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Social and Economic Justice under Constitution of India: A Critical Analysis

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ABSTRACT:

The expression 'Social and Economic Justice' involves the concept of 'Distributive Justice' which connotes the removal of economic inequalities and rectifying the injustice resulting from dealing or transaction between unequal in society. It comprehends more than lessening of inequalities by different taxation, giving debt relief or regulation of contractual relation; it also means the restoration of properties to those who have been deprived of them by unconscionable bargains; it may also take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society.

Social justice is concerned with the distribution of benefits and burdens. The basis of distribution is the area of conflict between rights, needs and means.

The Constitution of India has solemnly promised to all its citizens justices-social, economic and political; liberty of thought expression, belief, faith and worship; equality of status and of opportunity; and to promote among the all fraternity assuring the dignity of the individual and the unity of the nation in three parts, one is Preamble as I mentioned before, second Fundamental Rights and thirdly through Directive Principles.

In this paper, an analysis has been made as to how the social and economic justice removes inequalities and provides for proper distribution of benefits through the provisions of The Indian Constitution.

I. INTRODUCTION

A society, which protects the rights and liberties of people and provides all the economic and social advantages to the greatest benefit of the least advantaged sections in the society, could be considered Just[1]. The Constitution of India was adopted on November 26; 1949.The Indian Constitution is unique in its contents and spirit. Though borrowed from almost every Constitution of the world, the Constitution of India has several salient features that distinguish it from the Constitutions of other countries The Preamble of Constitution of India is designed to realize socio-economic justice to all the people in India.

II. BACKGROUND

In the Indian context social and economic justice assumes new significance. It bears no analogy to the meaning ascribed to it in the western societies. The stratification of the Hindu society based upon institutionalized hierarchical social inequalities makes the upward movement of the lower castes impossible.

The division of society into Brahmanas, Kshatriyas, Vaishyas and Sudras has divided the society vertically. The rigidity of the caste system had sealed the mobility of people from one caste to another. Below the fourfold division of the Hindu society there is a large class of people known as Panchamas subjected to the degraded

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[1] Rawls John, *Theory of Justice*, (1971)

practice of untouchability. There are other sections leading nomadic lives untouched by civilization; social evolution has not reached them. The original inhabitants of this country, the Adivasis are now commonly known as the Scheduled Tribes.

Realization of social and economic justice compels alteration of the basic structure of the society by ushering in a new legal order to harmonize the conflicting interests of different sections. Differential treatment accorded by law to further social justice cannot be termed discriminatory since the welfare of the society as a whole is the basis for the differential measures.

III. SOCIAL AND ECONOMIC JUSTICE

Social justice broadly incorporates economic justice also. The socio economic justice as visualized by the Indian Constitution is found mostly in the Directive Principles of State Policy – Part IV of the Constitution of India and to a little extent in the Chapter on Fundamental Rights and certain other provisions of the Constitution. 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 (SCs, STs, and OBCs) and women. Social Justice is the foundation stone of Indian Constitution.

Social Justice is the recognition or greater good to a larger number without deprivation or accrual of legal rights. The concept of social justice is central and integral to the Constitution and it is assumed to be to be a basic structure of the Constitution which cannot be whittled down, altered or done away with in view of the Doctrine of Basic Structure propounded in ***Kesavananda Bharati*** case[2].

Simply put, Social Justice is the comprehensive form to remove social imbalance by law harmonizing the rival claims or the interest of different groups and/or section in the social structure or individuals by means of which alone it would be possible to build up a welfare State[3].

For prevention of social wrongs and injustice there must be efficient administration of justice according to pre-declared principles of law and this can be done through the machinery of courts and legal process.

The concept of social justice is a revolutionary concept which provides meaning and significance to life and makes the rule of law dynamic. When Indian society seeks to meet the challenge of socio-economic inequality by its legislation and with the assistance of the rule of law, it seeks to achieve economic justice without any violent conflict. That is the significance and importance of the concept of social justice in the Indian context of today. Social justice is attained only through the harmonious co-operative effort of the citizens.

[2] Keshvananda Bharti vs. State of Kerala., AIR 1973 SC 1461
[3] Dalmia Cement(Bharat) Ltd. vs. Union of India, (1996) 10 S.C.C 104

The term '**Social Justice**' is not capable of any precise definition. It has neither any specific content nor does it have any definite contours. It changes with the times, with the culture, with the state of economy and with the people.

'Economic Justice' means the banishment of poverty, not by expropriation of those who have but by the multiplication of the national wealth and resources and an equitable distribution thereof amongst all who contribute towards its production, is the aim of the state envisaged by the directive principles. Economic democracy will be installed in our sub-continent to the extent that this goal is reached. In short, economic justice aims at establishing economic democracy and a 'welfare state'.

