

## **Social Justice - Changing Trends in the Era of Globalization and Liberalization: *Role of Courts***

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The framers of the Indian Constitution has not included the word “**Socialistic**” in the preamble of the Indian Constitution as it was originally enacted. It was only by way of the 42<sup>nd</sup> Amendment of the Indian Constitution in the year 1976, a socialistic orientation to the India Polity was given and India was hence declared as “**Sovereign**”, “**Socialistic**”, “**Secular**” Democracy. The principal aim of such amendment was to alienate inequalities in income and status and standard of life. The word “socialistic” has certain association which is inconsistent with the enacting provisions of our Constitution and having realized that the said word was required to be defined, the 45<sup>th</sup> Amendment Bill (which became the 44<sup>th</sup> Amendment) proposed an amendment of Article 366 by inserting the word “**Socialist**” meaning a “Republic in which there is freedom from all forms of exploitation, social, political and economic”. The said amendment was, however, not accepted and consequently therefore, the word “Socialistic” still remains undefined though, of course over the years various judicial pronouncements have given a definite flavour to it thereby imbibing the concept of “**Social Justice**”.

In the realm of employment both public and private, even before the introduction of the word “Socialistic” in our Preamble, several social welfare legislations, like the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952, Employees’ State Insurance Act, 1948, Industrial Disputes Act, 1947, to name a few were in vogue and these Acts were in the form of Social Welfare Legislations, which were founded on the basic ideals of socio-economic equality aimed to assist the removal of socio-economic disparities and inequalities as held in *J.K. Cotton Spinning & Weaving Co. Ltd. v. Labour Appellate Tribunal of India*<sup>2</sup>. The introduction of the word “Socialistic” enabled the Courts to lean more in favour of nationalization and State ownership of industries but so long as a right of private ownership of Industry is recognized, the principles of “Socialism” as emanating from theories of Marx and Engels and put in practice by Communist States like, the former Soviet Union, China, Cuba etc. cannot be pushed to such an extent so as to completely ignore and/or obliterate the interest of shareholders, creditors and depositors as observed in *Excel Wear v. Union of India*<sup>3</sup>.

The provisions of Article 38 of the Constitution which underwent a change

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2 AIR 1964 SC 737

3 AIR 1979 SC 25 at Pg. 36

in the year 1978 by the Constitution 44<sup>th</sup> Amendment Act imposes the duty on the State to promote a “Welfare State”, the functions of which should be within the bounds of the Constitution and subject to its limitation, be commensurate with public welfare as held in *Lokenath v. State of Orissa*<sup>4</sup>. Article 38 reaffirms what has been declared in the Preamble to the Constitution, namely, the functions of the Republic is to secure, inter alia, social, economic and political justice. Article 38 envisions social justice as the arch to ensure life to be meaningful and liveable with human dignity and that the Article envisages not only legal justice, but also socio-economic justice as well as observed in *Air India Statutory Corporation v. United Labour Union*<sup>5</sup>.

In *Ramon Services (P) Ltd. v. Subhas Kapoor*<sup>6</sup>, R.P. Sethi J. observed that : (SCC p. 127, para 21)

“21. After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system.”

26. In *LIC v. Consumer Education and Research Centre*<sup>7</sup>, K. Ramaswamy, J. observed that social justice is a device to ensure life to be meaningful and liveable with human dignity. The State is obliged to provide to workmen facilities to reach minimum standards of health, economic security and civilised living. *The principle laid down by this law requires courts to ensure that a workman who has not been found guilty cannot be deprived of what he is entitled to get. Obviously when a workman has been illegally deprived of his device then that is misconduct on the part of the employer cannot possibly be permitted to deprive a person of what is due to him.*

In the context of master-servant relationship as embodied in the concept of employment, the old order did not recognise and/or uphold the rights of the servant’s and the master’s rights were held to be paramount. Social security in those days was at a premium and the employee was constantly in danger of losing his job for very trivial reasons. There was hardly any legal protection against an arbitrary and capricious action of an employer. Several inequities were loaded against an employee in the field of private employment. Courts of Law on the doctrine of lack of mutuality of obligation did not enforce even

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4 AIR 1952 Orissa 42 at Pg. 47

5 AIR 1997 SC 645

6 (2001)1 SCC 118

7 (1995)5 SCC 482

contracts for permanent employment.

