

**Coalition Politics and The Issues of Social  
Justice: A Study in The Context of Directive  
Principles of State Policy Under The  
Constitution of India**

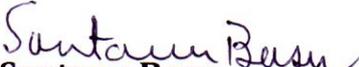
**A Thesis submitted to the University of North Bengal  
For the Degree of  
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in  
Political Science**

**By  
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June, 2015**

## **DECLARATION**

I declare that the thesis entitled **Coalition Politics and the Issues of Social Justice: A Study in The Context of Directive Principles of State Policy under the Constitution of India** has been Prepared by me under the guidance and supervision of Dr. Manas Chakrabarty, Professor of Political Science, University of North Bengal. No part of this thesis has formed the basis for the award of any degree or following previously.

  
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## **CERTIFICATE**

**I certify that Santanu Basu has prepared the thesis entitled COALTION POLITICS AND THE ISSUES OF SOCIAL JUSTICE: A STUDY IN THE CONTEXT DIRECTIVE PRINCIPLES OF STATE POLICY UNDER THE CONSTITUTION OF INDIA for the award of Ph. D. degree in Political Science, University of North Bengal under my guidance. He has carried out the work at the Department of Political Science, University of North Bengal, Raja Rammohunpore, Darjeeling.**

  
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# CONTENT

<b>ACKNOWLEDGEMENT.....</b>	<b>viii</b>
<b>ABSTRACT.....</b>	<b>x</b>
<b>PREFACE.....</b>	<b>1</b>
<b>CHAPTER - I .....</b>	<b>6</b>
<b>Introduction.....</b>	<b>6</b>
1.1 Introduction.....	6
1.2 Background and Rationale of the study.....	12
1.3 Role of India as a Welfare State in Dispensation of Social Justice.....	13
1.4 Importance and Implication of Fundamental Rights in securing social justice. ....	15
1.5 Social Justice – an Overview. ....	16
1.6 Social Welfare Steps Adopted and New Policies Formulated in India to Vindicate Social Justice.....	18
1.7 Social change and Social justice.....	20
1.8 Environmental Movements and Social Justice.....	20
1.9 Human Rights Movements and Social Justice .....	21
1.10 Directive Principles of State Policy.....	22
1.11 Contrast between Directive Principles and Fundamental Rights.....	22
1.12 Categorization of Directive Principles .....	23
1.13 Directive Principles of State Policy as a powerful instrument for securing social justice.....	24
1.14 Coalition Politics and Social Justice. ....	25
1.15 Political Coalition or Coalition Politics?.....	26
1.16 Types of Coalition Government.....	26

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1.17 Rise of BJP and Weakening of Coalition Politics in India .....	28
<b>CHAPTER II .....</b>	<b>33</b>
<b>Research Methodology.....</b>	<b>33</b>
2.1 What is Research?.....	33
2.2 The How and what of the Present Research? .....	33
2.3 Interrelationship between Research and Knowledge. ....	35
2.4 Scientific Method of Research.....	36
2.5 Steps in Research.....	36
2.6 Review of Related Literature.....	37
<b>CHAPTER III.....</b>	<b>40</b>
<b>Review of Related Literature.....</b>	<b>40</b>
3.1 Importance of Survey and Review of Related literature.....	70
3.2 Meaning and importance of Hypothesis.....	71
3.3 Hypothesis Formulated on the Research Study .....	72
3. 4 Data Collection and Data Analysis .....	75
<b>CHAPTER – IV .....</b>	<b>77</b>
<b>Denial of Social Justice to Indians in British India .....</b>	<b>77</b>
4.1 British rule: A Rule of Exploitation and Injustice.....	77
4.2 Impact of British rule on Indian Social Life.....	78
4.3 Impact of British Rule on the Economic Sphere of Indian Social life .....	80
4.4 Impact of British Rule on Indian Politics.....	81
4.5 Views of leading Indian Political thinkers on the consequences of the British Rule in India.....	83
4.6 Views on Education.....	83
4.7 Adverse Impact on Indian Socio-economic life.....	84

4.8 Views of Bankim Chandra Chatterjee on British Exploitation and Oppression.....	85
4.9 Naoroji , Gokhle and Lajpat Rai's Criticism of British Rule in India .....	85
4.10 Views of Aurobinda , Gandhiji and Tagore .....	86
4.11 B.R. Ambedkar's Reaction to British Exploitation in India.....	86
4.12 View of Acharya Narendra Deva.....	87
4.13 View of Dr. Rammonohar Lohia.....	87
4.14 Jaya Prakash Narayan – a champion of democratic rights of Indians in British India.....	89
4.15 View of Jawaharlal Nehru .....	90
4.16 Netaji Subhash Ch. Bose and his ideas .....	91
4.17 Attitude of the Indian Political Thinkers towards the British Rule in India .....	91
<b>CHAPTER – V .....</b>	<b>94</b>
<b>Preamble to the Constitution – A Declaration of the State of India to Secure Justice and Security to the People.....</b>	<b>94</b>
5.1 Meaning of the Constitution.....	94
5.2 The Preamble Designed to Make India a Welfare State .....	96
5.3 Legal implication of the Preamble.....	99
5.4 Legal and Constitutional Importance of the Preamble.....	101
<b>CHAPTER – VI.....</b>	<b>103</b>
<b>Justice to the People of India and Protection of their Rights .....</b>	<b>103</b>
6.1 Meaning of justice.....	104
6.2 Types of Justice.....	105
6.3 Social justice.....	108

6.4 Women Unguarded Despite Laws.....	108
6.5 Economic justice .....	114
6.620 Point Programme.....	115
6.7 Equality and Justice.....	116
6.8 Political Justice .....	120
<b>CHAPTER – VII .....</b>	<b>125</b>
<b>Human Rights Movements and Social Justice in India 125</b>	
7.1 Human Rights and Social Security .....	125
7.2 Human Life and Natural Rights .....	126
7.3 Suicide or Death Penalty – A Violation of Human Rights.....	126
7.4 Meaning of Human Rights .....	128
7.5 Evolution of Human Rights as a Movement for Human Justice .....	128
7.6 UN Declaration on Human Rights .....	129
7.7 The Indian Constitution— An Echo of UN Declaration of Human Rights.....	129
7.8 Violations of Human Rights in India .....	130
7.9 Human Rights Movements and Social Justice in IndiaNaxalite Movement and Human Rights.....	131
7.10 Imposition of Emergency in 1975 – A Challenge to Democracy.....	132
7.11 Movements Against Anti – People laws and National Human Rights Commission.....	133
7.12 Judicial Activism and to Protect Human rights .....	135
7.13 Government’s Initiative to Protect Basic Rights .....	138
7.14 Welfare state and Health security .....	139
<b>CHAPTER – VIII .....</b>	<b>141</b>
<b>Public Interest Litigation and Social Justice.....</b>	
	<b>141</b>

8.1 Genesis of Public Interest Litigation .....	141
8.2 Role of Judiciary in securing Justice to people .....	141
8.3 Vindication of PIL.....	142
8.4 First PIL and its victory.....	142
8.5 PIL and the Role of the Supreme Court .....	143
8.6 PIL- A Judicial Platform for Dispensation of Justice .....	145
8.7 Public Interest Litigation and Implementation of Directive Principals.....	148
<b>CHAPTER IX.....</b>	<b>162</b>
<b>Legal Aid Services and Social Justice in India .....</b>	<b>162</b>
9.1 Welfare State also stresses that no one should be deprived of legal justice .....	162
9.2 Meaning of Legal Aid.....	164
9.3 Legal Aid Service and Welfare state .....	164
9.4 Legal Aid Schemes to Ensure Legal Justice .....	166
9.5 Indian Constitution, Laws and Proscription of Social injustice .....	169
9.6 Legislations Made to Proscribe Inhuman Practices and to Protect Human Dignity.....	172
<b>CHAPTER –X .....</b>	<b>175</b>
<b>Directive Principles of State Policy and Social Justice</b>	<b>175</b>
10.1 Genesis of the Directive principles of State Policy .....	175
10.2 India's Welfarism through Directive Principles of State Policy .....	176
10.3 The 42nd Amendment Act and the Importance of Directive Principles.....	180
10.4 Implementation of directive principles to Ensure Social Protection.....	183

10.5 Implementation of directive principle—a positive step towards social justice .....	186
<b>CHAPTER XI .....</b>	<b>200</b>
<b>Directive Principles and Fundamental Rights – The Two Complementary Principles of Justice .....</b>	<b>200</b>
11.1 Aims and Spirit of Directive Principles.....	200
11.2 Directive Principles and Fundamental Rights Basically Inalienable .....	203
11.3 Fundamental Rights Constitutionally Contrasted with Directive Principles.....	204
11.4 Implementation of Directive Principles and Achievement of Social Goals.....	206
11.5 Legal Importance and Implication of Directive Principles .....	208
11.6 Value of Directive Principles in the Field of Social Justice.....	210
11.7 Directive Principles and Fundamental Rights Related .....	211
<b>CHAPTER XII.....</b>	<b>212</b>
<b>Conclusion .....</b>	<b>212</b>
12.1 India and the Constitution.....	212
12.2 Democracy and Justice in Indian Polity .....	212
12.3 Democracy and Justice in British India.....	213
12.4 Ideals and Aspirations of the Constitution Framers.....	213
12.5 India’s Dreams—Distant Realities .....	215
12.6 Role of Coalition Politics in Social Justice .....	216
12.7 Implementation of Directive Principles During Coalition Politics .....	216
12.8 Conservation of Forests and Preservation of Wild Lives.....	218
12.9 Judicial Activism and Social Justice.....	220

12.10 Environment Pollution and its Hostility to Social Justice.....221

**Bibliography ..... 224**

**Important Social and Economic Legislation Enacted for  
the realization of Social Justice..... 253**

**Specimen of Publication Preceding to Submission of  
Ph.D Dissertation..... 254**

**Index..... 255**

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## **ABSTRACT**

India has a long history of social, educational and economic disasters caused by foreign invasions which had exploited the country to the limitless extent and depleted the country's resources. In the process of exploitation, the invaders did not hesitate to unleash a reign of terror, tyranny, and bloodshed. Indians had been pushed into a state of animal existence. They had been deprived of all basic rights and liberty and denied justice. Their demand for justice had always gone unheeded, and the sword had been used to gag their voice of protest. The British rule was very much cruel towards the freedom fighters. It had resorted to all types of repressive ways to eliminate brave sons of the soil and to crush the nationwide movement for freedom, rights, equal treatment and justice. Lawlessness had reigned supreme in Indian national and social life for a long time. Laws that were made and imposed were designed to systematize and formalise the process of exploitation and to legalize oppression and repression.

The advent of the British colonial rule in India was dubbed as a period of exploitation, oppression, repression and therefore, denial of social justice. The British colonial rulers had reduced the people of India to slaves and ridiculed them as inferior to Europeans or the people of Great Britain. This discrimination exposed the ugly face of British imperialism and colonialism. The British Government was so unkind and hostile to the natives of India that Lala Lajpat Rai in 1920 was led to describe it as 'Satan'. British imperialism in India was concerned with the only aim to consolidate the British rule in the country, not with its development. When exploitation and oppression crossed all limits, the people of India were determined to fight for freedom and to justify their demand for total freedom in order to be entitled to social, political and economic equality and justice. India wins freedom and the Constitution of India was framed keeping in mind the desire of our national leaders to secure democracy to Indians, to ensure equality among them, to ban social evils and uproot inhuman practices, to prevent violence against women, to stop exploitation of children, to protect the poor and the weaker sections of the society, to adopt some measures of compensatory discrimination, to elevate the weaker, neglected and deprived

classes to the main national mainstream, to safeguard their interest and finally to establish and justify social justice.