The right to economic justice to the scheduled castes, scheduled tribes and other weaker sections is a fundamental right to secure equality of status, opportunity and liberty. Economic justice is a facet of liberty without which equality of status and dignity of person is teasing illusions[4] .The ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and of status-social, economic and political[5]

Liberty, equality and fraternity have to be secured and protected with social justice and economic empowerment and political justice to all the citizens under the rule of law.[6]

Distributive justice is a course that Social Justice adopts. In other words, the term Social Justice implies offering economic opportunity, economic equality and removal of social disabilities. It implies in the Indian context, programmes aimed at equality before law, equal opportunity, alleviation of poverty, bridging of the gap between the have and the have-not, re-distribution of material resources, betterment of conditions of labour and removal of caste disabilities etc. In India the idea of welfare state is that the claims of social justice must be treated as cardinal and paramount. Thus The Constitution of India in the preamble resolved to secure to all its citizens**;**

Justice: social, economic and political. Therefore, concept of social justice is not foreign to legal order. Social justice is the primary objective of the State as envisaged in our Constitution. Social Justice implies that all citizens are treated equally irrespective of their status in society as a result of the accident birth, race, caste, religion, sex, title etc[7].

[4] Papaiah vs. State of Karnataka and ors. (1996)10 SCC 533: 1996(9) JT 292
[5] Dalmia Cement(Bharat)Ltd vs. Union of India (1996) 10 SCC 104
[6] S.S Bola vs. B.D Sardana (1997) 8 SCC 522
[7] Kashyap C. Subhash, *Our Constitution An Introduction to India's Constitution and Constitutional Law,* p. 72 (2007)

IV. CONSTITUTIONAL EMPHASIS ON SOCIAL AND ECONOMIC JUSTICE

The constitutional concern of social and economic justice as an elastic continuous process is to accord justice to all section of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc are languishing and secure dignity of their person[8].

Social Justice is the principles that go into the formation of a welfare state. Themes and principles of socio economic justice are amply reflected in the Preamble to the Constitution, in Part III Fundamental Rights and in Part IV the Directive Principles of the Constitution. It has been held that the validity of any law enacted by the legislature would be tested against the touchstones of the Preamble, Fundamental Rights and Directive Principles.

The Preamble, Fundamental Rights and the Directive Principles form the ethical basis for the constitutional endeavour of social engineering for the creation of an egalitarian society[9].

Even in the case of ***S.R. Bommai v Union of India[10]*** where court held that Social Justice and Judicial Review is the basic feature of the Constitution of India.

The seeds of Social Justice which have been sown in the Preamble; and by the time one goes to Part III and Part IV, they are in full bloom. Articles 14, 15 and 16 speak of equality before law and equal protection of laws. Besides the Preamble, the Directive Principles of State Policy contained in Chapter IV of the Constitution expostulate the philosophy of social justice.

In ***Workmen of Meenakshi Mills Ltd. v Meenakshi Mills Ltd.[11]*** the Apex Court observed that the Preamble to the Constitution declares the solemn resolve of the people of India to secure to all the citizens justice-social, economic and political.

Law is the ultimate aim of every civilised society as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment.

Justice is the genus, of which social and economic justices are the species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribal's and deprived sections of the society and to elevate them to a status of equality and enable them to live life with the dignity of person.

In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which are the legitimate expectations. Social security, just and humane conditions of work and leisure to

[8] *Consumer Education & Research Centre vs. Union of India,* (1995) 3 SCC 42, (Para 19): AIR 1995 SC 922
[9] B. Senguttuvan, *Constitutional-Emphasis-On-Social-Justice*
[10] AIR 1994 SC 1918
[11] [1992] 3 SCR 33

workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity, the State should provide facilities and opportunities to them to reach at least minimum standard of health, economic security and civilised living while sharing according to the capacity, social and cultural heritage.

"Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results."

Therefore, rights conferred on citizens and non-citizens are not merely individual or personal rights. They have a large social and political content, because the objectives of the Constitution cannot be otherwise realized. Fundamental rights represent the claims of the individual and the restrictions thereon are the claims of the society.

Article 38 in Part- IV is the only Article which refers to justice, social, economic and political. However, the concept of justice is not limited only to directive principles. There can be no justice without equality. **Article 14** guarantees the fundamental right to equality before the law on all persons. Great social injustice resulted from treating sections of the Hindu community as 'untouchable' and, therefore, **Article 17** abolished untouchability and **Article 25** permitted the State to make any law providing for throwing open all public Hindu religious temples to untouchables. Therefore, provisions of Part-III also provide for political and social justice[12].

The expression 'social and economic justice' involves the concept of 'distributive justice' which connotes the removal of economic inequalities and rectifying the injustice resulting from dealing or transaction between unequal in society.

