to be achieved. The Constituent Assembly declared its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution wherein shall be guaranteed and secured to all the people of India, justice, social, economic and political. It became the vision of the people of India and a promise of the Constitution speaking through its preamble and some of the enacting provisions that there shall be secured to all the citizens, social justice.<sup>5</sup>

The Preamble to the Constitution summarizes the aims and objectives of the Constitution.<sup>6</sup> It is a genuine aid in the interpretation of the constitution. It put socialism in the Constitution as its guiding principle. Law of course, is not static, backward looking or a tradition bound.<sup>7</sup> The preamble of the Constitution of India speaks of justice, social, economic and political and of equality of status and opportunity.

The makers of our constitution were highly influenced by the feeling of social equality and social justice. For the same reason, they incorporated certain provisions in the Constitution of India which reflects its form as a 'social welfare state'. In fact the Preamble to the Constitution, which is based on the objectives resolution of Pandit Jawaharlal Nehru,<sup>8</sup> asserts that 'We the people' of India, through this Constitution, aim at establishing a Sovereign, Socialist<sup>9</sup>, Secular, Democratic, Republic of India and to secure to all its citizens, JUSTICE- social, economic and political. The Constitution for this purpose has put across certain fundamental policy choices in the Constitution, in the form of Parts III and IV.

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<sup>5</sup> Srinath Sahay J., 'SOCIAL JUSTICE', Chairman, State Law Commission, Uttar Pradesh, JTRI Journal - Second Year, Issue 4 & 5, March, 1996.

<sup>6</sup> Section-2 deals with Amendment of the preamble. In the preamble to the constitution: for the words "SOVERIGN" DEMOCRATIC, REPUBLIC, the words "SOVEREIGN" SOCIALIST SECULAR DEMOCRATIC, REPUBLIC shall be substituted. Be it enacted by Parliament in the Twenty Seventh Year of the Republic of India. The Constitution(Forty Second Amendment ) 1976.s

<sup>7</sup> Chitkar M.G and Mehatha P.L, ' Lok Adalat And The Poor', p. 104.

<sup>8</sup> Constituent Assembly Debates, Vol. 1, New Delhi, Parliament Secretariat, p.57; Also see, Rao B. Shiva (Ed). *The Framing of India's Constitution*, Select Documents, 2 [Delhi, Universal Law Publishing Co. Pvt. Ltd.], 2006, pp.3-4

<sup>9</sup> The expression 'socialist' was intentionally introduced in the Preamble by the 42<sup>nd</sup> Constitutional (Amendment) Act, 1976.

‘In the preamble, justice, is not just an abstract concept. It conveys (as one of the purpose of the constitution) the removal of injustices to the extent possible, a theme projected by the Nobel Laureate, Professor Amartya Sen, in his *The Idea of Justice*:

*...the strong perception of manifest injustice applies to adult human beings. What moves us, reasonably enough, is not the realization that the world falls short of being completely just- which few of us except- but there are clearly remediable injustices around us which we want to eliminate.*

*This is evident in our day-to-day life, with inequalities or subjugation from which we may suffer and which we have good reasons to resent, but it also applies to more widespread diagnoses of injustices in the wider world in which we live. It is fair to assume that Parisians would not have stormed the Bastille, Gandhi would not have challenged the empire on which the sun used not to set, Martin Luther King would not have fought white supremacy in ‘the land of the free and the home of the brave’, without their sense of manifest injustices that could be overcome. They were not trying to achieve a perfectly just world (even if they were any agreement on what that would be like), but they did want to remove clear injustices to the extent they could.’<sup>10</sup>*

The fact that ‘the State’ has been defined in the same manner, in both Parts III and IV, is possibly an indication, that the founding fathers of the Constitution, were of the opinion that the nation’s ideals viz, national unity and integrity and a democratic and equitable society, to be achieved through a socio-economic revolution pursued with a democratic spirit using constitutional, democratic institutions.<sup>11</sup>

The Supreme Court in *Minerva Mills v. Union of India*<sup>12</sup>, observed, *There is no doubt that though the courts have always attached very great importance to the preservation of human liberties, no less importance has been attached to some of the Directive Principles of State Policy enunciated in Part IV.... The core of the commitment to the social revolution lies in parts III and IV. These are the conscience of the Constitution.*<sup>13</sup>

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<sup>10</sup> In the Preface to *The Idea of Justice*, Penguin Books, New Delhi, 2009, as cited in, Fali S. Nariman, ‘The State of the Nation’, Hay House India, p. 121.