The Constitution of India is a political and economic document and represents a specific political economy. It contains the values, ideals and aspirations of our constitution framers. The ideals and aspirations which our national leaders and Constitution makers cherished for the people of India in order to secure democracy, security and protection against violence and violation of rights and liberties are found to have been clearly and unambiguously reflected in the Preamble, Fundamental Rights and Directive Principles of State Policy. The three components of our Constitution combine to ensure and provide to the people of India rights, equality and justice, and fraternity which constitute the basis of democracy and lay the foundation stone of an egalitarian society. The Constitution prohibits discrimination and deprivation, disapproves of racialism and communalism, does not allow sex and gender discrimination, advocates equal pay for equal work, guarantees fundamental rights and directs the State to adopt and launch programmes to ensure and strengthen social justice to all. India is committed to welfarism and socialism. The Government of India along with the state governments has launched a handful of schemes and programmes to gradually translate the aims and objectives, ideals and aspirations relating to equality, justice and democracy into tangible realities.

Since the dawn of Independence of India in 1947 the Central Government has been attaching considerable importance to the formulation of various policies directed towards egalitarianism, welfarism and social justice. The 42<sup>nd</sup> Amendment of the Constitution of India 1976, notwithstanding drawing serious criticism by the Constitutional experts, was a step towards<sup>3</sup> achieving the national goal of "equal opportunity to all" which is envisaged as a variant of Indian Socialism. The secular objective of India has been implemented through the incorporation of the term secular in the preamble is significant episode in the history of Indian Constitutional development and incorporation of fundamental right to all citizens relating to freedom of religion as enshrined in the Article 25, since the inception of Constitution is another landmark phenomena.

Mrs. Indira Gandhi's 20- point Programme is the point of start of the Central Government's initiative and endeavour to secure social justice. This is virtually the first step of the Central Government towards the implementation of Directive Principles. The 20 Point Programme and 42<sup>nd</sup> Constitutional Amendment Act be put together to understand the nature of socio economic justice that Government of India mooted. Through this programme , the State seeks to secure to all its citizens social and economic justice. The programme prohibits discrimination on any artificial ground and seeks to vindicate economic justice or distributive justice. The essence of this programme consists in prohibition and elimination of discrimination and deprivation , eradication of poverty , illiteracy and evil , harmful social practices , protection to people against exploitation and violence , provision of shelter to the homeless and the destitute , creation of job opportunities for people , promotion of the living standards of the weaker section of the society and finally upholding the principle of compensatory discrimination<sup>3</sup>.

The Directive Principles of State Policy constitute a very comprehensive blueprint to bring about social and economic change of India which leads to social development that paves the way for social justice. The coalition governments both at the national and provincial levels have directly or indirectly implemented a good many numbers of directive principles to ensure social justice to the people of India. Coalition politics in India has acted as a force towards the implementation of Directive Principles on social security , poverty alleviation, eradication of illiteracy , rehabilitation of the poor and the weaker sections , promotion of health and education , improvement of living standards of the poor, improvement of work conditions, launching of minimum wages programme , protection of rights and liberty , protection of women against violence , prohibition of child labour , etc., conservation of forestry and wild lives have contributed greatly towards achievement of the goal of social security and social justice.

Coalition Politics is a watershed in Indian Politics, though it is an essential feature of a multi party system or multi party government. In a multi party system , where a single party fails to form government, the party having the

highest number of seats, is found inclined to join hands with regional party or parties to form and run the government. In our country the first coalition government at the centre under the Primeministership ( leadership) of Morarji Desai was formed in 1977 and Kerala was the first state to have a coalition government in 1952 when the Congress formed a coalition government which was replaced by a CPI led coalition in 1954. India has several experiences of coalition government both at the central level and this has added a new dimension and direction to Indian politics in connection with equality, protection of rights and social security and justice to people.

The Congress which was dominant till the mid 70s and which epitomized the one party rule at the national politics faced a great political debacle in 1977. This led to the birth of coalition at the centre. People became united in their voice against the Congress and many congress leaders broke away from the party and formed regional parties in protest against its failure to fulfil people's hopes and aspirations, against corruption, misrule and so called repression. Indian politics assumed a new dimension in relation to the pressing need to ensure social justice and facilitate development at all levels. It was thought and believed that regional parties would raise local and regional issues of development in parliament and voice for justice for those who were socially, educationally, and economically backward. The data so far collected and incorporated in this study reveal that the Indian Parliament at the national level and many state assemblies at the provincial level passed many laws to protect and promote the interests and rights of lots of backward communities which, during the pre coalition politics period, were mostly overlooked or perhaps unintentionally ignored.

Regional parties that helped to form government at the national level played an important role to bring regional issues of development and community progress to the forefront of national politics. They were seen to be less interested in the stability of the government or in the development of national economy but much more interested in getting their demands fulfilled at any cost. The political history of India since the dawn of dominance of coalition politics in India gives ample evidences that regional parties created and continue to create undue pressure upon the major political party forming the government with their

support in order to fulfil their demands which they promised to voters during elections. They often tended to brush aside the sacred principle of national unity and integrity, communal harmony and universal brotherhood. This may be termed a negative impact of coalition politics upon Indian national politics which aims national unity, integrity, peace, progress and uniform development. Yet regional parties cannot be underestimated in all cases. They sought to fulfil the hopes and aspirations of those peoples they represent.

The target has been much achieved during the ongoing or continuing the dominance of coalition politics in India both at the state level and at the central level, though we cannot rule out the germination of regionalism, casteism, communalism, or de-secularism etc., which are the aftermath of coalition politics has compelled the state government and the central government since 1977 to focus their attention on the necessities of poverty alleviation, universal education, prohibition of social evils and inhuman practices through enactment and legislation and protection of people's social, judicial, economic and above all human rights.

The Central Government during the dominance of coalition politics in India has introduced some schemes and programmes to secure social justice to the socially and economically backward communities, which is to be perceived as continuity of earlier 20 point programme. Swarnajayanti Gram Swarajgar Yojna, Swarnajayanti Rozgar Yojana, Prime Minister's Employment Generation Programmes are important self-employment and wage employment schemes for social protection. The Mahatma Gandhi National Rural Employment Guarantee Act aims at social security for those who are economically very weak and socially backward. This scheme also aims at women's empowerment and prevention of distress of migration. Indira Gandhi National Old Age Pension Scheme is to provide financial assistance in the form of pension to all citizens living below poverty line and crossing the age of 65 years. Financial Assistance to the widows of the age between 45 and 64 years age of BPL households is a positive step towards social security. Women and Children are the worst victims of social injustice and social insecurity in India. The Government of India has already formulated laws on the spirit of Directive Principles to protect women

against humiliation, torture, exploitation and violence. Child labour has been prohibited and outlawed. It has formulated the National Child Labour Policy in 1987 for rehabilitation of Child labourers, implementation of Child labour Projects, grants – in aid to the voluntary organisations and promotion of international programmes to the elimination of Child labour. The Gurupadswami Committee report<sup>1</sup> shows that problem of child labour is a direct result of poverty. So, the more poverty will be eradicated through different legislations and social welfare measures, the more will it be easier to tackle the problem of child labour. As a step to promote education among children, the Scheme of Sarva Sikshya Abhiyan has been launched to ensure compulsory education to children. Thus laws formulated and the programmes so far launched to curb and control violence against women and to prohibit and discourage child labour are the implementations of Directive Principles of State Policy by the Central Government during the continuing dominance of coalition politics in the country.

The Government of India has already adopted some measures to protect human rights against violation and to provide free legal aid services to poor, helpless women to secure them justice. It has prohibited through enactment, police atrocities and declared custodial deaths as punishable offence. Judicial activism through Public Interest Litigation (PIL) has led to secure legal justice to an aggrieved person. It has succeeded in restraining legislatures from formulating laws and executing administrative decisions that violate human rights. The Supreme Court and High Courts have declared some laws and executive decisions as not being fit for implementation as they are not in consistence with the spirit of Directive Principles of State Policy. Thus we see that every issue that has been so far implemented to secure social justice to people and almost all programmes and schemes that has been so far launched, is included in the Directive Principles of State Policy. At present, Directive Principles have assumed the Characteristics of rights and law.

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<sup>1</sup> The national policy for children Resolution, adopted in August 1974 set out a policy framework and measure aimed at providing adequate service to children. The Gurupadaswamy committee recognized that distinction had to be made between child labour and exploitation of child labour as....Labour becomes an absolute evil in the case of child when he is required to work beyond his physical capacity when hrs. of employment interfere with his energy.

Coalition Politics has added a new dimension to the welfare policy of the Government. During the period of dominance of coalition politics in the political system both at the central and provincial levels, the government has formulated laws one after another on the basis Directive Principles with a view to rendering social and economic justice to all particularly to those who belong to vulnerable section of the society. It is worth mentioning that during the dominance of coalition politics, which is still continuing in India, the Central Government and State governments have attributed prime importance as part of their social welfare measures, to the adoption and implementation programmes not only to protect the social political and economic rights of people but also to protect and preserve nature and to maintain ecological balance. This has been discussed in details in successive chapters of the present study. Here it is pertinent to mention the government's special initiative to ban smoking in public places as a positive measure to ensure justice to non-smoking people. Medical science claims that smoking in public places harms non-smoking people greatly and it makes them passive smokers. This is a step added to the government policy of social justice.

Judicial activism has recently played a very significant role to vindicate an individual's or a community's demand for justice. Public Interest Litigation (PIL) which is the brainchild of the Supreme Court (the Judiciary) has an admirable contribution towards the implementation of Directive Principles and the fulfilment of many human demands which had been long unheeded and has still been unachieved. The recent Supreme Court historic judgment on transgender has created a stir not only in India but also in the world. Now a member of the transgender has been given the status of a third gender and thus transgender has been constitutionally recognized.

Social justice has a wide ranging scope and implication, and the government is required to march much more ahead with the aim and plan to implement more items on social and economic matters stated in Directive Principles in order to give a real shape to the principle and philosophy of social justice. We cannot deny or dilute the importance of coalition politics in the case of the implementation of many Directive Principles or the translation of many Directive

Principles into realities but what is more important to ensure social justice to people is the spontaneous initiative and dedication of our leadership to the mission and vision of perfect welfarism and social justice.

Prof D.D. Basu , in his astounding interpretation of Social Justice vis a vis Directive Principles , succinctly , stated "That this democratic Republic stands for the good of all the people is embodied in the concept of 'Welfare State' which inspires the Directive Principles of State Policy . The 'economic justice' assured by the Preamble can hardly be achieved if the democracy envisaged by the Constitution were confined to 'political democracy'. In the words of Pandit Nehru<sup>2</sup>,

"Democracy has been spoken of chiefly in the past, as political democracy, roughly represented by every person having a vote. But a vote by itself does not represent very much to a person who is down and out, to a person, let us say, who is starving or hungry. Political democracy , by itself is not enough except that it may be used to obtain gradually increasing measure of economic democracy , equality and the spread of good things of life to others and removal of gross inequalities"<sup>3</sup> or as Dr. Radhakrishnan has put it

"Poor people who wander about , find no work , get no wages and starve, whose lives are a continual round of sore affliction and pinching poverty , cannot be proud of the Constitution or its law"<sup>4</sup>

In short the Indian Constitution promises not only political but also social democracy, as explained by Dr. Ambedkar in his concluding speech in the Constituent Assembly

"Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which

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<sup>2</sup> Inaugural address of Pandit Nehru at Seminar on Parliamentary Democracy on 25-56, 1956 in DD basu's Introduction to the Constitution of India , 19<sup>th</sup> Edition 2001, p. 24 , Wadha Publishers , Nagpur

<sup>3</sup> Inaugural address of Pandit Nehru at seminar on Parliamentary Democracy on 25- 26 , 1956, *ibid*

<sup>4</sup> Speech of the Vice President , *ibid*

recognizes liberty, equality and fraternity which are not to be treated as separate items in a trinity. The form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced’.

The state in a democratic society derives its strength from the cooperative and dispassionate will of all its free and equal citizens<sup>5</sup>. Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian polity<sup>6</sup>.