It comprehends more than lessening of inequalities by different taxation, giving debt relief or regulation of contractual relation; it also means the restoration of properties to those who have been deprived of them by unconscionable bargains; it may also take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society[13].

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[12] *M. Nagaraj & Others vs. Union of India & Others* (2006) 8 SCC
[13] Basu Durga Das, *Shorter Constitution of India,* p.4(2006)

A. Fundamental Rights

The Supreme Court in Sadhuram ***VS. Pullin Behari*** observed that social justice is one of the aspirations of the Indian Constitution. In view of securing to all its citizens social justice our Constitution provides some Fundamental rights in Part III some of which are available to all

Persons and some are enjoyable only by the citizens of India. They are -

- Equality before law (Art 14)
- Prohibition of discrimination on ground of religion, race, caste, sex or place of birth (Art 15)
- Equality of opportunity in matters of public employment (Art 16)
- Abolition of Untouchablity (Art 17)
- Abolition of titles (Art 18)
- Protection of certain rights regarding freedom of speech etc. (Art 19)
- Protection of life and personal liberty (Art 21)
- Protection in respect of conviction for offenses (Art 20)
- Protection against arrest and detention in certain cases(Art 22)
- Protection of traffic in human beings and forced labour (Art 23)
- Prohibition of employment of children in factories or mines or in any other hazardous employment (Art 24)
- Freedom of Religion (Art 25 - 28)
- Protection of interests of minorities (Art 29-30)
- Judicial remedies for enforcement of rights conferred by this Part - III of the Constitution (Art 32).

B. Directive Principles of State Policy

To realize the goal of social and economic justice our Constitution also provides some directives to the State in the form of Directive Principles of State Policy (Articles 39-50) and lays down that the state shall direct its policy towards securing these objectives. The most important of these directives are –

- Promotion of welfare of the people (Art 38)
- Adequate means of livelihood; equal distribution of material resources of the community; distribution of means of production to the common good equal pay for equal work; promotion of health and strength of

workers, men and women and the children : Protection against exploitation of child hood and youth (Art 39)

- Equal justice and free legal aid (Art 39A)
- Right to work, education and to public assistance in certain cases (Art 41)
- Just and human conditions of work and maternity relief (Art 43)
- Living wages for workers (Art 44)
- Uniform civil code (Art 44)
- Free and compulsory primary education for children (Art45)

Article 38 of the Constitution enjoins the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, the social order in which justice- social, economic, and political- shall inform all the institutions of the national life striving to minimize inequalities in income and endeavour to eliminate inequalities in status, facilities, opportunities amongst individuals and groups of people residing in different areas or engaged in different vocation[14].Read with Article 39A, Social Justice would include 'legal justice', which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice by all section of the people irrespective of their social or economic position or their financial resources[15].**Article 14 to 18** has to be understood in the light of social justice assured by **Articles 38, 39, 39A, 41** and **46** of Part IV of the Constitution[16].

In ***State of Bihar vs. Kameshwar Singh[17]*** Court held that the ideal we have set before us in Art. 38 is to evolve a State which must constantly strive to promote the welfare of the people by securing and making as effectively as it may be, a social, economic and political justice shall inform all the institutions of the national life.

The concept of social justice consists of diverse principles essential for orderly growth and development of personality of every citizen. It is a dynamic device to mitigate the suffering of the poor, weak, dalits, tribal and deprived section of people[18].

Again in the case of Air ***India Statutory Crop. Vs. United Labour Union[19]*** court observed that The Preamble and Art 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and liveable with human dignity.

[14] Air India Statutory Corpn. vs. United Labour Union (1997) 9 SCC 377
[15] Babu Ram L. vs. Raghunathji Maharaj, AIR 1976 SC 1734 (para 1): (1976) 3 SCC 492
[16] Indra Shwhney vs. Union of India, AIR 1993 SC 1734 (Para 4) : 1992 Supp. (3) SCC 217.
[17] AIR 1952 SC 252
[18] Consumer Education & Research Centre vs. U.O.I. AIR 1995 SC 922
[19] AIR 1997 SC 654

The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social Justice, equality and dignity of person are cornerstones of social democracy. The concept of 'social justice' which the Constitution of India engrafted consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social Justice" is thus an integral part of "Justice"

The meaning of the expression is also brought out by Article 46, which aims at protecting the weaker section from ' Social injustice' Provision in this behalf are also made in Article 15(4),16(4), 19(1)(d)(e), 275,330,335.[20]

V. JUDICIARY VIS-À-VIS SOCIAL AND ECONOMIC JUSTICE

After our independence a significant change has occurred in the role of judicial process in our society. Judicial activism figures prominently in the contemporary India with active assistance of social activists and public interest litigators for vindication of the governmental commitment to welfare and social justice. One of the meanings of judicial activism is that the function of the court is not merely to interpret the law but to make it imaginatively sharing the passion of the Constitution for social and economic justice.