<sup>11</sup> Supra Note 2

<sup>12</sup> AIR 1980 SC 1789

<sup>13</sup> *Ibid* at pp. 1805-1810

The Court said that, rights enumerated in Part III of the Constitution of India are not an end in themselves, but are the means to an end, the end is specified in Part IV as Directive Principles of State Policy. Together, the two realize the idea of justice, which the Indian State seeks to secure to all its citizens.

## **SOCIAL JUSTICE AND INDIA**

Indian Constitution, the cornerstone of the nation, was intended to promote social transformation in view of Granville Austin.<sup>14</sup> The term 'social' is concerned with all human beings within the society and the 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.<sup>15</sup> Whenever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. Social justice found useful for everyone in its kind and flexible form. Although social justice is not defined anywhere in the constitution but it is an ideal element of feeling which is a goal of constitution. Feeling of social justice is a form of relative concept which is changeable by the time, circumstances, culture and ambitions of the people.<sup>16</sup>

Social Justice is the keystone of Indian Constitution. Indian Constitution makers were well known to the utility and shortcoming of various principles of justice. They wanted to search such form of justice which could fulfill the expectations of whole revolution. Pt. Jawahar Lal Nehru put 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.'*<sup>17</sup>

The Judges of the highest Court of the country has time and again established the ideals of social justice in relation to our constitution: In the words of Justice Vivian Bose<sup>18</sup>-

*'After all, for whose benefit was the Constitution enacted: what is the point of making all this pother about fundamental rights? I am clear that the Constitution is not for the exclusive*

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<sup>14</sup> Supra Note 2 at p. 11

<sup>15</sup> Dr. Puneet Pathak, Social Justice Under Indian Constitution, International Journal Of Legal Developments And Allied Issues, p. 33

<sup>16</sup> V.R. Krishna Iyer, Social JusticeSunset or Dawn (1987) p.53

<sup>17</sup> Supra Note 12

<sup>18</sup> Former Judge, The Hon'ble Supreme Court of India

*benefit of governments and States; it is not only for lawyers, politicians and officials, and those highly placed. It also exists for the common man, for the poor and the humble for those who have businesses at stake, for 'the butcher, the baker, and the candlestick maker'. It lays down for this land a rule of law as understood in the free democracies of the world.'*<sup>19</sup>

Social inequalities of India expect solution equally. Under Indian Constitution the use of social justice is accepted in wider sense which includes social and economical justice both. According to Chief 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.'*<sup>20</sup>

The Indian judiciary has taken up the administration of social justice through the judicial activism in the exercise of their writ jurisdiction. The higher judiciary realized that India being a welfare State is committed to the cause of social justice and the courts must respond to the cause keeping in view the needs of the society. The Supreme Court in *S. D. Nakara v. Union of India*<sup>21</sup> and *Minerva Mills*<sup>22</sup> observed that the expression 'social justice' in the preamble recognizes the Bentham's principle of greatest happiness of the greatest number without deprivation of legal rights of persons.

The concept of justice, particularly, Article 46 seeks to protect the weaker sections from social injustice. Similar provisions also exist in Article 15 (4) regarding special provisions for backward classes; Article 16 (4) regarding reservation for backward classes; Article 330 regarding special provisions relating Scheduled Castes and Scheduled Tribes in reserving certain seats of parliament, Article 335 regarding relaxation of minimum qualifying standard for admission to certain professions, e.g., medical engineering etc.

In the case of *Indra Sawhney v. Union of India*,<sup>23</sup> the Supreme Court held that a positive duty is imposed on the State protection of tribals and weaker section of people.

Article 39-A contains a directives for legal aid to poor sections access to justice and law courts. It is on the basis of this provisions that legal aid programmes have been launched by

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<sup>19</sup> *Bidi Supply Co. v. Union of India* AIR 1956 SC 479, as cited in, Fali S. Nariman, 'The State of the Nation', Hay House India, p. 115.

<sup>20</sup> P.B. Ganendragadkar, *Law, Liberty and Social Justice* (1964) pp. 77, 99

<sup>21</sup> AIR 1983 SC 927

<sup>22</sup> AIR 1980 SC 1789

<sup>23</sup> AIR 1993 SC 487

most of the states in India. The Legal Services Authorities Act, 1987 has been enacted in order to achieve the objective enshrined in Article 39-A. For the disposal of cases expeditiously and without much cost, Lok Adalats have been constituted under the Act which are functioning as voluntary and conciliatory agencies.<sup>24</sup>

The Directive Principles contained in Art 39(a) to (g) further requires the State to remove inequalities of wealth and ensure distributive justice to all alike and ensure fair distribution of material wealth to remove disparity between 'haves' and 'have nots'. Similarly, Art 43 regarding living wages and Art 43-A which was introduced by 42<sup>nd</sup> Constitutional Amendment, 1976 regarding participation of workers in management of industries are directed towards ensuring social justice for the industrial workers. Moreover, Art 41 regarding public assistance to disabled and aged persons and Art. 42 regarding securing just and humane condition of work etc. are all directed towards the attainment of the object of social justice.