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 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 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<sup>7</sup>.

Social Justice is a fundamental right.<sup>8</sup> Social justice is a comprehensive form to remove social imbalance by law harmonizing the rival claims or the interest of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare state.<sup>9</sup>

The three have to be secured and protected with social justice in order to facilitate economic empowerment and ensure social and political justice to all

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<sup>5</sup> State of Punjab vs G.S. Gill, AIR 1997 S.C. 2324, in DD Basu’s Introduction to the Constitution of India.

<sup>6</sup> Samntha v state of A.P. , AIR 1997 SC 3297, ibid

<sup>7</sup> Dalmia cement (Bharat) Ltd. Vs Union of India , (1996) 10 S.C.C.

<sup>8</sup> Ashoke Kumar Gupta vs. state of UP, (1997) 5 S.C.C. .201

<sup>9</sup> Dalmia Cement (Bharat ) Ltd., vs Union of India (1996) 10 S.C.C 104

the citizens under the rule of law.<sup>10</sup> The spirit of the Constitution and the activities of the Government of India ( also the state governments) since the days of dominance of Coalition politics reveal that the Preamble to the Constitution, the Directive Principles of the State Policy and fundamental rights are inseparable in theme, aim and spirit. A good many number of programmes launched by the Government are inspired by those three important parts of the Constitution. It is clear and unambiguous that justice which is the aim and spirit of our constitution cannot be achieved without the programmes already launched and implemented , which have been studied almost in details in this dissertation.

Coalition politics , in the political context , is not unflawed . It is not free from evil impacts upon Indian national politics. It cannot be said that it has not harmed national unity and national economy or diluted the firm aims of national politics. Some regional parties are charged with fomenting regionalism, racism, casteism, and being involved in corruption. Still it cannot be bypassed that coalition politics is more a boon than a curse for people and for the nation because the coalition government ( both provisional and central) has focused on the development to ensure social protection and social security to people and emphasized the guarantee of people's rights. This study has made a wide survey of programmes and schemes launched by the coalition government for about four decades since 1977 with a view to protecting people's rights and interests, ensuring equality , securing justice to all and guaranteeing social security and justice. It is quite important to mention that during dominance in coalition politics in India a number of laws were made and many programmes and schemes were launched to empower women in our society , to protect the rights of children and also protect them against exploitation and to provide human and humane services to the old, the helpless and the hav -nots .

Social justice is the foundation democracy and the soul of socialism. Before the introduction of coalition politics in India neither the Central Government nor the state governments had attached much importance to many local and regional

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<sup>10</sup> S.S.Balavs. B.D Sardana (1997) 8 S.C.C 522.

issues related equality and social justice. But regional political parties which gradually became dominant in Indian politics compelled the Central Government and state governments to focus the attention on the solutions of local and regional issues which were/ are inextricably related to social justice in the broader sense. This study has pointed out and discussed these topics in separate chapters under separate headings.

The thesis traces, describes and discusses in detail various social security oriented programmes, already launched and some of them partially implemented, which essentially needs to be reviewed in order to give a broader perspective to the policy of social justice adopted by different dominant parties-led coalition governments over the long period of coalition politics in India. It contains and deals with the historical background of formulation of the Directive Principles of State Policy and its addition to the Constitution of India. It also demonstrates with ample illustrations from authentic sources how the governments from time to time initiated schemes and programmes to implement many of the Articles of the Directive Principles of State Policy and introduced lots of programmes primarily intended for social justice to the disadvantaged classes in consonance with the spirit and general trend of coalition politics in India. The words 'justice' and 'security' which form the foundation of the governments' welfare policy since the dominance of coalition politics in Indian political system, are hard to explain without the proper fulfillment and attainment of goals and targets of the programmes associated with social security and justice. The thesis made an attempt to highlight the steps and measures directed towards social justice, which have been amply illustrated, discussed, explicated and evaluated as far as the aims of social justice are concerned. It is a matter of apparent satisfaction that the coalition governments were convinced of the essentiality for the protection of social rights not only of people but also the rights of animals and those of the plant world with the exclusive target to conserve and de-pollute our environment. Our sustainable growth and development depends upon the environment because the livelihood of a large section of people especially belonging to the category of below the poverty line have been extremely affected by the ongoing process of de-forestation and the

mindless activities of a sizable number urban people causing environmental pollution. The thesis explored and validated that poverty , shelterlessness of the have -nots , ignorance and illiteracy responsible for various social evils , various issues of social and economic disparities and deprivations , bureaucratic red - tapism, indifference, etc., stand in the way of social security and justice. But what is satisfying and optimistic is that coalition politics in India has been successful , to a certain extent, in making the mass people , i.e., people of all ranks and classes , conscious of their rights as human beings and of prevailing social and economic evils of which they have been victims. The existing situation connected with the question of security and justice will definitely be changed if the government continues to adopt and implement more and more social welfare schemes and programmes as Narendra Modi- led NDA (Coalition) government has recently announced and launched three important social programmes directed towards social security to the people of India.

## **PREFACE**

This study is a narrative as well as a descriptive research on various welfare measures adopted, introduced and launched in India during the coalition politics dominating both national and state politics with a view to ensuring equality providing and strengthening social security for all protecting rights of people, vindicating social justice for all, legalizing the process of aids for all to get justice in the court of law and finally guarding against the violation of human rights. It also contains a good many number of references and evidences in the form of enactment and national programmes, which aim at protecting wild lives, natural resources and environment which are unambiguously associated with or related to social justice. Coalition politics is hailed in the context of social security and social justice in India, though we should not forget its glaring drawbacks in the shapes of instability of government blocking the passage of development, that entails damage to national economy, the growth of regionalism, casteism, and communalism which are social and political stigmas and forces against social equality and justice. It is also in some cases that regional parties which have shaped and contributed to coalition politics in India adopted some political and social policies that debilitate the cohesion of national and social fabrics of unity and the incitement of divisive forces. However the merits of coalition politics in India outweighs its drawbacks which have been amply traced and recorded in this dissertation.

India is committed to democracy and socialism and vows to security, equality and justice to all, protect people's rights, prevent social discrimination and provide compensatory justice to such enlisted communities that had been neglected for a long period of time. People's growing dissatisfaction and disillusionment with the single party rule in relation to its failure to fulfil the hopes and aspirations formed the basis of the emergence of regional parties that gave birth to coalition politics in India. The constant pull and swing of political alignments and polarization have a mutual impacting on both the national and state politics. The era of Congress party dominance ended in 1967 which is regarded as a watershed in electoral politics in India. The Congress Government

became anachronism in central and state level. At the national level , the first coalition government was formed in 1967 and at the regional level , the first coalition government was formed in 1977 and at the regional level , coalition politics was experienced in West Bengal, Bihar and Punjab from 1967 onwards.

The study in the shape of dissertation submitted to the University of North Bengal , Darjeeling , India for the degree of “Doctor of Philosophy” in Political Science , demonstrates that most of the welfare measures launched in India during the period of the post single party dominance ( the Congress Party) both at the central level and state level aim at securing social security and social justice as stated in the Preamble to the Constitution of India and the Articles under the Directive Principles of State Policy which have led an additional philip to the government’s initiative to fortify the fundamental rights so that they are rightly and adequately protected. It has been shown here that the preamble , the Directive Principles and Fundamental Rights are inalienable in aim and vision. The leaders of the political parties during the period of coalition politics in the country . were to be least doubted inspired by the message of Preamble system and the content, aim, and spirit, of the Directive Principles to adopt and introduce the programmes and shines for the people of India , especially for those who are socially backward, , economically weak, educationally deprived, and victims of discrimination. The welfare measures may be called the conscious and unconscious reflection of the preamble and the Directive Principles of State Policies contained in the Constitution of India.

We can’t deny the measure adopted and introduced in India during the pre coalition politics in India . The Indian National Congress is the party that represents the single party rule in India . Before 1977, the Congress laid government laid stress on the need of social change through social origimobility, social uplift of the backward classes , development of economy, providing financial support to the poor farmers , supply of foods, provision of shelter, guarantee of equality, protection of rights, eradication of illiteracy, abolition of social evils, enforcement of rule of law to dispense justice. But the sincerity of the government in matter of fair implementation of the programmes aiming at social security and justice for all is still called in question. Many programmes intended

before 1977 were not implemented nor became successful as narrow party politics governed them. Besides corruption was a bigger factor for the failure.

India is a social welfare state. It is committed to social democracy vowing equality to all, banning social evil that infect social life, securing rights for all and protecting children and women from inhumanity and injustice. This study contains twelve chapters, each of which elaborately discusses coalition politics in India and issues of social justice, -- social justice in diverse forms and ways to provide food and shelter to the poor, to provide financial and technical support to poor farmers, to provide free education to children, to protect children and women from exploitation, to protect people's rights in many ways. The study deals with the relation between the issues of social justice and the statements contained in the Articles under the Directive Principles of State Policy.

The study enumerates and discusses with ample evidences how the Indians under the British rule were denied justice, protection and security that led the freedom fighters to launch nation-wide movement extensively for the protection of people's rights and recognition of security and justice. The Chapter IV of this dissertation deals with it in detail. The Chapter V deals with the importance of the Preamble to the Constitution in terms of the constitutional declaration for the government to exert all its possible efforts to secure social justice and security to people. This declaration prohibits inequality and discrimination which are opposed to the principles of equality, socialism, secularism and above all social justice. Due honour to this principles can alone enable the Government of India to build up the country as a true welfare state and to achieve egalitarianism.

India vows the protection of rights and honour of every individual and strongly disapproves of discrimination on artificial ground of race, caste, creed, religion, sex, etc. It strives to secure economic, social and political equality for all with the aim to establish socialism and to prepare the ground for egalitarianism. During the dominance of coalition politics, the government has paid especial attention to controlling and prohibiting all that go against people's rights and justice, to protect women against sex-exploitation, to give due honour in the society, to

empower them through education and reservation. The chapter VI of the study contains and discusses that the Government in India has already made laws to guarantee social security and justice to men and women, children and the old helpless persons and to provide education to children as an important step towards social justice.

Public Interest Litigation (PIL) which is the legalistic recognition of the Directive Principles of State Policy aims at protecting people against the violation of public interest and thus ensuring justice of all forms of people. It is a judicial platform for dispensation of justice to those who have been denied or deprived of justice by the executive, PIL originated in 1979 when the central government was ruled by Janata Party led. coalition government. The Chapter VIII of this study traces how PIL protected people's rights and ensured justice to them. PIL is playing a significant role in the implementation of the Directive Principles of State Policy (DPSP). It has paved the way for social justice. Cases like *Indira Swahany* and *Vishakha vs. state of Rajasthan* are mention worthy as example for judicial justice for judicial justice. PIL covers a wide range of areas of human life . rights and freedom denied by the agencies of the government. Hence it is the epoch in the history of judicial system in India of India during the era of coalition politics.

The chapter IX deals with how legal aid services contributes to social justice in India. The principles of welfarism would have remained unrealized if the government had not provided fair legal aid services contribute to social justice in India. It has protected and continues to protect people against oppression, exploitation, denial of justice, discrimination and many other acts of violation . Legal aid service forms an important feature of a welfare state to do justice to people. This chapter records analysis and discusses how legal aid service which emerged as a force of social justice during coalition politics in India and continues to uphold the rule of law and protect people's rights.

India seeks to bring about socio economic changes in society and DPSP is an effective instrument of this changes if they are properly implemented. During the coalition era in the country which is still in force in some way or another.

Chapter X of this study demonstrates and explicates that social protection is without of use or value in regard to social justice.

We generally distinguish between the Fundamental Rights and DPSP on the ground of its enforceability in the court of law; but to me such distinction is rather artificial ; a deeper study and course of analysis would invariably reveal that such distinction have been blurred because of 'aggressive implementation' or we may say penchant for its implementation of DPSP by the government . Many articles in DPSP have been enacted and implemented and assumed the status of people's rights be it during one party rule or under coalition government. The articles under DPSP which have so far been enacted and implemented have immensely helped to pursue the noble ideas of social justice. The chapter XI of this study traces and explains it with enormous references.