The ***Maneka Gandhi***[21] case in which fundamental right of personal liberty has been converted into a regime of positive human rights unknown in previous constitutional diction. Thereafter, gradually the Supreme Court, particularly some socialist justices tried to explore social justice in our Fundamental Rights and Directive Principles of State Policy.

In this way, the courts try to force the government to realize the new concept of social justice in the cases of:

- ***Sunil Batra VS. Delhi Administration***[22](right against torture);
- ***Bandhua Mukti Morcha VS. Union of India***[23](right against bondage);
- ***People's Union for Democratic rights VS. Union of India***[24] (right against bondage);
- ***Olga Tellis VS. Bombay Municipal Corporation***[25](right to livelihood);
- ***M.C. Mehta VS. Union of India***[26](right against environmental pollution),
- ***Upendra Baxi VS.State of Uttar Pradesh***[27](right to human dignity),

[20] Sadhuram Bansal vs. Pulin Bihari Sarkar, AIR 1984 SC 1471
[21] AIR 1978 SC 597
[22] AIR 1980 SCR (2) 557
[23] 1984 3 SCC 161
[24] (1982) 3 SCC 235; AIR 1982 SC 1473
[25] AIR1986 SC180
[26] 1985 SC 652
[27] (1983) 2 SCC 308

- ***Sheela Barse VS. Union of India***[28](right to legal aid);
- ***M.K. Sharma VS. Bharat Electronics Ltd***.[29] (right to have safety and protection to the workers);
- ***Sankar VS. Durgapur Projects Limited***[30](relying on Olga Tellis the court held that compelling a person to live in sub human conditions amounts to the taking away of his life);
- ***Krishen Pattanyak VS. State of Orissa***[31](victims of starvation deaths in the district of Kalahandi, Orissa);
- ***Vishal Jeet VS. Union of India***[32](child abuse and forced prostitution);
- ***M.C. Mehta VS. State of Tamil Nadu***[33] (right of children against exploitative employment in hazardous industries);
- ***Delhi Judicial Service Association, Tis Hazari courts Delhi VS. State of Gujarat***[34](also known as Nadiad case)
- ***Banwasi Sewa Ashram v State of U.P***[35], where adivasis and other back-ward class people used forest as their habitat and means of livelihood and parts of such forests were declared as reserved.

In these cases the judges maintain that in a developing society judicial activism is essential for participative justice and the bureaucrats as well as the elected representatives.

Kerala Education Bill, 1957[36], the Supreme Court advocated a harmonious construction of the Fundamental Rights and the Directive Principles. **Art. 23** and **Art. 24** mandate that no child below the age of 14 may be employed in any factory or mine or engaged in any other hazardous employment. These two Articles recently came up for construction before this Court in ***People's Union for Democratic Rights vs. Union of India***[37].

The Apex Court in ***Ashok Kumar Gupta v State of U.P.***[38]**,** held that the term Social Justice is a Fundamental Rights.

Supreme Court in ***Municipal Corporation of Delhi v Female Workers (Muster Roll)***[39]**,** the provision entitling maternity leave under the Maternity Benefit Act, 1961, even to women engaged on casual basis or on muster

[28] (1986) 3 SCC 596
[29] AIR 1987 SC 1792
[30] AIR 1988 Cal 136
[31](1989) AIR 677
[32] 31 AIR 1990, SCR (2) 861
[33] (1996) 6 S.C.C. 756
[34] AIR 1991 SC 2176
[35] 1992 SCC (2) 202
[36] AIR 1958 SC 956
[37] AIR 1982 SC 1473
[38] (1997)5 SCC 201

roll basis on daily wages and not only to those in regular employment are in consonance with the doctrine of social justice and any contention against it is contrary.

VI. CONCLUSION

There is now a strong need in India to have a co-ordination between the Executive and judicial organs of the State. Whenever there appears heat on any matters in our society, the legislature passes a law on it; but after passing of the law for want of implementation the people especially the masses, never see the light from that heat. So we need to develop a viable judicial system by changing our existing procedural law and taking necessary steps for proper implementation of laws including timely filling up of vacancies of the posts of judges in all courts. Law alone or the court alone cannot bring social justice. The development of delivery system of justice i.e. the judicial system is part and parcel of the programme of social justice which depends very much on correlation and coordination among the three organs on the State.

Despite the well intentioned commitment of ensuring social justice through equalization or protective discrimination policy, the governmental efforts have caused some tension in the society. In the name of social justice even such activities are performed which have nothing to do with social justice. 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.

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