

## CHAPTER – VI

### Justice to the People of India and Protection of their Rights

Justice to people constitutes the spirit of the Constitution of India. The guiding principles of our polity are democracy, social justice, and secularism as enunciated in the Preamble. The Fundamental Rights which are guaranteed to all citizens of India by the Constitution are based on these principles of our polity. India is a socialist, democratic and secular state. It has pledged to ensure equality in society and to secure social justice for all. It has already prohibited a good many numbers of social practices which encouraged and implanted in people's minds discrimination which is opposed to the principles of equality and social justice. The State vows the protection of rights of every individual and strongly disapproves of discrimination on the artificial grounds of race, caste, creed, religion, sex etc. It strives to secure social, economic and political equality for all with the aim to establish socialism and to pave the way for egalitarianism. So justice is the goal of the State and this can be achieved through the effective implementation of the directive principles as stated in Part IV of the Constitution.

**'Justice V.R. Krishna Iyer On Fundamental Rights and Directive Principles'** by Shailja Chunder is very effective in dealing with the issues of social justice. Iyer bases his notions of Justice not only on Preamble but on other provisions of the Constitution as well. Article 39 amplifies the concept of Justice by providing that the state shall in particular direct its policies towards securing the objectives set out in clauses (a) to (f) of that Article.

Justice Gajendrgadkar thinks<sup>29</sup> that social justice is not a blind concept or an irrational dogma. According to him, justice and liberty are blended together leading to corollary of social justice. He emphatically put forth that the claims of social justice must be treated as primary and paramount and the freedom of

---

<sup>29</sup> P.B. Gajendrakar "Law Lawyer and Judges (1963) 25 C.J p 21 in Shailja Chunder V.R. Krishna Iyer on Fundamental Rights and Directive Principles

individual, if needed, should be annexed for the accomplishment of social justice. He claims that the accomplishment and goal of a welfare state can be achieved only through social justice. So the concept of social justice takes within its ambit the objectives of all inequalities and affording equal opportunities and economic activities to all the citizens. Thus Gajendragadkar's concept of social justice is a harmonious synthesis of both social justice and economic justice.

Justice Hegde's ruling<sup>30</sup> on Directive Principles in explaining social justice unlocks the underlying significance of the term social justice. For him, social justice means the sum total of Directive principles of State Policy.

### **6.1 Meaning of justice**

Justice is related to the themes of law, rights, freedom and equality. If law, right, freedom and equality are properly valued, protected, granted and ensured in society, justice is said to have been rendered to people. Justice cannot exist in reality if right and liberty, equality and justice are denied to people. Justice prevails when exploitation is prevented; justice is vindicated when discrimination on any ground is resisted; justice exists when people are protected against inequality and deprivation; justice is upheld when the government succeeds in securing social security to its citizens.

Justice implies impartiality in the treatment of different persons and requires that no discrimination is allowed or approved of among various members on the basis of the basis of caste, creed, religion, sex, place of birth, class, etc., but in some cases discrimination is permitted or approved of on reasonable grounds. This is called compensatory discrimination. For example, the special treatment promised and granted to or permitted to the backward classes under the Constitution of India does not violate or negate the concept of justice. Some special facilities are provided to backward classes to socially, economically, and educationally uplift them in society. This has been done and validated by our

---

<sup>30</sup> K.S.Hegde, Directive Principles of State Policy in the Constitution of India, 5 JCPs (1971) s in Chunder's V.R. Krishna Iyer

constitution framers as well as the government to elevate them to the level of non-backward classes in our society

Justice attributes top importance to human dignity and disapproves of all these actions that restrict the rights and freedom of individuals. However restrictions on the freedom of an individual are sometimes required to be imposed in order to broaden and widen the scope of social freedom. Restricted freedom is true freedom, and if freedom is unrestricted, it will give rise to lawlessness, disorder and social chaos.

The concept of justice is inseparably related in the concept of equality. Absence of equality stands for the absence of justice, and inequality is considered as a violation of the principle of justice. It can be added that legal justice implies equality before law. Article 14 of the Fundamental Rights guarantees 'equality before the law' and equal protection of the laws within the territory of India to all persons. "The Directive Principles guide the path which will lead the people of India to achieve the noble ideals which the Preamble of the Constitution proclaims." Justice--social , economic, and political, liberty, equality and fraternity" (Dr. M. V. Pylee). Justice implies the existence of a feeling for fraternity among the members of society and seeks to reconcile the individual rights with the social good.