In reality , the emergence of coalition government in place of one party dominant system have created a sharp debate among social scientists and economist in regard to the questions of liberalism or economic reforms. Some believe that coalition government have retarded the pace of economic reform , so it is a bad government while others believe that coalition government represents equal geographical and regional entities of our polity. But undeniable is the fact coalition government have to pursue welfare programmes for extending its reach and influence among the voters' so long untouched by major partner in coalition government.

Human rights are wedded to social security and justice . Right to life, right to education, right to individual dignity , right against slavery and bonded labour , right to decent life , etc., constitute the foundation of human rights. The study enumerates and discusses with relevant references how the Government during the era of coalition politics seeks to protect , preserve and ensure human rights . This is elaborately discussed and exemplified in the chapter VIII. The survey which is undertaken on the importance of human rights , several issues of the violation of such rights and the steps of the government to protect and honour rights of people corroborates the fact that social justice is reduced to a farce or a non- entity if human rights are grossly violated.

# CHAPTER - I

## Introduction

### 1.1 Introduction

India is a vast land with varied cultures, and diverse socio- economic situations. She has a long history of the British colonial rule that is regarded as one of the major reasons for her economic backwardness and social deprivation. During the period of British colonialism , the people of India were inhumanly oppressed , limitlessly exploited, and deliberately deprived of rights and human dignity . They were looked upon as inferior to the Britishers or Europeans and reduced to almost slaves. Exploitation pauperized a large section of people and oppression led to the social disintegration and prevented them from leading a life of social unity . Laws were made only to guard and preserve the interests of the Britishers or the British colonialism in India and not to protect the rights of Indians . They were designed to deny justice to Indians . British education was introduced in the country with a view to serving the purpose of the British rule and government. No such welfare policy and programme was adopted then to bring about social change in Indian society nor was any welfaristic step taken to promote the social , educational and economic life of the people of India. The government of free India attached considerable importance to the need of social change , social uplift , economic development. guarantee of equality , protection of rights , abolition of social evils , establishment of the rule of law to dispense justice to all and to democratic services which are enunciated in the Preamble to the Constitution, Fundamental Rights and Directive Principles of State Policy. This has been explored, described and discussed in separate chapters of the present study. Secondly , the Directive Principles are non Justiciable , The judiciary can't enforce them. A Directive may be made enforceable only when there is a law on it. The Fundamental rights , on the other hand, are justiciable.

They impose legal obligation on the state as well as on individuals. The judiciary enforces them, If a law violates the Fundamental Rights.

The dissertation is a socio- political and socio economic study of the Directive Principles of State Policy (DPSP) as articulated in Part IV of the Constitution of India and explores and vindicates its importance, value and significance in paving the way for social justice – the justice to protect and promote the socio-economic life of the poor and the weaker sections of people in the Indian society. It has tried to explore the evils of British colonialism which is to be dubbed as the British misrule in India and to trace systematically pro -people policies adopted and programmes launched to implement Directive Principles by the Central and State Governments in order to bring about social change for social development. It justifies the progress and development of India as a welfare nation or state standing on the systematic implementation of the principles as enunciated in the Directive Principles. Here my attempt has been to explore, discuss, explicate, vindicate and validate the fact that almost all welfare and development - oriented programmes which the Government of India and provincial governments have adopted and launched since 1952 when the first general election was held and the government was formed which have been inspired by and derived from the Directive Principles of State Policy.

Constitutional experts and scholars describe India as a welfare state, and in Preamble to the Constitution, it has been declared that India is wedded to democracy and socialism and the aims of the founding fathers of the Constitution of India is to firmly establish social justice which shall be secured to all India citizens irrespective of class, creed, colour and community.

Historical background of Fundamental Rights and Directive Principles Shailja Chander's "**Justice V.R. Krishna Iyer On Fundamental Rights and Directive Principles**" is intensely felt in dealing with the historical development of this cardinal components of our Constitution. Iyer wrote that the demand for Fundamental Rights during the freedom struggle can be traced with the formation of Indian National Congress itself. First of all demand for the Fundamental Rights appeared in the Constitution of India Bill, 1886.

Between 1917 and 1919 the Indian National Congress passed a series of resolutions 'demanding civil rights and equality of status with the English men. The next demand for Fundamental Rights was Annie Besant's Commonwealth of India Bill , 1925. The assertion was reiterated by Nehru Committee in 1928 which stated that the guarantee of Fundamental Rights should be in such a manner that it would not permit their withdrawal under any circumstances.

The Indian leaders pressed for the inclusion of Bill of Rights at the Round table conference in the proposed Constitution. The sub-committees of the minorities held detailed discussion on the subject at the first meeting of the sub- committee held on December 23, 1930. Raja Narendra Nath pointed out the need to make the question of declaration of Rights unassailable by the majority of the Constitution of India. A.T .Paul also emphasized the need for inclusion of Fundamental Rights and to provide for some machinery to ensure that they were not violated.

B. Shiva Rao, a representative of labour organization of India in the Round Table Conference , placed before the Minorities sub-committee meeting on December 23 , 1930 a Comprehensive enunciation of a draft declaration of Fundamental Rights. During the discussion at the sub-committee meeting, Dr. B.R. Ambedkar also pointed out the need for the inclusion of sanctions in the Constitution for the enforcement of Fundamental Rights, including a right of redress in case of their violation.

After the concluding session of the Indian Round Table Conferences, a report was presented by the Secretary of the State for India to Parliament. The report observed that the Government recognized the importance attached by the Indian leaders to the idea of making a chapter on Fundamental Rights , a feature of the Indian Constitution. It also pointed out that some of their propositions discussed at the conferences could find their place in the Constitution. The idea of enumerating such of these fundamental rights which could not be embodied in the Constitution on Act itself in the instrument of instructions also found support in a memorandum submitted by Khan Bahadur Hafiz, Hidayat Hussein and Dr. Safat Ahmed Khan on December 27, 1932. As a result of the discussion

and memoranda for a declaration of Fundamental Rights , certain concessions were made . 12(1) (c ) , 52 (1) (b) 275 , 298 were embodied in the Government of India Act, 1935 providing for New Fundamental Rights.

Then came Sapru Report which was published in 1945. The Sapru Committee recommended that the declaration of Fundamental Rights was absolutely necessary, for not only giving assurances and guarantee to the minorities, but also for prescribing a standard of conduct for the legislatures, Government and the Courts.

The Sapru Committee envisaged two kind of Rights, namely justiciable and non justiciable rights. However, the committee did not suggest a list of Fundamental Rights to be included in the Future Constitution making body. Thus it is clear that even prior to the independence, the issue was left to be decided by the Constitution making body.

Thus it is clear that even prior to independence there was a concerted effort and awareness for the recognition of the importance of Fundamental Rights.

Iyer was equally emphatic on the nature of Directive Principles of State Policy. He explained that it is the ancient Indian practice of laying down policies on **Dharmasashtra of the State** . In ancient India , the state used to undertake many functions which the socialist , ancient and modern , are advocating , yet these went hand in hand with the enlargement of rights and freedom.

There is the illusion that the correct economic thought is only of recent growth and exclusively of modern origin. But the concept of declaration of policy in regard to social and economic obligations of the state cannot be said to be foreign to the brain of India.

Kautilya recorded specific injunctions in his **Arthsastra** that the King shall provide to the orphan, the dying, the infirm, the afflicted and the helpless with maintenance and shall also provide subsistence to helpless expectant mothers and also the children they gave birth to. Dharma is the supreme law of the laws, king of Kings. It is raj dharma in which all living creatures take refuge.

The Constitution of India is virtually the Dharma of modern democratic India , for it aims at protection , security, equality and justice to all. The Directive principles of State Policy enunciated in Part IV of the Indian Constitution are nothing but principles of Rajdharma . Fundamental Principles of Governance means Dharma or the path of duty of the government.

B.N. Rau recommended the classification of rights into two parts, one dealing with fundamental principles of state policy and other fundamental rights as such. At first, there was stiff opposition for the inclusion of non -justiciable rights in the sub-committee on Fundamental Rights.

Speaking about the nature of the two parts , B .N. Rau observed “there are certain rights which requires positive action by the state and which can be guaranteed only as far as such action practicable and needed while others merely requires that the state shall abstain from prejudicial action”.

He gave two examples as typical ones for each type. For the former , the example is right to work, which cannot be the guarantee except during the policy of the state in that direction for the later life and life of the person, wherein the state can restrain from interfering .

Hence the distinction was made between the fundamental rights and directive principles obviating the administrative and other practical difficulties that might arise in the directive which need to be enforced at the behest of the citizens.

Some were pessimistic and others were optimistic towards the Directives . Some called them ‘ a veritable dustbin of sentiments attaching no values. Jennings referred to part IV of the Constitution as the expression of Fabian Socialism without socialism.

But to Dr. Ambedkar , the directives were like the Instruments of Instruction. They were also hailed as the essence of the Constitution and also as cardinal , important and creative provisions.

Prof. P.K. Tripathi , also points out that all the twentieth century constitutions have given a place in their systems to the provisions of social welfare and these

provisions have gathered larger sweep , greater emphasis and more definitive legal obligations as the lapse of years brought in more governmental experience to bear.

Directive principles aim at making the Indian masses free in the positive sense, free from passivity engendered by centuries of coercion by society and by nature, free from abject physical conditions that had prevented them from fulfilling their best selves. The first and paramount principle enjoins that the state shall secure a social order in which social, economic and political justice shall prevail.

This means that equality shall be ensured to all without discrimination .It is believed that India can be a veritable welfare state , and social justice can be ensured to the people of the country only if the Principles as stated in the directive principles are adequately and systematically implemented .We have our constitutionally granted Fundamental Rights as enunciated in Part III of our Constitution but we have experienced that the Fundamental Rights are not at all enough for the state to ensure to people social , civil, political, and human rights. New laws need to be framed on the basis and spirit of Directive Principles of State Policy to ensure socio -economic equality to all , to guarantee liberty to all , to protect the weaker class and the working class against exploitation against social oppression, to prevent child labour, to promote and preserve the interests of dalits and minorities, to empower women , to expedite and strengthen social and national progress and finally to accord constitutional status to directive principles as necessary for social justice and the state should legislate against violence against women, deep rooted evil social practices and discriminations.

The study deals with the relation between social justice and the preservation of forests and protection of the environment and cites some opinions and directives of the Supreme Court of India as the judicial step towards the protection and preservation of wild life and forests. It also focuses on free legal aid mainly provided to deserving individuals to protect their rights and to uphold the rule of law.

## 1.2 Background and Rationale of the study

The founding fathers of the constitution of India aimed at making India an egalitarian society – a society to provide and ensure social, political and economic justice to all its citizens. The preamble to the Indian constitution as well as the Fundamental Rights and the Directive Principles of State Policy enumerated in the constitution constitute an integral part of the same constitutional edifice. The constitution aims at building an egalitarian society and specially emphasizes socio economic justice as one of its cardinal democratic principles. The ideals and values proclaimed in it clearly reveal that India is committed to the ideal of welfare state and must establish socio economic justice. The Preamble envisions not only democratic form of government for India, but also democratic society which is infused with the ideals and spirit of justice, liberty and equality.

The constitution of India seeks to provide a unified shape to multiple divisions of the Indian society based on class, religion and language, racialism and ethnicity by developing a polity on the basis of certain principles. It propounds prescribes, and preserves the principles and spirit for the government to formulate and adopt valid policies to vindicate social and economic justice to all Indian citizens. It dictates the governmental actions against exploitation and deprivation and is committed to establish discrimination and oppression free society in India.