## DISTRIBUTIVE JUSTICE

Social justice may be in the form of distributive justice. When it operates at the level of distributive justice, it seeks to ensure a fair distribution of social benefits and burdens among the members of the community. The manifestation of the distributive justice may be found in the concept of wages, bonus, gratuity, family pension, subsidized ration to poor, etc. which are intended to secure minimum standard of living to needy and poor persons.

The concept of distributive justice is by no means new to the jurisprudential thinking. Aristotle, the Greek philosopher of his time, commented: '*Distributive justice exercised in the distribution of wealth, honor and other divisible assets of the community which may be allotted among the members in equal and unequal shares by the legislator according to merit.*'

The essence of distributive justice is to secure a balance or equilibrium among members of the society. The concept has been well recognized under Article 14, 15 and 16 of the Constitution of India. Again, the provisions contained in directive principles of state policy are directed towards attainment of distributive justice<sup>25</sup>, which is a form of social justice.<sup>26</sup>

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<sup>24</sup> Dr. N. V. Paranjape, *Studies in Jurisprudence and Legal Theory*, Central Law Agency 7<sup>th</sup> Edition, p. 271

<sup>25</sup> Articles 37, 41, 42 etc

Elaborating the concept of Distributive justice as one of the forms of social justice Mr. A.P. Sen in *Lingappa Pochanna v. State of Maharashtra*<sup>27</sup> observed:

*‘Our Constitution permits and even directs to administer what may be termed as distributive justice. The concept of distributive justice in the sphere of law making connotes, inter-alia, the removal of economic inequalities and rectifying the injustice resulting from dealing or transactions between unequal in society, law should be used as an instrument of distributive justice to attain a fair division of wealth among the members of the society based upon the principle from each according to his capacity, to each according to his needs.’*

The Apex Court in this case held that distributive justice is aimed at lessening of inequalities by differential taxation, imposing ceiling on holdings both agricultural and urban, and regulating contractual transactions so that those who have hitherto been deprived of their fortunes by unconscionable bargaining should be resorted their legitimate dues. Thus, law should take upon itself the task of forced redistribution of wealth so as to achieve a fair division of material resources among the members of society.<sup>28</sup>

## CONCLUSION

The recent trend of public interest litigation has got revolution effect, the whole law relating to writ remedies under the constitutional provisions as provided in Article 32 and Article 226. Now even an ordinary prayer of petition to the Supreme Court under article 32 or to the High Court under Article 226, may be taken up and heard by these courts as writ petition if it is filed on behalf of some group of persons who themselves are unable to move to the Court due to poverty, misery etc. it implies that this is a way to deliver justice at the door-steps of the poor, down-trodden and persons of meager resources. The pro-active approach of judiciary in *People’s Democratic Right v. Union of India*;<sup>29</sup> *Bandhua Mukti Morcha case*;<sup>30</sup> *M. C. Mehta v. Union of India*;<sup>31</sup> *Olga Tellis v. State of Maharashtra*;<sup>32</sup> *Maneka Gandhi v. Union of India*;<sup>33</sup> *Vishakha v. State of Rajasthan*<sup>34</sup> are some of the best illustrations to demonstrate the

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<sup>26</sup> Distributive justice and corrective justice are two forms of social justice.

<sup>27</sup> AIR 1986 SC 389

<sup>28</sup> Dr. Vinay N. Paranjape, *Dimensions of Reference Making Power of the Government in Industrial Adjudication*, (2004), p. 55

<sup>29</sup> AIR 1983 SC 1473

<sup>30</sup> AIR 1984 SC 802

<sup>31</sup> AIR 1987 SC 1086

<sup>32</sup> AIR 1986 SC 567

<sup>33</sup> AIR 1978 SC 597

incorporations of the principles of social justice through this new trend of writ jurisdiction. It seeks to remove injustice and ensure social justice to all those who had been hitherto deprived of the access to justice through law courts through all these years.<sup>35</sup>

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<sup>34</sup> AIR 1997 SC 3011

<sup>35</sup> Supra Note 24 at 273