## **6.2 Types of Justice**

Justice is categorized as legal justice, political Justice, social justice and economic justice in the domain of political philosophy. Law is the basis of justice. Justice will cease to exist if polity is characterised by lawlessness. A lawless society cannot ensure justice to people. Justice lies in the enforcement of the law of the state. Each individual is entitled to the protection of law and the violation of law invites punishment in accordance with the law. The Constitution of India guarantees "equality before law" and "equal protection of law". In Indian polity the court enforces the law and decides the cases on the basis of equality and natural law to uphold justice. This view of law implies that justice stands for a happy synthesis or coordination of the principle of natural justice and premises

of natural law. Indian justice like British and American justice, works on the premise that an accused is innocent until he/she is proved guilty. In India an accused is given all chances to defend his ground to prove before and establish his innocence. In the process of legal justice no discrimination should be made on the basis of caste, colour, grade, sex, place of birth, class etc. In India the legal dimension of justice are determined by the constitution and the statutes of the legislature.

The Constitution of India, in line with the United kingdom and the United states of America provides for constitutional remedies against the violation of the constitutional rights. Article 32 which was referred to as the very soul of the constitution provides that "The Supreme court" shall have the power to issue directions or order a writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari achieved which may be appropriate for the enforcement of any of the rights to move the Supreme Court in the case of transgression of fundamental rights. The Supreme court thus is constituted into a protector and guarantor of fundamental rights.

In the Constitution of India, the power to issue a writ of habeas corpus is vested only in the Supreme court and the High court. The writ is a direction of the Supreme Court to a person who is detaining another commanding him to bring the body of the person in his custody at a specified time to a specified place for a specified purpose. A writ of habeas corpus has only one purpose--to set a person free who is confined without any legal reason , to secure release from confinement of person unlawfully detained. Under the constitution, this writ sought to safeguard the fundamental rights guaranteed under Article 19 protection of life and personal liberty and Article 22 immunity against arrest and detention.

The writ of mandamus is an order of the High court or Supreme Court commanding person or a body to do that which it is his duty to do. Usually it is an order directing the performance of ministerial acts. A writ of mandamus may be issued against a person or against dereliction of duty of a person or a body (

B.C Das-Gupta vs. Bijoy Ranjan Rakshit<sup>31</sup>). "In State of Bombay vs. the United Motors (India) Ltd , in the Supreme court the principle that a court will issue a prerogative writ when an adequate alternative remedy was easily available and would not apply where a party came to the court with an allegation that his fundamental right had been infringed and sought relief under Article 226.

The writ of prohibition is a writ used by the Supreme Court or a High Court to prevent an interior court from exceeding its jurisdiction. It can otherwise be said that the aim of the writ is to compel the inferior court to direct them not to cross or overstep the limits of this jurisdictions. In India, a writ of prohibition may be issued not only in the case of absence of excess of jurisdiction but also in the case where the court or tribunal quashes jurisdiction under a law which itself contravenes some fundamental rights guaranteed by the constitution.

The writ of certiorari is issued by High court or the Supreme court to correct an error which is apparent on the face of the judgment of the lower court, where there is a failure or wrongful exercise of the jurisdiction or where there is wrongful exercise of authority. The writ of certiorari is issued against judicial or quasi-judicial bodies. A High court can issue a writ of certiorari to quash the decision of the inferior court/ tribunal , and the Supreme Court can also issue the writ in such cases provided some Fundamental Rights have also been violated and complained against. The leading case on the subject of certiorari was Basappa vs. Nagappa<sup>32</sup>.

Quo warranto is a proceeding whereby the court enquires with the legality of the claim which a party asserts to a public office, and to oust him from its enjoyment if the claim be not well-founded. The purpose of the writ is prevent usurpation of power of public office by an undesirable, or by an unqualified person.

---

<sup>31</sup> Calcutta High Court , Bijay Ranjan Vs B.C. Das Gupta , President .... 4February , 1952. This is an application under article 226 of the constitution for an appointment writ declaring the opposite parties to withdraw or revoke the order of cancellation of the Intermediate Licentiatehip Medical Exam held at Burdwan Medical Exam in June 1951

<sup>32</sup> Supreme Court of India , T.C Basappa vs Nagappa And another On 5 May 1954 . Act Constitution of India – Art 226 – certiorari writ of general principles giving the issue manifest and patent error apparent on the face of proceeding clear ignorance or disregard of a provision of law – excess jurisdiction

### 6.3 Social justice

Social justice is an individual's social security. Its principle is to promote the general welfare of the members of a community. It seeks not only to eliminate all kinds of discrimination and privilege based on caste, color, creed, sex, class, etc but also enjoins upon the state the duty to make concerted effort to promote the life of the deprived and weaker sections of the community. The issue of justice is inexplicably associated with the issues based on the social economic and political justice. Social justice relates, writes Bakshis Singh , to the balance between an individual's rights and social control ensuring the fulfillment of the legitimate expectations of the individual under the existing laws and to assure him benefits there under and protection in the case of any violation or encroachment in his rights, consistent with the unity of nation and need of the society."