The Preamble with which the Constitution of India begins is the quintessence of the Constitution. The fundamental values and the principles, on which the constitution is based, constitutes the aspirations and ideals of the constitution framers to build up an egalitarian society in India. It contains the aims and objectives which the Constitution seeks to establish and promote. The ideals and values proclaimed in it clearly reveal that India is committed to the ideal of welfare state and must establish socio economic justice. The preamble depicts not only the democratic form of government for India, but also a democratic society which is infused with the ideals and spirit of justice, liberty and equality.

The aim of the political system of India is to justify a right ordering of society so as to secure to all citizens, social economic and political justice. Social justice is the sine qua non of a welfare state in as much as it prohibits discrimination on artificial ground. It also prohibits forces that create artificial barriers. Economic Justice or distributive justice is a corollary to social justice. The aims of economic or distributive justice is to better the lot of the deprived and the backward sections of the community, to protect the working sections against exploitation and to reshape the country's economy in such a way that the common man can avail himself of its equitable benefits or an equitable distribution of the country's economic growth is secured to him. This socio economic justice has been translated into several articles in Parts III and IV of the Constitution.

The constitutional provisions as stated above affirm that the State would not discriminate, in the matter of public employment, between one citizen and another merely on the ground of religion, race, caste sex or place of birth. The state would seek to remove social disabilities like untouchability, bonded labourers, illiteracy etc., to improve the position of severely deprived groups, e. g., women, Scheduled Castes and Scheduled Tribes, by providing compensatory discrimination, to eliminate poverty, to dispel ignorance, to prevent disease and to actively promote egalitarianism.

### **1.3 Role of India as a Welfare State in Dispensation of Social Justice.**

The concept of welfare state presents a model of a new state which enhances the vibrant aspects of democracy and socialism. India is committed to democracy. The 42<sup>nd</sup> Amendment to the constitution, 1976 has led to the insertion of the word 'socialist' in the Preamble, and by virtue of this amendment, it is declared that the goal of Indian polity is socialism and the right to private property has been removed from the list "Fundamental Rights" through the 44<sup>th</sup> Constitutional Amendment Act, 1978. The right to property is now reduced to a legal right. The aim of India is not only to build up a democratic political system but also a democratic social system that proscribes discrimination and deprivation in any form and in any way in order to secure social and economic

justice to all Indian citizens. In the post modern period , the concept of welfare state has become a universal concept and even totalitarian state is a welfare state in an indirect way, laying more emphasis on material welfare than on moral and spiritual welfare. India as a welfare state is wedded to the principle of promoting the general happiness and welfare of the people. In theory it is more an agency of social service than an instrument of power—India's welfareism is enunciated in the Directive Principles of State Policy. India is envisioned as a state aiming at securing optimum progress and confront for the individuals and providing for its citizens a wide range of social service. The instances of recent Suredranath Khoshla Vs Dalip Singh<sup>11</sup> on 29<sup>th</sup> Nov. 1956 political development reveals the government's initiative to attribute constitutional status to the important articles of Directive Principles through constitutional amendments or through enactments . The attitude of the government towards Directive Principles in recent years is expressive of its effort to provide economic security to people , to provide free legal aid for legal justice ; its initiative to protect the health of the workers , to adopt preventive as well as curative measures , its drive against illiteracy and its announced aim to protect against want , sickness, and old age , which constitute social security . Social security for a welfare state like India is justified not only on humanitarian ground but also on economic ground as well . In line with the "directive principles" India endeavored to root out social evils and harmful social practices which are out to sap the roots of democracy. It has made several legislations against social evils. It has already announced a number of programmes to uphold the rights of all without any discrimination of caste , colour and so on. It makes no compromise on human personality, dignity and liberty. Thus India has marched much ahead towards building up the welfare society.

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<sup>11</sup> Surebdranath Khosla vs Dalip Sing on 29 November, 1956, date of judgment 29.11.1956. Act Election improper materially affected presumption – double member constituency

## **1.4 Importance and Implication of Fundamental Rights in securing social justice.<sup>12</sup>**

Part III (Arts. 12 – 35) contains Fundamental Rights of Indian citizens. The Fundamental Rights are described as fundamental because they are basic to the development to human personality. They are guaranteed by the Constitution and constitute, in the words of Jawaharlal Nehru “conscience of the Constitution”<sup>(1)</sup>. The Nehru report of 1928 on Fundamental Rights observed that “Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing a living wage for every worker, the protection of motherhood, welfare of children and the economic sequences of old age, infirmity and unemployment”<sup>13</sup>.

The Karachi session of Indian National Congress, 1931<sup>3</sup> adopted an impressive document on Fundamental Rights and Fundamental Duties. This document was the forerunner of part III of the Indian Constitution which deals with fundamental rights. The Karachi session also dealt with the provisions on labour, taxation, expenditure and economic and social programme. These provisions constitute the basis for part IV of the Indian Constitution which contains the Directive Principles of State policy.

The fundamental Rights offer the best fruits of democracy and opportunities for self development. The rights as granted to the citizens are right to equality and freedom, freedom against exploitation, religious freedom, cultural and educational rights and right to constitutional remedies. Some of the Fundamental Rights are positive while some others are negative in tone. The

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<sup>12</sup> Page – 204, Jawharlal Nehru, A Biography by Sankar Ghosh.

<sup>13</sup> The Motilal Nehru Committee Draft Constitution included under clause 4 (5) dealing with fundamental rights had the following “All citizens of the Commonwealth of India have the right to elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the state and such right shall be enforceable as soon as due arrangement shall have been made by the competent authority [Nehru Report 1928 excerpt]”<sup>13</sup> Page – 204, Jawharlal Nehru, A Biography by Sankar Ghosh; the Motilal Nehru Committee Draft Constitution included under clause 4 (5) dealing with fundamental rights had the following “All citizens of the Commonwealth of India have the right to elementary education without any obstacle and hindrance.

positive rights are those which confer some benefits upon the individuals, e.g., the right to religion, and the cultural and educational rights. The negative rights, on the other hand, are those which impose limitations and restrictions on the authority of the state, for example, "the state can't deny to any person equality before law and equal protection of law (art. 14). The enjoyment of the Fundamental Rights are essential to the development of individual. The Judiciary is the guardian and protector of the Fundamental Rights. The rights are not absolute. Reasonable restrictions may be imposed upon any fundamental rights in the interest of society as a whole. Whether a restriction imposed upon any Fundamental Right is reasonable will be determined by the judiciary. Justice Gajendra Gadkar of the Supreme court in *Sajjan Singh vs. State of Rajasthan* 1965<sup>14</sup>, remarked that 'the Fundamental Rights constitute as great charter of rights of the Indian people', the very foundation and cornerstone of the democratic way of life was ushered in this country by the constitution.

The Fundamental Rights are constitutional rights intended to ensure equality and liberty to the people of India. These are not merely of supreme political value to firmly establish democracy in India but also immense value with a view to establishing and upholding social justice. They are meant to ensure education to all, to stop exploitation in the country, education to all, to stop exploitation in the society, to secure equality for all citizens, to allow everyone to enjoy freedom and to uproot discrimination, deprivation and oppression. The framers of the Constitution of India had in their mind, the aim to establish social justice in the society. The Fundamental rights restrain the state from adopting any decision or step to deny social justice to people.

### **1.5 Social Justice – an Overview.**

Justice has a wide ranging meaning. In the context of politics and state, the words 'justice' means right and fair treatment. It encompasses within its range and scope, equality, freedom and fairness of treatment and absence of partiality and discrimination. This sort of justice has three broad dimensions – social, economic

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<sup>14</sup> *Sajjan Singh vs Respondent State of Rajasthan* ; date of judgment 30.10.1964 Bench Gajendrakar CJ

and political. As democracy has penetrated into social and economic sphere, the meaning of justice has been so much expanded as to cover all walks of human life; the expansion of the meaning of justice is the corollary of the achievement of the ends of social justice. Social justice and social well being are interrelated. Social justice is dream if social well being fails to take place. If the rights of the individual and interests of the community are coordinated, social well being of society is sure to take place. Social justice is the concept intimately associated with democracy and governs the welfare state. It seeks to ensure the fulfillment of legitimate aspirations and expectation of the individual and expectations of the individual under the existing laws to assure him benefits there under and protection in case of any violations or encroachment on his rights, consistent with unity of nations and needs of the nation and needs of the society. "The concept of social justice is a very wide form that covers within its fold everything pertaining to the norm of 'general interests' ranging from protection of the interests of minorities to the eradication of poverty and illiteracy. It also relates to the eradication of gigantic social evils that taint and jeopardize life and humanity and human civilization". India is still a developing country announcing, undertaking and launching a number of programmes based consciously on the Directive Principles or unconsciously on the Directive Principles which are deliberately designed to ameliorate the lot of the downtrodden and weaker sections of the community. The force or impetus that inspires India to adopt various welfare programmes is the concept of social justice. Social justice has become an all encompassing idea to promote life in all fields in the society. It enjoins upon the state to make concerted effort to widen itself so as to cover the economic domain of people's life for the obvious reason that it demands non exploitation of the working class. The idea of social justice envisages to promote the welfare of people by securing and developing a just social order. Apart from ensuring equality and liberty to the people, it enjoins to bring about a social order in which justice – social, economic and political – shall inform the institutions of national life (chief justice K. Subba Rao of the Supreme Court of India in *Golak Nath vs. the State of Punjab*, AIR, 1967, SC 1643).

## **1.6 Social Welfare Steps Adopted and New Policies Formulated in India to Vindicate Social Justice.**

The India social system reveals the practice of inequality on the basis of caste. The leaders of independent India were pledged to establish a modern welfare egalitarian state. This is reflected in the Preamble of the constitution of India which makes it clear that the framers of the Constitution were committed to achieve the goals of justice, liberty and equality. These conceptual objectives can be considered as the sheet anchor of our political system. In the context of commitment to equality for all citizens, the principle of compensatory discrimination in favour of certain classes was acceded to. Consequently, reservation facility has been constitutionally offered to the SCs, STs, and Anglo Indian Community. Article 15(4) while promoting the idea of equality as a fundamental rights for citizens, contains special provision for the advancement of socially and educationally backward classes of the citizens. The 73<sup>rd</sup> amendment and 74<sup>th</sup> Amendment, 1987 have provided for additional reservation reservations in the Panchayati Raj and the urban institutions. Initially, reservations of seats were made for a period of the years from the commencement of the constitutions. Subsequently, the period was extended several times. The land extension was made in 1999 by the 79<sup>th</sup> Amendment, but 79<sup>th</sup> Amendment extended reservation of seats upto January, 2010.

The Janata Government appointed the second Backward Classes commission in 1978 headed by BP Mandal, former Chief Minister of Bihar. The Commission was requested to recommend mainly on two matters – (1) identification of socially and educationally backward classes and (ii) uplift of these classes. The Commission submitted its report to the President in 1980 and it was laid before parliament in 1982. In order to identify other backward classes, the Mandal Commission followed eleven indicators. Of these four were social, three on educational, four on economic standards. The Commission gave a weightage of three points to each social indicator, two points to each educational and four on economic indicators. The National Front Government took steps to follow the recommendations of the Commission. In 1990, Prime Minister V.P. Singh issued

orders for seat reservation in govt. jobs to the extent of 27% which meant a total reservation of 49.5%.<sup>15</sup>

In 1991, the VP Singh ministry, was replaced by the Congress ministry headed by Narshima Rao. His government decided that for the welfare of economically backward people of high caste and additional 10% reservations would be made. In November, 1992, the Supreme Court in the case of Indira Sawney Vs. Union of India<sup>1</sup> held the reservations beyond limit of 50% was unconstitutional. The decision was reaffirmed subsequently in 1994 in the case of Surendra Nath and Others vs. Union of India<sup>16</sup>. However, in spite of the states like Tamilnadu and Karnataka passed acts providing for 69% and 78% of reservation respectively.