This trend however, changed with the courts increasingly adopting and enforcing the concept of social justice to protect the weaker contracting parties against the harshness of the common law and abuses of the freedom of contract. The doctrine of *laissez faire* repeatedly found disfavour with the Supreme Court as would be evident from the judgements reported in ***Government Branch Press v. D.B. Velliappa***<sup>8</sup> and again in ***Glaxo Laboratories India Ltd. v. Presiding Officer***<sup>9</sup>. At paragraph 12 of Glaxo Laboratories Case, the Supreme Court observed as under :-

“12. In the days of *laissez faire* when the industrial relation was governed by the harsh weighted law of hire and fire the management was the supreme master, the relationship being referable to contract between unequals and the action of the management treated almost sacrosanct. The developing notions of social justice and the expanding horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry, namely, those who invest blood and flesh against those who bring in capital. Moving from the days when whim of the employer was *suprema lex*, the Act took a modest step to compel by statute the employer to prescribe minimum conditions of service subject to which employment is given. The Act was enacted as its long title shows to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed. If this socially beneficial Act was enacted for ameliorating the conditions of the weaker partner, conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief.”

However, globalisation and liberalisation all around the world has also left its indelible mark in the Indian economy as a result whereof Indian economy is now shedding its years of isolation and protectionism and adopting western views of capitalism in every nook and cranny of its economy which to a large extent is threatening to engulf the concept of social justice. The American concept of handing over pink slips to employees at the dropt of a hat is finding increasing favour with industrial houses in the private sector as would be epitomised by the Information Technology sector.

Successive Governments, both at the Centre and various States, are increasingly embracing private entrepreneurship and/or partnership even in certain

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8 (1979)1 SCC 477

9 (1984)1 SCC 1

core sectors of the economy which were hitherto were considered out of bounds for such private operators.

With the changing dimension of Indian economy and its tectonic shift from the socialistic character to a more capitalistic mode, the benefits or otherwise of which are yet to be fully assessed, there is a lurking fear that the principles of social justice as we have come to know of over the last few decades may be an important casualty. Already there are tell-tale signs of the same in governmental policies which are couched in the name of “reforms” and the courts of law have not escaped from such trend. As succinctly observed by Justice G.S. Singhvi in the case of *Harjinder Singh v. Punjab State Warehousing Corporation*<sup>10</sup> at paragraphs 30 and 31 of the said judgement:-

“30. *Of late, there has been a visible shift in the courts’ approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalization are fast becoming the raison d’etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is the initial employment/engagement of the workmen/employee was contrary to some or the other statute or that reinstatement of the workman will put to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.*

31. *It need no emphasis that if a man is deprived of this livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining*

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10 (2010)3 SCC 192

*the specious and untenable grounds put forward by the employer-public or private”.*

Irrespective of whether the Indian economy in the years to come adopts the western economies and their own brand of socialism in toto or not, the concept of social justice and socialism in its innate form has to be upheld and practiced so long as a large majority of the Indian populace live below the poverty line and where the society is still riddled with economic and social disparities and the role of the Courts in such a changing scenario becomes all the more crucial to prevent political compulsions from trampling over such facets of social justice and socialism. Courts must ensure a harmonious co-existence between the two concepts of social justice and globalisation. The view of the author as canvassed in this article in this aspect is eloquently summed up in the words of Justice A.K. Ganguly at paragraphs 49 and 50 of the Harjinder Singh’s case (Supra) :

*“49. I am of the view that any attempt to dilute the constitutional imperatives in order to promote the so-called trends of “globalisation”, may result in precarious consequences. Reports of suicidal deaths of farmers in thousands from all over the country along with escalation of terrorism throw dangerous signal. Here if we may remember Tagore who several decades ago, in a slightly different context, spoke of eventualities which may visit us in our mad rush to ape western ways of life. Here if I may quote the immortal words of Tagore :*

*“We have for over a century been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness and overwhelmed by the speed. We agreed to acknowledge that this chariot-drive was progress, and the progress was civilisation. If we ever ventured to ask ‘progress towards what, and progress for whom’, it was considered to be peculiarly and ridiculously oriental to entertain such ideas about the absoluteness of progress. Of late, a voice has come to us to take count not only of the scientific perfection of the chariot but of the depth of the ditches lying in its path.*

*How stunningly relevant are the words and how deep are the ditches created in our society by the so-called advance of globalisation.*

*50. At this critical juncture the Judge’s duty, to my mind, is to uphold the constitutional focus on social justice without being in any way misled by the glitz and glare of globalisation”.*

Only the coming years will tell.