Social Justice aims at eradicating or abolishing gigantic social evils like poverty, illiteracy, exploitation, discrimination and evil practices disgracing community life and denigrating human dignity. It seeks to control social violence against woman and protect them against depriving of woman of the share of property and against mental torture. To resist violence against women the government of India has enacted several laws-the amended laws on rape in 1986, the Anti-Dowry Act of 1984-86. The laws regarding Molestation of Women of 1986, 1987, etc., and even in the case of **Bishaka Vs the state of Rajasthan**, the Supreme Court has given verdict against sexual harassment in 1997 and dubbed it as an act of violation of human rights.

### 6.4 Women Unguarded Despite Laws

Women are victims of social injustices. They are exploited in various ways and humiliated beyond limits. Violence against women has increased in many folds. Mr. Ram Ahuja in his "Social Problem in India" has identified three types of violence against women in India and these are (1) Criminal violence against women which includes offences like rape, abduction, wife beating, murdering against them etc. (2) domestic violence which includes dowry deaths, wife beating or violence against women and social violence which includes physical

and mental tortures on them in the society, against which neither the society nor the government provide them adequate protection and security. To stop violence against women requires a total change of our social system and social mentality and also the government's sincerity to control it.

Women are helpless and depressed in society because of continued cases of violence against them. They lead lives of stressful family situations. They are often victims of indescribable tortures by their alcoholic husbands. According to a recent survey India is the fourth most dangerous place for women in the World, primarily due to high number of female foeticide, infanticide and human trafficking cases in India. According to National Crime Records Bureau (India) statistics, on Crime against Women in India, a total of 185382 incidents of crime against women were reported in the country during 2007 as compared with 164765 in 2006. The conditions of the depressed women in our country is alarming. Since birth they have been struggling for physical and decent social existence. Society often proves to be hostile to them. Their lives are beset with increasing problems which hamper their development. Law is a tool for women empowerment. Empowerment is a must for a social change. With the passage of time, for empowerment of women, a number of laws have been amended and formulated. The recent Acts are (1) The Indecent Representation of Women (Prohibition) Act, 1986, The Commission of Sati (Prevention) Act, 1987, The Protection of Women from Domestic Violence Act, 2005, The Hindu Succession Amendment Act, 2005 and the Prohibition of Sexual Harassment Women Bill, 2010. A new provision of free education for girls from primary to higher studies has been made for those girls who are single child of their parents. This aims at increasing the literacy rate as well as sex ratio of girls.

Though the laws are said to grant justice to the innocent and protect the right and dignity of women, sadly it is not true involving crime against women. This stands true especially in cases of sexual assault and rape cases as despite these prevailing laws, rape and sexual harassment cases are on the rise. Ironically, in most of the rape cases the victim is branded as a women of loose moral. One such example, is the famous Priyadarshini Mattoo case, where the culprit Santosh Kr. Sing, was charged with rape and murder, and was convicted and finally brought

to book after a horribly long period of ten years , largely owing to public pressure.

Jessica Lall murder case is another such gruesome case , whereas Jessica was shot dead by Manu Sharma in front of three hundred guest. However Manu, son of a wealthy political leader, was acquitted by the court owing to lack of evidence. It was only after the public and media pressure that the case got reopened and the culprit was given life imprisonment . Ironically, the 8 March, 2011 was observed as International Women's Day and on that day a Delhi University girl was shot dead in the brought daylight. The Government announced 2011 as the Women empowerment year but what we see in reality is that the process of women empowerment is very slow . India needs to launch many more programmes for uniform development for women in our society for their empowerment and guarantee of social justice to them .

Rape has become a social malady in Indian society. It is a crime against women , tantamounting to murder. There is hardly a single day on which rape is not found to be a new headline. There is law against rape but it has totally failed to protect women against it. There is a standing demand for death penalty for the rapists and again , it is seen that some unscrupulous politicians want law and administration to be lenient towards rapists . Neither law nor society is equipped enough to ensure security and protection to women. Rape victims often do not receive justice . The police that are meant to specially provide protection and security to women against heinous violence like rape are often blamed for being lax in this matter. At Badaun in Uttar Pradesh , two girls aged 14 and 15 respectively went missing from their house on the night of May 27, 2014, but their bodies were discovered hanging from a mango tree in a village in the Ushoit area the next morning. The post –mortem report confirmed that two girls were gangraped before being murdered. This is a horrific gangrape and proves that women are not safe and protected even in their houses. This shameful incident has been condemned by all. The Union Women and Children Welfare Minister , Mrs Maneka Gandhi announced the formation of a “ rape crisis cell” for speedy action on such incidents.