Reservations in educational institutions are generally referred to as Mandal II. In 2005, the Supreme Court abolished all caste based reservations in unaided private educational institutions. The Lok Sabha has also passed the 104<sup>th</sup> Constitution Amendment act adding a new clause to Art. 15 providing for reservations of SCs and STs and Other backward Classes (OBC) in private unaided educational institutions and other minority institutions. Thus we find that originally reservation issue was guided by the noble ideal of compensatory discrimination for ensuring justice to underprivileged sections but now it has resulted in politics of reservation<sup>17</sup>.

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<sup>14</sup> Supreme court of India ; Indira Swhney vs Union of Indian And Others on 4 November, 1996 Bench: S.V. Manohar, K Venkataswami PETITIONER INDIRA SAWHNEY VS. RESPONDENT: UNION OF INDIA AND OTHERS on 4 November 1996. Bench SV Manohar, K. Venkatswamy

<sup>16</sup> Petitioner Surendra Nath khoshla vs. Dalip Sing, date of judgment 29.11.1956. Act: Election improper rejection of nomination paper – whether result of election materially affected presumption – double member constituency.

<sup>17</sup> The cases in this batch raise common issues relating to the identification of 'creamy layer' among the backward classes in the state of kerala and the implementation of law declared and directions issued in Indira sawhney vs. Union of India { 1992 (suppl) 3, SCC 217 }. The state of kerala took time for implementation of the directions in Indira Swahney for appointment of a commission for the purpose of identifying the creamy layer but it failed to implement the recommendations. The court by its order dated 10.7.95 held (IAs 35, 36 filed by the state for extension of time etc..) that the state of kerala, represented by its chief secretary was guilty of contempt but gave a further opportunity to the state to purge the contempt and adjourned the matter to 11.9.95.

### **1.7 Social change and Social justice.**

Since independence in 1947, new social movements have been taking place in the country to preclude deprivations and exploitation. Various social movements have been taking place in the country to preclude deprivation and exploitation to firmly establish equality, security and justice. A social movement is characterized by an organized collective attempt to bring about either partial or total change in society. It may also emerge to resist change. All social movements may not emanate from a sense of deprivation. They may also emanate from social deprivation and structural strain. When people become dissatisfied with prevailing system of value, the society reveals strain. This prompts people to protest prevailing social norms. What has been studied, investigated, and explored is that a feeling of deprivation, may also emerge to resist a change. "The new social movements are not motivated by the goal of acquisition of power. They are mainly related to issues concerning civil society".

### **1.8 Environmental Movements and Social Justice**

Environmental movements in India developed centering around the issue of environmental degradation which has adversely impacted in the socio economic progress of the country . The major elements of ecological infrastructure of society like water, soil, flora and fauna etc., have their impact in different aspects of their society. The impact is virtually menacing to the environment and life of our country. It creates problems which relate to air, water, and noise pollution , degradation of soil , threat to biological diversity, in increasing deforestation, solid waste disposal and sanitation. Those are hazardous to life. The constitution of India provides for the protection and conservation of natural resources. The 42<sup>nd</sup> Constitution Amendment Act, 1976 provides for protection and improvement of environment and safeguarding of forests and wild lives. Deforestation not only pollutes the environment but leads to expropriation of traditional livelihood. This is a clear case of denial social justice which majority of the authors have failed to take note of. Whenever, the conservationists, environmentalists, journalists start discussion on conservation of Forests and protection of environment (tons of newsprints have already been

devoted in the domain of discussion of climate change and conservation of environment) , they discuss it independent to Directive Principles of State Policy.

Women constitute a pillar for national progress and reconstruction . we can't dilate the role of women in social progress and social justice . But in India they are victims of gender bias , male domination and sex discrimination. In post independent India , they organized themselves and formed association to demand full freedom and equality in society with men and finally to end sex discriminations. In the history of women's movement the period between 1973 and 1975 can be considered as an important milestone. As a result of persistent and untiring efforts , in 1990 a National Commission for Women Act was passed . Prior to this, the Rajiv Gandhi Government made the national perspective plan for women's development. The 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendment acts 1992 are landmarks on road to women empowerment as seats have been reserved for them in the panchayats and Municipal bodies . In 2004 , some women organizations sought support to fulfill their needs through the common millennium programme of the UPA Government. Social progress can't be achieved without women empowerment. Social justice in our society will remain a myth if women continue social familial violence and discrimination.

### **1.9 Human Rights Movements and Social Justice**

The movements for human rights is regarded as one of the fundamental goals for social, national and human development. The message of the movement is that every individual should be allowed to enjoy rights as human beings. To curb this right amounts to denying social justice. Inspired by the spirit of the Directive Principles , the government of India , has adopted steps, through legislations against bonded labourers , child labourers , police atrocities like illegal detention , torture in police lock-ups and custodial death, crimes against weaker sections of society, cruelties and violence against women, including dowry and deaths , women trafficking , anti-people laws and violation of Forest Acts and oppression and exploitation of the tribal communities who fall victim to a process of urbanization. Parliament passed the protection of Human Rights Act, 1993. In the following parts of the dissertation, I have given a detailed description and

analysis of the steps so far taken by the government to establish and ensure social justice and throw light upon how they are related to the Directive Principles of State Policy.

### **1.10 Directive Principles of State Policy**

The Directive Principles of State Policy included in Part IV of the Constitution represents hopes, ideals, and goals rather than actual reality of government. They, by no means, constitute a decorative part of the constitution but a manifesto of aims and ideals and as such it is to be said to contain the philosophy of the Constitution. They “constitute a very comprehensive political, social, and economic programmes for a modern democratic state.”

They may be regarded as a sister part of the Fundamental Rights in the sense that they aim at making the Fundamental Rights a reality by extending democracy in the social and economic spheres or domains. They embody the aims and objectives of the State under the republican Constitution e.g. the aim to make India welfare state. The term directives indicate that there are broad directives given to the state in accordance with the legislative and executive power of the state are to be exercised. It is the duty of the legislatures and administrators to follow the principles. They lay down a comprehensive blueprint of social goals, a charter of economic and social democracy which is pledged in the Preamble.

### **1.11 Contrast between Directive Principles and Fundamental Rights.**

The Directive Principles are often contrasted with the Fundamental Rights. The Fundamental Rights constitute a set of negative injunctions. The State is restrained from doing something. The Directives, on the other hand, are a set of positive directions. The state is urged to do something to transform India into a social and economic democracy. Secondly the Directive Principles are non justiciable, it is said. Courts can't enforce them. Directives may be made enforceable only when there is law on it. The Fundamental Rights on the other hand are justiciable. They impose legal obligation on the state as well on the individuals. Courts enforce them. If a law violates a Fundamental Rights and, the

law in question is declared void. Whenever conflicts arise between Fundamental Rights and Directive Principles, Fundamental Rights will prevail over directive principles, in terms of Articles. 32 and 226; fundamental rights are enforceable by the courts. In the case of social order and social justice the Directive Principles are said to have primacy over the Fundamental Rights. In the judgment on State of Madras vs. Chamkam Dorairajan ( 1951 ) , a judge constituting the majority in that case said "In building up a just social order , it is sometimes imperative that the Fundamental Rights should be subordinated to Directive Principles". This view defends the logic that the Fundamental Rights and the Directive Principles are complementary.

The Directive Principles are very much oriented towards social welfare and social justice. The aims and aspirations of the framers of the constitution is to ensure social justice are reflected in the Directive Principles . The principles categorized as socialistic principles aim at securing welfare of the people (Art. 38), securing proper distribution of natural resources of the community as to best sub serve the common good , equal pay for equal work, protection of childhood and youth against oppression etc (Art. 39) , securing just and human conditions and maternity relief (Art. 42. etc).

### **1.12 Categorization of Directive Principles**

The Principles categorized as Gandhian Directives are to organize village panchayats (art. 40), to secure living wage , decent standard of life .... And to provide cottage industries (Art. 43) , to provide free and compulsory education upto 14 years of age (Art. 45) , to promote economic and educational interest of the weaker section of the people., particularly , the Scheduled Castes and Scheduled Tribes , and to enforce prohibition of intoxicating drinks, and cow slaughter and to organize agriculture and animal husbandry on scientific lines (Arts. 46-48).

The Government of India and the state legislative machinery are trying to implement many of the provisions of Directive Principles, as for example Minimum wages act was passed to implement provisions of Art. 43 of Directive

Principles. The Employees Provident Fund Act, 1962 was passed in conformity with Art. 41. Free primary education legislations have been passed in some states in conformity with Art.45 of the Constitution. The 42<sup>nd</sup> Constitution Amendment Act, 1976 increases the number of directions and gives importance to the directives. By this Act, new directions are being added to Part IV to provide for free legal aid to the economically backward classes. Thus the importance of the Directive Principles is day by day increasing in order to establish a socialist state.

### **1.13 Directive Principles of State Policy as a powerful instrument for securing social justice.**

The framers of the Constitution of India appended the Directive Principles to it with a view to providing social protection to the people of India. The term 'social protection' contains a wide ranging meaning and implication. All that is needed to make the life of an individual happy, healthy, and problem free is included in the term of social protection. The philosophy of the Directive Principles is based on social protection.

The Directive Principles are meant to give directions to the state to provide health security, especially to children, women and to fix and ensure rational rates of wages, to prohibit labour exploitation. The Government of India has already launched a few programmes like Swarna Jayanti Sahari Rojgar Yojna (SJSRY) to alleviate poverty in urban areas. The Directive Principles have led the state to introduce and continue social security programmes for those who belong to below poverty lines (BPL). The aim of such programmes is to ensure social justice to all citizens of India, especially to those who have been subjected to various social injustices.

Human rights are central to social justice. Social Justice can't be realized if human rights are denied or violated. All types of right which a person enjoys as a human being of human rights. A welfare state accords supreme importance to the basic rights to which a person is entitled to lead a normal decent and democratic life. India is pledged to welfarism, democracy and socialism to which

a question of human rights is inextricably linked. The state has adopted some welfare measures to ban inhuman practices, shameful social custom and many other social evils prevailing in Indian society from time immemorial.

As measures to protect human rights and human dignity the state of India has legislated against atrocities against dalits, forced labourers and slavery, inhuman practices. The inhuman practices of manual scavenging which is closely related to untouchability is an instance of gross violation of human rights and human dignity. The Indian Parliament has passed four enactments in order to outlaw these practices. There are Protection of Civil Rights Act, 1955, The SC/ST (Prevention of Atrocities) Act, 1989, The Employment of manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The State is striving through legislation and enactment, to ensure inherent dignity and of equal and inalienable rights of all members of the human family. The Government has enacted laws to support welfare provisions. It strives to ensure just and human conditions of work, fair wages, a decent standard of living and safe and healthy working conditions to all kinds of workers and specially seeks to provide adequate means of livelihood to all. The Supreme Court has directed in its verdict on several cases the state to take appropriate actions to eliminate<sup>4</sup> discrimination against women and violence against them, and to ensure their security and honour in public and social life. The government has taken steps to stop police atrocities and custodial deaths. All these measures adopted by the state to protect human rights are in accordance with the Directive Principles of State Policy.

#### **1.14 Coalition Politics and Social Justice.**

Multi-party system is introduced in India since independence. Existence of political parties is regarded as an essential requirement of democracy. For a successful working of parliamentary democracy political parties are necessary for democracy. The party system is a part of large political system in India. Coalition politics is a political reality, and coalition may happen to be a necessity for the formation of a government. The first coalition government at the centre functioned from 1977 to 1979. In 1977, the Janata Party government emerged

as a coalition of different anti Congress groups . The coalition Government in India since 1996 have played an admirable role in introducing and launching a plethora of welfare programmes adopted on the basis of Directive Principles of State Policy to impart social and economic justice to the people. The BJP-led NDA government and the Congress-led UPA government made a number of constitutional amendments and enactments of some Directive Principles to provide for and ensure social justice to women , children and people of backward classes . In the following chapters of the study, the welfare programmes which have been adopted and launched by the coalition government, have been discussed and analysed to show how they are related to Directive Principles of State Policy.