The present Central government has stressed not only the issue of protection and security to women in society but also is contemplating on the necessity of providing rehabilitation, on the humanitarian ground, to those women who are rape victims. The Government has aimed to set up special centres in each district of the country to provide them protection, medical treatment and legal health. The Union Women and Children Development Minister has already announced that the rape victims will be provided with medical and legal health and, if needed, with police and ambulance services so that the attitude of the State to them proves to be humane. The Minister announced in this respect that "We have fund for the project but if needed we will take money from the Nirbhaya Fund, which was created for the welfare of women in the aftermath of the December 2012 Delhi gang-rape". (The Statesman, 3<sup>rd</sup> June, 2014).

### **Rape As The Consequence Of Degeneration Of Moral Values In Society**

Moral value controls life and guards it against lasciviousness. Our society is now passing through an acute moral and ethical crisis, and the situation has assumed such a horrible dimension that it will hardly be an exaggeration or an impertinent remark if the society we live in now is described as morally defunct. This has relevance in the present context of serial rape incidents in different parts of India. Nothing can be more nefarious than rape as violence perpetrated against women. **Rape is a crime more grievous than murder.** Now the question is how to prevent rape in our society. The role of the police in the prevention of rape against is often or sometimes found to be frustrating. The times and prompt police action might have saved many girls and women from being victims, i.e., from being raped or raped and murdered. The gang rape and murder of two teenaged cousins at Badauan in UP is a glaring example of the alleged lingering attitude of the police. The Central Bureau of Investigation (CBI) "took over the probe from UP Police, which have been accused not taking prompt action against the guilty." (The Statesman, 13 June, 2014)

The police are exclusively meant for maintenance of law and order and the provision of protection and security of life to people. Their one of the prime duties, aims and responsibilities in a true democratic society is to protect

women against insecurity and physical and mental tortures and injustices. The Police ought to be rationally active and quite fair in their action in the safeguard of women's honour , security and safety of life but they are sometimes politically controlled and prevented from being active in adopting adequate measures towards protection, security and justice to women. This has a clear demoralizing effect on police department. This is quite unexpected and uncalled- for .

"The CBI has mentioned in its FIR ( First Information Report) that the State Police did not act when people approached them with the complaint of girls ( of Badaun, UP) being kidnapped . The agency has named two police officials – Chatrapaul Yadav and Sarvesh Yadav – along with three brothers – Pappu , Awadhesh and Urvesh Yadav—who have been accused of criminal conspiracy to commit gangrape , murder and violation of provision of **Protection of Children from Sexual Offences ( POCSO) (The Statesman , June 13, 2014).**

Only the strong sense of moral value can be an effective instrument of Security and safety of women in society. Women should also be aware of their gender weakness and be accordingly decent in their daily habits, manners and behaviors. Nothing unbecoming in the perspective of Indian culture should not be noticed in them. They are required to lead controlled and restricted life in many cases and attach due importance to morality in matters of decision of life and lifestyle. Mr. R.R. Patil , Home Minister of Maharashtra stressed moral values as a means of protection to women against violence, rape in particular . He remarked that " rape or crime against women cannot be stopped even if we post a cop per house in the state." He added that " crimes like rape have increased due to ( owing to ) decline in moral values, Even if we provide enough police protection, I doubt whether the crime against women could be stopped." ... " the state Home Minister rattled out statistic to buttress his contention why offences against women cannot be fought effectively . According to him 6.34 percent rapes are committed by brothers/ fathers, 6.65 % by close relatives, 42 percent by those men known to victims and 40 percent by those who exploit women on a promise to marry." ( The Statesman , June 12, 2014)

Action whatever it may be , against those persons accused of rape are not enough to do justice to women. Action cannot bring back or restore to rape victims what they lose because of being raped. What the State or the society should do as part of justice to women is to adopt necessary steps to protect against women from horrific and heinous violence like rape and subsequent murder. India is boastfully marching ahead towards progress and development. We claim to be civilized ; rate of literacy is claimed to be rising by leaps and bounds. We also claim to have eschewed outdated outlooks to embrace new views of life . But what now happens to women in our society is definitely an indelible black spot on our traditional glory and heritage. Women are duly honoured and their chastity is properly protected and preserved even by the nomadic tribes who are often hated as uneducated , uncultured and half civilized, but have we been able to do it towards women in our society? This is a shame for all Indians.

The ideal of social justice envisages promoting the welfare of the people by securing and developing a just social order. In the society as one will be deprived of justice of any kind and of any form. Children should get education free of cost. Education is a right for them and they must not be deprived of it. The Indian government has made laws to ban child labour and to universalize education. There is law to proscribe labour exploitation; law has banned untouchability and child marriage and many steps have been taken to make people socially conscious. Rehabilitation programmes have been launched to provide shelter to the homeless and to the destitute. Financial support is lent to women, the poor and the members of backward communities and minority communities to make them self-reliant.

The objective of the constitution of India, as envisaged in the preamble are to secure social and economic justice to all and to establish economic democracy. In order to achieve this objective the constitution makes certain provision to help the weaker sections of the society and to promote and raise the standard to the level of the general body of the citizens of India. With this end in view, the Scheduled castes and Scheduled tribes are given special provisions in the constitution.

Article 340 of our constitution empowers the president to appoint a Backward Class Commission to investigate the condition of the socially and educationally backward classes and to recommend measures for removing the impediments and difficulties coming in their ways for improvement of their conditions.

### **6.5 Economic justice**

Economic justice is the basis of all kinds of justice. Political or social justice is meaningless if the state fails to secure justice to people so social and political justice is closely related to economic justice. Political freedom is useless for a man who remains unfed, unclothed and undernourished. Therefore, economic justice means that the government has ensured the provision of the basic needs of life to all the citizens and the political economy is so shaped as to allow the maximum number of people to share its benefits. There should not exist wide economic disparities, and the principle of equal pay for equal work should be informed and implemented.

The idea of social justice epitomizes non-discrimination between man and woman on the basis of economic values. It also enjoins freedom for all in the spheres of production and distribution subject to the conditions of general welfare. In this way, the idea of economic justice comes to imply a socialistic pattern of society. The declaration of the framers of the constitution in the preamble reveals the aim of the country to introduce socialism as its ultimate political goal. Late Prime Minister, Indira Gandhi was committed to introducing Indian socialism with a view to eradicating poverty containing the galloping rate of unemployment alleviating difficulties of life, ensuring social and economic justice, making the nation economically strong and self-reliant. The 20-point programme which Mrs. Gandhi introduced and launched was undoubtedly a positive attempt towards the implementation of the directive principles but also a bold and actual step towards socialism and economic justice to people. It was the glaring instance of the implementation of Directive Principles of State Policy per se.

### **6.620 Point Programme**

Late Mrs. Gandhi was an uncompromising crusader against poverty and economic backwardness. She adopted and announced a number of programmes to make the country socially dynamic and economically self reliant. The twenty-point programme she announced was as follows: (I) Improvement of irrigation facilities and the techniques of dry land farming. (ii) In increasing the production of pulses and edible oil seeds, (iii) strengthening , and extending the Integrated Rural Development Programme and the National Rural Employment Programme, (iv) Enforcing land reforms and distribution of additional holdings. (v) Ensuring minimum wages to agricultural labourered. (vi) Intensifying developing programmes for Scheduled castes and Scheduled tribes (vii) Rehabilitation of liberated bonded laborers, (viii) Ensuring the supply of drinking water to all villages. (ix) Providing Loans to families and offering assistance in construction, (x) Improving the slum environment with better living conditions for slum dwellers. (xi) Maximizing generation of electricity and increasing the electrification of villages (xii) Reclaiming the aforestation programme and evolving alternative fuel sources. (xiii) widening the scope of the family planning programme. (xiv) Expanding primary health centres facilities. (xv) Speeding up the welfare programme for woman and children (xvi) Providing primary education for children and increasing literacy in the states. (xvii) Increasing the number of fair price shops and expanding the public distribution system, (xviii) Relaxing method of capital investment and simplifying the industrial policy (xix) Intensifying measures of against smugglers, hoarders and tax-evaders (xx) Improving the efficiency of public sector industries.

The Twenty-point programme was adjudged as a national re-construction programme in our country. It aimed at the welfare of the nation and the amelioration of the backward and under-privileged sections in our country. The spirit and philosophy of this programme is drawn form the Directive Principles of State Policy. It was the first true programme directed towards social and economic justice for people. The programmes under the twenty point programme were intended for the social, economic, cultural and educational development of Indian life in villages as well as in towns. The benefits of the

programme was seen and experienced in the later years in the field of Indian economy and in the changes in Indian social life.

The legal justice stands for equality to people and removal of discrimination and deprivations. Political and legal justice is impossible if there is absence of social and economic justice. Social justice implies the end of social evils and socially distasteful practices like castism, racialism, untouchability, and economic justice stands for the end of economic exploitation. The Preamble which is virtually the written declaration of our constitution framers to re-shape Indian society after about two-centuries of colonial rule of oppression, deprivation and exploitation into an egalitarian society announces the country's object to all its members social, economic and political justice. Article 15 of the constitution of India prohibits discrimination against only citizen on grounds of religion, race, caste, class, sex, etc. The constitution of India grants of every individual liberty of thought, expression, faith and worship incorporated in Articles 19(1)(A), 25, 26, 27 and 28. Equality cannot mean identical treatment; it means equality of status and of overcapacity as free individuals.

Justice is related to liberty. Justice contributes to the development of an individuals' personality. The states need to ensure it to all. Justice is achieved through giving full right to freedom of speech and expression and other rights. Justice seeks free and fare expression and other human rights. Justice seeks to protect the innocent against punishment by the law. In the judicial system, a person who is accented of offense is given opportunity to prove his innocence or guiltlessness. Here everybody irrespective of caste, creed, class, colour, sex, etc. is allowed to participate in the administration of the country through right to vote, rights to contest elections, right to criticize or support or praise the policies of the government etc.