### **1.15 Political Coalition or Coalition Politics?**

To deal with coalition politics and social development in the context of the study is to deal with programmes introduced and launched by the coalition governments in India since 1996. To do it, it is necessary to discuss the meaning of coalition politics . The term “coalition politics” is used in this study to mean or referred to coalition government in India. Coalition is a temporary alliance of political parties for forming a government. A coalition is formed either to defeat the governing party in order to form a new government or to cling to power when the party in power apprehends defeat in the forth coming election. Coalition politics is an essential feature of multi-party government. F.A. Ogg defines coalition in political sense as a cooperative arrangement under which the distinct political parties or at all events members of such parties unite to form government or a ministry.

### **1.16 Types of Coalition Government**

Coalition Government can be classified into two types—pre -poll coalition government and post -poll coalition government. In a pre -poll coalition, more than two parties unite in elections on the basis of agreed policy and common programmes. If such a coalition partner secures a majority of seats, it forms a government consisting of representatives from parties forming the coalition

and joining the government. A post poll coalition is formed when no political party is in a position to secure absolute majority to form government. Again coalition politics can be tactical and formal. In the case of tactical tradition , there may be one party in power but certain other parties support the ruling party from outside. In 1979, when the caretaker government of Charan Singh was functioning , Congress lent support from outside. In the first UPA Coalition government (2004 – 2009) the Left parties supported it from outside on the basis of certain issues like common minimum programme, the keeping of so-called communal forces from power in Delhi, etc., Coalition politics implies a temporary conjunction of particular interests to enjoy some material reward of psychological advantage by seizing political power.

The dawn of coalition politics may be regarded as a boon for Indian social and economic conditions. Before the three phases of coalition government i.e., One NDA coalition government at the centre and two UPA coalition government, no noticeable socio economic development programme was adopted in India, though the Congress government headed by Mrs. Indira Gandhi paid much attention to social development, economic progress and social justice. Her successful effort of bank nationalization in 1967 is a glorious event in the history of socio economic development in India. The basic aim of bank nationalization was to protect rural poor farmers against exploitation by local money lenders and to boost national economy. It is the duty of the welfare state to provide protection to the economically weaker and educationally backward classes against economic exploitation and deprivation and social injustices and thus to ensure equality to all. Her twenty- point programme was directed towards the evolution of a new socio -economic system in order to prepare a solid ground for a radical change in Indian society. The Coalition Government adopted and launched quite a good many number of programmes to firmly establish equality in society – equality not only in politics but also in social and economic fields.

The coalition government since 1996 has stressed socio-economic changes in order to smoothen the path to social justice. It has its announced commitment to the policy of growth and development which is a positive force that paves the

way for social changes and social development , which enabled the state to achieve the goal of social justice. The National Democratic Alliance (NDA) introduced and implemented the programme of universalization of basic education and the UPA stands for solving the economic problems like unemployment and poverty. Earlier, the Janata Dal-led National Front and the Left Front agreed to a Common Minimum Programme, "Social Justice", implementation of Mandal Commission's report on reservations, share of power for the deprived and protection to the minorities formed the four planks of their poll strategy. Janata Dal leadership projected itself as messiah of the poor , the backward, and the minorities. V.P. Singh built a social hierarchy on the basis of Mandal Commission recommendation and its implementation and the Left parties endorsed VP Singh's political programme. The BJP led-government stressed the protection of national economic interest to provide its benefits to the people. It believed that people should receive the economic justice along with political justice and also assured protection to the minorities. The NDA government provided subsidy to Haj Pilgrimage as a part of the government's initiative to send a message of positive secularism to the minorities.

### **1.17 Rise of BJP and Weakening of Coalition Politics in India**

Multi-party is recognized as the party system in the democratic political system in India. The political democracy in independent India began its journey with the single party dominance. This dominance was the dominance of the Congress party, and it ended in 1977 when Congress had a frustrating debacle in the general election in that year. The Janata Party-led coalition formed the government at the centre. The Congress again regained power and its influence could well be felt in 1989. The end of this single party dominance strengthened the political spirit of coalition politics in India. Coalition politics at the regional level was seen to be of limited influence on national economy , politics and development. But coalition politics in India that began with the emergence of National Democratic Alliance gave a new dimension to Indian Politics. The dominance of coalition politics in India that almost ended with the Bharatiya Janata Party bagging the required number of seats to form the government at

the centre on its own strength in the 16<sup>th</sup> general election 2014 ushered in a new era of Indian Politics. It is to be noted that nearly 26 political outfits, mostly non-descript, were inducted into National Democratic Alliance (NDA) which is in contrast to earlier political formations or coalition where majority of the constituents either of NDA or UPA were of regional party or parties. It may be noted that 26 political outfits, majority of which are non-descript were inducted into National Democratic Alliance (NDA) which is in sharp contrast of early political conglomerations comprising mainly state based parties or regional parties. (See Sheela Bhat's who are the 26 allies in NDA in rediff.com)

Coalition politics that had characterized Indian Politics for more than two decades had its visible merits and glaring demerits. The merits include arousal of People's political consciousness, awareness of democratic and constitutional rights, encouragement of their participation in politics and adoption of many welfare policies and introduction and implementation of a good many numbers of schemes and programmes for removal of social, economic and political ills that stood in the way of equality, security and justice to people. Lots of facilities were provided in both the agricultural and industrial sectors to boost rural and urban economy. The success of coalition politics in India cannot be underplayed in any way, though the implementation of the welfare schemes and programmes is far from satisfactory<sup>1</sup>.

The regional political parties made either pre-poll alliance or post-poll alliance with the Bharatiya Janata Party to form the BJP-led NDA government at the centre till March 2004 and with the Congress party to form coalition government i.e., UPA I and UPA II till April 2014 led various ministries of the central government to adopt and launch programmes to achieve the national goals of equality, social security and justice to all. Universalization of education, provision of health security, legal justice, financial assistance to the poor, helpless women, provision for assistance for helpless women to attain self-reliance, and many such programmes were launched to render social justice to people during the period. Through all such schemes and programmes the central government over the long period of coalition politics had made a good number social legislations on some directive principles which have been

explored and analyzed in this dissertation under different chapters and headings. Even the government within the period of dominance of coalition politics had made laws to prevent various types of violence against women and children and is still deliberating on the necessity of protection to women against rape.

The demerits of the dominance of coalition politics over this periods of two decades cannot be ignored. Corruption which has weakened Indian economy and deprived people of social and legal justice is the aftermath of coalition politics in India though independent India was never free from corruption. During the period of UPA II, government corruption spread the whole nation and assumed a horrible dimension. Some political parties which formed part of the coalition government had reportedly blackmailed the government on different issues and also opposed the government on many issues related to high national interest . Besides the coalition governments were always under the threat of being toppled if some if the demands of some allies were not met Above all, coalition politics strengthened regionalism and regional politics which is inimical to national unity.

The 16<sup>th</sup> Parliamentary election heralded a new era in Indian Politics. Though the BJP , led NDA had replaced the Congress -led UPA II, in the general election 2014 , coalition politics received a deep jolt because the seats bagged by BJP outnumbered the required figure to form majority . Naturally , the allies have lost their dominance over BJP and the importance of coalition politics in national arena has been sharply reduced. Thus it can be said that there has been a come-back of the era of single party dominance . Mr. Narendra Damodardas Modi , who was elected Prime Minister , appears to be paying not much importance to the existence in the matters of allocation of ministries and declaration of his government's future of action though he is committed to the parties election manifestos prepared in prior consultation with NDA allies . Mr. Modi who heads this new government has assured people justice – social, economic legal , security to people with special emphasis on matters of women and children , control and prevention of corruption and above all reconstruction of India in the light of new hope and aspiration in order to build up India as a

developed , democratic and welfare state where no discrimination and deprivation , exploitation and violence will be put up with ; the 16<sup>th</sup> parliamentary election may be interpreted as the virtual death of coalition politics in India , at least, for this term of the government.

**Summary:**

This is an admitted fact that the government is striving to translate the ideals and aspirations of the framers of the Constitution into visible and perceptible realities through the introduction of several welfare and constructive programmes and the implementations of Directive Principles of State Policy. The activism of the judiciary has been an addition to the government effort to render and secure welfare services to the people of India, mainly to the poor, the weaker and backward sections of the society. What is seen and experienced in reality is that the political environment in India is not conducive to the total success of the government's welfare programmes. This is because the political parties are more interested in achieving narrow political ends in the form of building up vote bank. They do not, it is found, to compromise with their political aims, ideologies, values and national interests. Since 1947, the Congress which had been the single, dominant power in India upto 1996 with two breaks for few years has done nothing except Mrs. Gandhi's 20 point programmes, to implement Directive Principles in order to secure social justice to all. During the period of coalition government in India were and are busy forging alliance with the sole aim to reconstruct nation and politics. Corruption is found to dominate political parties and this is so deep rooted in Indian politics that it is an uphill task for any party in power to uproot corruption from all sphere of state.

## **CHAPTER II**

### **Research Methodology**

#### **2.1 What is Research?**

Research is a systematic effort to obtain answers to questions about phenomena or events through the applications of scientific method. It is an objective, empirical and logical analysis and evidences that may lead to the development of generalizations, principles, laws or theories which help us to understand the phenomena. Research emphasizes objective verifications of generalizations. It involves logical analysis of problems and devising appropriate methodologies for gathering relevant data, their analysis and interpretations.

Research is an activity that helps us generate knowledge; it helps us in testing the existing knowledge and also in creating new horizon of knowledge. It is essentially the process of conducting disciplined enquiry. It serves to generate knowledge, helps to discover which is still hidden or unknown, to systematize enquiries related to researchers planned enquiry, to formulate procedures and sequence of actions to achieve the researcher's purpose and to serve the purpose of preparing future researches by providing the planned experiences.

#### **2.2 The How and what of the Present Research?**

The present study is directed towards the solutions of how the " Directive Principles of State Policy" if implemented through their constitutionalisation promotes and ensures social justice. It has emphasized the development of this theory that will inspire and impel the government to accord constitutional status to the directive principles in a gradual process to make India a true welfare state. The study is based on experienced or empirical evidences and supported by the policies of the government to give considerable importance to the implementation of the directive principles necessary to secure justice to all, especially to the poor, the weaker and deprived class of people.

The study investigates observation of the Apex court on the value and importance of the Directive Principles of state Policy “in the interpretations of Fundamental Rights and attempts to vindicate by way of analysis and elucidation of interpretations between Preamble to the constitution, the Fundamental Rights and Directive Principles of State Policy. It also systematically investigates and explores how the coalition politics in India has created imperative situations that lead the government to India to concentrate on the implementation of the Directive Principles of State Policy. The Study further explores and investigates the nature of exploitation , oppression and deprivation during the British colonial rule in India.

The study has not overlooked or ignored the initiatives of the union government, before the era of the coalition politics in India, in adopting and launching welfare and national reconstruction programmes. It includes the effort of the congress government under the primeministership of late Indira Gandhi and in tracing and launching the twenty point programmes described as a concrete action to combat the unhappy state of poverty, exploitation, inequality and social insecurity. This was intended for the social, economic educational and cultural development of Indian life in both rural and urban areas of India. The aim of this programme was to make the country developed and self reliant.

The study is an objective and logical discussion on various measures adopted and introduced prior to the era of coalition politics and dominance of coalition politics in India. Documentary evidences have been provided to establish the value of directive principles as the instrument of social justice and the sheds light on how implementation of directive principles gradually effects social change and social development.

In this direction it has attempted to eliminate personal bias. There is an attempt to prove an emotionally held conviction. In this study, previous important studies have been deliberately replicated using similar or identical procedures with different subjects. Replication is made to infer the conclusion of a previous study.

The study is carefully recorded and repeated. The procedures are described in details. References are carefully documented. What the study validates and establishes are objectively recorded. The conclusions are presented with scholarly intentions and restraint. The written report and accompanying data are made available to the scrutiny of associates or other scholars. Any scholars will have the information necessary to establish, analyze, evaluate and even replicate the study.