### **6.7 Equality and Justice**

Equality is one of the pillars of justice. It is inseparably related to justice. Justice cannot prevail if equality ceases to exist. Justice and equality are mutually dependent. It is not possible to connive of justice without equality in all spheres

of life. But absolute equality is neither practicable nor desirable. The government sometimes provides special facilities to a particular community in order to render justice to it. For example, there is a constitutional provision for special facilities for the Scheduled Castes and Scheduled tribes and also for the other backward communities for raising their economic standard.

Liberty and equality are complementary because we cannot conceive of equality without liberty, though the idea of both equality and liberty is not unrestricted. Absolute equality often leads to the denial of justice to the deprived and disadvantaged classes, and restricted liberty generates anarchy. So, the word 'equality' is used to mean that everyone should be allowed to enjoy the benefits of adequate social and economic opportunities for the sake of his own development. The state needed to remove inequalities of wealth, and this constitutes the basis of liberty. Thus equality is not inimical to liberty but it is essential to liberty. "Equality is not an isolated principle". Liberty and equality combine to promote the development of humanity personality.

India seeks to guarantee equality and liberty to its people. With a view to securing to all equality of status opportunity". Proclaimed in the Preamble the constitution has made generous provisions guaranteeing, the right to equality which are regarded as the foundation on which stands the principle to promote social equality. Articles 14-17 of the constitution of India deal with the principal of rights to equality. In order to promote the ideal of liberty envisaged in the preamble; the Constitution of India has conferred upon the citizens of the country certain fundamental rights in Articles 19-22. But it is a fact that liberty which we are allowed to enjoy is not absolute, for absolute liberty stands for anarchy and disorder; it will create a situation of lawlessness and mess. In this respect, Justice Mukherjee of the Supreme Court in A.K. Gopalan vs State of Madras case 1950 explained and clarified that liberties of the individual must be subject to reasonable restrictions as the governing authority of the country considered it to be essential to the safety, health, peace, general order and morality of the community. At the same time there cannot be absolute social control without stating the development of the individuals. "What the constitution, therefore, attempts to do is to strike a balance between individual

liberty and social control." This is a reference to the option of the supreme Court in Collector of Madras vs. Nathela Sampathu Chetty (1962) that the court will ultimately determine the reasonable restriction is to be imposed on liberty. The Supreme Court also opined that Quarashi vs. State of Bihar case, 1965 that the court will declare that unconstitutional and void if it finds the restriction unreasonable upon liberty. But that cannot determine the reasonable restriction is to be imposed on liberty and need social control." This is a presence is to be imposed on liberty. In the cases Dwaraka Prasad vs. State of U.P.<sup>33</sup>, 1954, Chintaman Rao vs. State of M.P. 1952<sup>34</sup>, and State of Maharashtra vs. Himmatbhai, 1970 the Supreme Court mentioned that a restriction on freedom is reasonable and not excessive only, when there is a proper balance between the freedom of the individual and the rights of the security. The court is the final authority to say whether the freedom of an individual needs and the power of the state to protect collective interests begins.

Article 21 of the Constitution of India provide that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." The article carries the meaning that the state or any of its agents can impose punishment on a person, imprison him or subject him to physical coercion only if the action or the procedure of action is supported by a law. The aim of the Article is to restrain the executive from interfering in personal liberty in accordance with law. The Supreme Court opined it in connection with A.K. Gopalan vs. State of Madras Case, 1950. The Court shall exercise its constitutional power of judicial review on the basis of the complaint of a person deprived of his life or personal liberty. In Francis Coralie vs. Union Territory of Delhi, 1981, the Court declared that in the exercise of the power it will decide (a) whether there is a law which authorizes such deprivation and (b) whether, in the given case, the

---

<sup>33</sup> ... the Supreme Court held, therefore that the provision of clause 4 (3) of the Uttarpradesh Coal Control order, 1953 must be held to be void as imposing an unreasonable restriction upon the freedom and trade and business guaranteed under article 19 (1) (g) of the constitution and not coming within the protection afforded by cl. 6 of the article.

<sup>34</sup> ... the Act was not a law imposing reasonable restrictions within the meaning of clause 6 of Article 19 and was therefore void.

procedure stated in such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful.

Right to life, enunciated in Article 21, does not merely mean "survival or animal existence," it also includes, as the Supreme Court opined in several cases, the right to live with human dignity. In *Sushil Basra vs. Delhi Administration*, 1978 the court maintained that the right to life under Article 21 incorporated the right to live with human dignity and decency. In *Bandhua Mukti Morcha vs. Union of India* 1980, (details of the case was provided at the end of this chapter) the court ruled that protection of health and facilities for children to develop in a healthy manner in conditions of freedom and dignity, educational facilities fell within the purview of Article 21. In *People's Union for Democratic Rights vs. Union of India* 1982, the Supreme Court held that non-payment of minimum wages to the workers amounted to denial of their right to live with basic human dignity and violated Article 21. In the famous *Permanent Dwellers' case* (1986) the Supreme Court observed that the word 'life' in Article 21 included the "right to livelihood" for if the right to livelihood was not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his increase of livelihood. In *Sankar Banerjee vs. Durgapur Project Ltd.* (1988), the Supreme Court maintained that a person who is compelled to lead a sub-human condition of life is said to have been deprived of the right to livelihood. It amounts to the taking of his life, not only exclusion of death sentence by a slow and gradual process of robbing him of all human qualities, a process which is much more cruel than sending a person to the gallows. In 1993, the Court showed that the right to life under Article 21 included the right to livelihood.

The Constitution of India lays down certain provisions to prevent exploitation of the weaker sections of the society by unscrupulous individuals or even by the state. Article 23 prohibits traffic in human beings and beggars or similar forms of forced labour, and Article 24 prohibits child labour. The two articles are symbolic of the national objective, enunciated in the Preamble, of the people of India to establish a 'just' social order. In *People's Union vs The Union of India*, 1982, the Supreme Court opined that the Constitution prohibits both slavery and traffic

women or children or the crippled for immoral or other purposes. These are all specific forms of exploitation and constitute a serious challenge to human freedom and civilisation. Article 24 prohibits employment of children of the 14 years of age in any factory or mine or in any other hazardous jobs. This Article aims at protecting children against inhuman exploitation and is, therefore, absolute.

### **6.8 Political Justice**

Political justice is positive justice. It aims at free and fair participation of people in their political life. It involves the guarantee of universal adult franchise so that they are the people who are able to take part in the election of their representatives. People are granted equal rights and opportunities to influence the policies of the government. Recruitment to public services is made without discrimination. The notion of political justice requires that the state was not the product and preserve certain valuable rights of the individual so that he is able to develop his personality as a citizen and thereby contribute his share to the welfare of the political community. The idea of political justice derives a liberal-democratic order in which rights of the individuals including those of the minorities are well protected. People are given a fair chance to determine the policies of the government in keeping with the prevailing requirements. The political parties, the interest groups, etc. have an important role in establishing political justice.

In India, election is held on the basis of Universal adult franchise. A recent amendment of the Constitution has entitled every Indian citizen, attaining the age of 18, to vote in election. India has established a parliamentary form of democracy, and it is the voters who elect their rulers. Many said Universal adult franchise a wise step, but some believe that India ought to have opted for a restricted franchise, for the course of Indian political developments reveals the failure of Universal adult franchise. They argue that Universal education must precede

Universal franchise. But we have seen in reality that franchise itself is a mass of political education. Democracy is a culture, adult franchise has successfully nurtured democratic culture in India.

Women's participation in politics has given a mass direction to Indian policy and government. It not only improves them but also is a way to provide them security against violence, deprivation and exploitation. It is a positive way to spread woman education in the country and to enhance their economic rights and freedom. It is an optimistic view that their participation in politics can save them from further humiliation and insecurity. Their participation in politics will help them to stand firmly against all injustices and evils against them and is expected to reduce evils of corruption and vices. The 73rd and 74th Constitution (Amendment) Acts of 1992 are landmarks on the road to women empowerment as seats have been reserved for them in the Panchayat and Municipal bodies.

**Summary:**

Justice is categorized as legal justice, political justice, social justice and economic justice in the domain of political philosophy. Law is the basis of justice. Each individual is entitled to the protection of law and the violation of law invites punishment in accordance with law.

The Fundamental Rights and the Directive Principles form the core of social, political and economic justice. The Constitution makers through these two principles have pledged to ensure justice to all. Justice is the goal of the State and this can be achieved through the effective implementation of these principles.

In India the court and law play a vital role in protecting individual life and freedom. Women are specially the victims of social injustices. Women are helpless and depressed in society because of continued cases of violence against them in all spheres of life. The recent Acts are (1) The Indecent Representation of women (Prohibition) Act, 1986, The Commission of Sati (prevention) Act, 1987, The Protection of Women From Domestic Violence Act, 2005, The Hindu Succession of Amendment Act, 2005 are important.

Justice prevails when exploitation is prevented; justice is vindicated when discrimination on any ground is resisted. Justice exists when people are protected. Our Constitution is a sacred book of justice. It makes no compromise on any issue that goes against the concept of justice.

**Note: (*Bandhua Mukti Morcha case* :** *Bandhua Mukti Morcha case is a landmark phenomena in the history of Public Interest Litigation. The Supreme Court accepted it as PIL after it was informed the inhuman condition of the stone quarrying labourers in Faridabad not away from New Delhi. A letter addressed to this Court complaining about prevalence of bonded labour system in the quarries of Faridabad District in Haryana State was treated as a writ petition under Article 32 of the Constitution. Two Advocates were appointed as Commissioners to inquire into the working conditions of the stone quarry workers. Later, this Court, finding the necessity of an in-depth investigation into social and legal aspects of the problem, also appointed two Commissioners--Dr. S.B. Patvardhan and Mr. Krishan Mahajan to study the working conditions prevailing in the various quarries within the Faridabad district with particular reference to violation of provisions of the Bonded Labour System (Abolition) Act of 1976 and Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act. The Commissioner furnished their report on 28th of June, 1982. The 3-Judge Bench heard the matter and in its Judgment (reported in (1984) 3 SCC 161), dealt with various aspects of the problem and taking into account the information collected by Advocate Commissioners and the report made by Dr. Patvardhan. The Court did not treat the writ petition as disposed of by its judgment and the application survived for further monitoring. This Court also appointed Shri Laxmi Dhar Misra, Joint Secretary in the Ministry of Labour, Government of India as a Commissioner to carry out the assignments stated in the judgment. Mr. Laxmidhar Misra, in due course, submitted his report in two parts one dealing with the identification of the bonded labour and the second covering the inquiry into the implementation of the 21 directives.*

*The petitioner-Morcha, filed a petition for contempt alleging that the directions were not being implemented. Mr. Mahabir Jain of the Faculty of National Labour Institute was appointed to inquire into the measures and report on the degrees to which the 21 directives issued by the Court had been implemented and to present to*

*the Court a clear picture of the issues involved for enabling it to make its own assessment and come to a conclusion as to whether the directions had been or were being implemented and also as to whether action for contempt was appropriate or in the matter of monitoring the social problem, some other course was necessary to be adopted, and in February, 1989, the report was submitted to the Court.*

*As the 3-Judge Bench had gone into the philosophy involved in the matter in the Judgment, what remains for consideration at this stage was more or less a clear review of the enforcement of the directives and assessment of the outcome for achieving the statutory purpose and the constitutional goal and for the fulfilment of the hopes and expectations of this Court in that regard. The matter was heard for some time on the basis of these reports of Mr. Jain and this Court reserved Judgment on 10th of July, 1990. When the matter was about to be disposed a communication was received by the Court dated 24.11.1991 from the Director General of Labour Welfare in the Ministry of Labour that the total number of unrehabilitated bonded labourers was 523 up to 30.11.1990, whereas the number to be 3993 according to the petitioner and on 21st February, 1991, this court directed a Committee to check up the particulars and to furnish a report, which was furnished on July 1, 1991, from which it was understood that the total number of identified bonded labour is around 2000 and not 3993. The report indicated that the wages, the facility of schooling and medical treatment, availability of water, provisions and scope for recreation are aspects which still require attention. No attention has been bestowed by the inspecting authority of the labour law enforcers to secure improved conditions of working. Allowing the petition this Court,*

*HELD: 1.-For a loan taken at an exorbitant rate of interest the debtor virtually sells himself to the creditor and gets bonded usually for a period of life and renders service for the purpose of satisfying the debt. The creditor anxious to exploit the situation ensures that the debt is never satisfied and often on the traditional basis of pious obligation the liability is inherited by the children of the original debtor. The system thus provides a built-in mechanism for continuation of the under-privileged section of the society by the privileged few living therein. [537H-538B]*

*The bonded labourers are paid nominal wages and often their family members are not permitted to take remunerative jobs elsewhere without permission of the master. Normally, such permission is not granted and the impoverished condition is allowed to continue to the advantage of the creditor, [538B-C]*

*Quarries are located in a particular area away from habitation. On account of necessity for workmen in the area people from different parts of the country are made to live therein along with their families under very insanitary and inconvenient conditions. Health care of workmen and members of their families and education of the children as also the adults in such exclusive locality should be of the employer. To require a school to be built in such an area where there may not be adequate number of children for the purpose of schooling at the expense of the State exchequer may not be appropriate. That apart, these institutions should be a part of the trade. In the manner the employer has to make provision for water and medical care, it should also have the responsibility of providing schooling for the children of the workmen. Today emphasis is also being given on adult education. If appropriate facility is provided the workmen beyond their working hours can also have scope for learning the three Rs and this could be through a process of adult education with State support under the relevant scheme. [544G-545B]*

*4. The State of Haryana must come forward to play its role in a better way. These are quarries located near about the industrial belt of Haryana and not far away from Delhi. Dust emanating from the working area in Haryana is bound to affect adversely, the Delhi atmosphere. Computer generated)*