The study has followed a carefully designed procedure to investigate and validate its aim. In this respect, I have researched and related literature carefully. The research uses various methodology for collecting data or evidences and analyzing and interpreting information. The whole process is carefully recorded , documented and reported.

### **2.3 Interrelationship between Research and Knowledge.**

Research generates knowledge, and knowledge paves the way for discovery of new areas. Research leads to the new horizon of knowledge and knowledge fertilizes the field of research . Now we need to shed light on knowledge. This knowledge is what may be called human 'commonwealth' . Knowledge consists of all that a person knows and believes to be true. This is known as personal knowledge . Personal knowledge is generally unexamined, unvalidated , and therefore subjective .

In the context of research, knowledge refers to specific knowledge. Scientific knowledge is well tried out , examined and tested (i.e., validated) knowledge . It is therefore objective. Scientific knowledge is considered and accepted by the experts to be true. Knowledge, in this sense, represents the entire context of human intellectual heritage. The knowledge is human wealth and is handed down to people generation after generation. The knowledge of the social sciences is subjectively acquired and objectively explained and to validate it. The present study "Directive Principles and social justice" is initially a tentative truth ; it is more subjective than objective – this subjective knowledge as I have acquired is subject to be examined , supported with reasons , logic and evidences

to validate that directive principles of state policy' as enunciated in the constitution of India will veritably secure social justice to people if they are enacted and accordingly implemented . Recently a number of Directive Principles have been constitutionally recognized through amendments and this has started bearing fruits in respect of social justice to the disadvantaged class.

## **2.4 Scientific Method of Research**

The research method is formulated in order to avoid the defects of deductive reasoning as well as inductive reasoning. In deductive reasoning we start from realization and apply it to specific case and deduce an inference. In inductive reasoning we start with a specific event and make more observations and on the basis of which we formulate a generalization. The scientific method is the method of research. In spite of the variety, research has a typical set of procedures based on the scientific method which is also known as the hypothesis deductive paradigm". According to researchers, the scientific method consists of a sequence of steps.

## **2.5 Steps in Research**

Research is a specific study to investigate, analyze and validate the truth or knowledge about a particular topic or subject and is conducted using the steps as followed in the scientific method. Though detailed discussion on the steps in this research will be made in various units of the study, a brief preparation of the steps, given below, provide the examiners, evaluators a holistic understanding of the process of the study.

**Step I:** The effort of the research is focused on the topic of the present dissertations with caption "Directive Principles of Social Justice: A study in the context of Coalition Politics in India".

**Step II:** Research hypotheses are formulated on the theory and constitute the statement of possible relationship between the idea (Directive Principles) and the truth (social justice) to be discovered and validated.

**Step III:** Research questions will be identified and these are relevant to the study which is subject to explanation and answer. This will be done to give a right direction to what is required to be explored, investigated and validated.

**Step IV:** the specific procedures to collect and analyze data related to the topic of the study are described.

**Step V:** An appropriate research design i.e. plan of action for validating the null hypothesis is required to be carefully and logically designed.

**Step VI:** Hypothesis are formulated in order to arrive at the inferences on the study. These Hypothesis are intelligent genesis about the possible link between the theory and its validity i.e. between 'directive principles' and 'social justice'. Since they are to be verified by obtaining data or evidences , their formulation has been done very carefully.

**Step VII:** The data collected have been analyzed and interpreted . The development of the research plan has been made in accordance with the research design or plan.

**Step VIII:** Hypotheses have finally been verified. This establishes the truth or rationality or acceptability of the research topic. The research report has been systematically prepared and includes the detailed procedures of the study, findings conclusions and suggestions for the future study.

## **2.6 Review of Related Literature**

Research is based on objective knowledge specific to the subject of study. Knowledge gained by research is of highest order. It is not based on assumptions, beliefs and invalidated generalizations. Research takes advantage of the knowledge which has been accumulated in the past as a result of constant human endeavor. It can never be undertaken in isolation of the work that has already been done on the problems which are directly or indirectly related to a study planned and proposed by a researcher. To seek knowledge of the previous works a researcher must develop knowledge and, scholarship and willingness to spend long hours to collect and review all forms of past knowledge related to the study.

A careful survey and review of research journals, books, dissertations, theses and other sources of information pertaining to the problems to be investigated is one of the important steps in any planning of any research study.

The problem of investigation, which constitutes my research study is logically chosen. I have familiarized myself with the areas of the study and developed a thorough conceptual or theoretical understanding of the field of study in order to know what studies have already been done on it. I have also covered some related areas in the present study which seem to have remained uninvestigated.

A research problem arises from a theoretical and empirical framework. Thus both conceptual and research literature are to be reviewed. I have reviewed research literature appropriate to my study , and this has helped me in identifying the latest research trend pertinent to my problem. It has clarified what is already known and also what is unknown and unexplored.

As the first step in this direction, I have judiciously identified the material to be gone through and scanned. Some material for my study has been identified as the primary source and some as the secondary source. In the primary sources the author reports it on work directly in the form of research articles , books , monographs , dissertations or theses. These sources have provided me a basis for making judgments about the present study to be investigated. The survey of such sources has provided me a good source of information about the present study to be investigated. It has also provided me a good source of information about research methods used. Bibliographies, abstracts, indexes, encyclopedias, etc. constitute the secondary sources of my research study. In these sources, the author compiles and summarizes the results of research studies undertaken by others and provides interpretations of these results. They have acquainted me with major theoretical issues in the field and with the work that has been done in the area under study . Secondary sources have proved to be of immense help for me as they suggest guidelines of working with hypothesis and also introduce me to important primary sources. They are excellent starting point to look for relevant literature. Library is an important source for locating the information of primary or secondary nature.

I have made use of ( i ) reference literature ; (ii) research periodicals; (iii) abstracts ; (iv) government documents ; (v) monographs; (vi) newspapers for my study.

## **CHAPTER III**

### **Review of Related Literature**

**(1) Introduction To the Constitution of India (Edition 2001) by Dr. D.D. Basu, published by Wadha and Company Law Publishers , New Delhi.**

This is an authentic book on the Constitution of India. It traces the Constitutional History of India since Government of India Act, 1935. It gives an analysis of the provisions of the present Constitution and also an explanation of the interrelation between the diverse contents. It contains the chapters made by different Constitution Amendments up to 83<sup>rd</sup> Amendment, 2000. It has amply shed light on the philosophy and features of the Constitution and deals with the federal features Fundamental Rights , Fundamental Duties , Directive Principles of the State Policy , Government of the States , administration of Union Territories , the judicature, constitutional explanations of 42<sup>nd</sup> Amendment to the constitution and other important issues like the dilution of Right to Property Act and its conversion into a legal right from Fundamental Right , land acquisition policy of the then Central Government etc., in a scholarly way , The critical estimate of each topic is of immense value to the students of law and political science.

**(2) Indian Government and Politics (1984), by A.T. Philips and K. Shivraj Rao ; Sterling Publishers Private Limited, New Delhi.**

The book studies various aspects of Indian Government and the features of the Constitution of India . It gives a brief survey of the landmarks of constitutional developments and contains a detailed discussion on the formal structure of the Constitution. It also analysis the political system, and explores the role of the parties, the pressure groups. Casteism , regionalism and so on. It has also tried to reflect the developments and trends in politics and the roles of the government of India upto 1982.

**(3) Political Theory and Constitution (1985) by S.D. Jathar and R. Rayaram, Sterling Publishers Pvt. Ltd , New Delhi.**

This is a book on political theories and institutions which have been clearly explained and adequately illustrated. It helps the readers to develop their concepts on various political theories and institutions. It gives a detailed and systematic analysis of various political theories and principles of constitution that helps the student of political science to conceptualize the subject. It is written in a very lucid style.

**(4) Modern Indian Political Thought (1998) by Prakash Chandra. Vikash Publishing House, Private Ltd. Delhi.**

The book is a record of political thoughts of the twentieth century of political thinkers who were very much critical of the British Rule in India, which is historically branded as a rule of oppression, exploitation and discrimination. It contains their ideals and aspirations for a new independent India which, they hope, will restore to the people of India freedom and rights which were denied by the British colonial rule. It also offers a critical and comparative domain of political, economic, and social spheres.

**(5) Indian Government and Politics by D.C. Bhattacharya, Vijaya Publishing House Kolkata.**

The book deals with government and politics in India and with the concepts and structures and the functioning of the political system. It discusses the institutional structures, the constitutional framework and political forces. It also contains some topics on Indian social, political and economic affairs. What is of immense importance of the book is that it offers a detailed analysis of the meaning, value and implication of Preamble, Fundamental Rights and Directive Principles. The striking feature of the book is the author's attempt to analyze constitutional amendments and opinions and verdicts of the Supreme Court of India upon the necessity of the implementation of the Directive Principles of the State Policy in order to ensure social justice to all.

**(6) Democracy Without Associations, (1999) Pradeep K. Chibber , Vistar Publications, New Delhi.**

The book offers some intriguing ideas about the role of the political parties in Indian Politics . It focuses on some social divisions that political parties in India creates. Indian political parties look different because some institutional difference . The role and structure of the state and the nature of social relation , constraint and Indian position. The book also deals with why religion and caste based political parties have come to disseminate the electoral landscape in the 1990s and why catchall parties have evolved.

**(7) Constitutional Government in India (1984) by Dr. M.V. Pylee. Publisher, S. Chand and company limited, New Delhi.**

This is an authoritative works in the constitution of India and the functioning of Government of India . It deals with complicated issues relating to constitutional government in the country. It contains very valuable common constitution .

**(8) Indian politics and the 1998 Election (1999) by Ramashray Roy and paul Wallace . Sage Publications , New Delhi.**

The book offers a critical analysis of General election held in 1998, in terms of changes in the party system and on the basis of social support. It deals with the emergence of a new formula of political alliance and gives stress on the importance of regionalism in Indian politics. The book also explores a wide range of important electoral role of social factors like caste , ethnicity. These constitute , as the book presents it , the main components of Indian politics.

**(9) Indian Political parties (2006) Peter Ronald de Souza and E. Sreedharan , Sage Publications New Delhi.**

The book gives an idea of a 'paralysis' democracy and discusses how the party system at both the national and regional level in India had evolved. It explores the character of parties on the basis of ideology , social base and organizational form and gives an assessment of parties and representation with special

reference to the idea of women. The book also provides an evaluation , the significance and defectives of a representative democracy.

**(10) Towards Sociology of Dalits (2014) by Paranjit S. Dudge, Sage, New Delhi.**

The book is a document of socio economic life of Dalits in Indian society. It focuses on an important point of the relation between the life of Dalits and casteism and the economy of Indian Society. It explores the origin of the practice of untouchability which was supported by tradition and religious ideology. It is also critical of the Indian tradition which is one of the factors for which Dalits in Indian Society are exploited.

**(11) Sociological Probings in Rural Society (2014) by K.L. Sharma , Sage , New Delhi.**

The book sheds light on the new era of rural urban relationship, social stratification in rural India and social change in rural India. It also deals with some critical issues relating to the socio economic life of rural people in independent India.

**(12) The Exemptability of Directive Principle of State Policy by S. Karthikeyan , Advocate , High Court.**

This is a computer generated article which shows how the Supreme Court directs the government to implement Directive Principle of State Policy to render social justice to Indian Citizens.

**(13) Social Protection Floor in India (2011 ) by Sudha Pillai, Secretary of the Planning Commission of India.**

The article deals with social protection being the core issue of social security and throws light on the government initiative and effort to improve living standards of the poor. It gives brief discussion of the programmes launched by the government to secure protection of rights and freedom, justice and equality to Indian citizens.

This is a study that deals with the relation between Fundamental Rights and Directive Principle of State Policy and throws light on judicial behavior and Public Interest Litigation (PIL) which plays an important role in the implementation of DPSP

**(14) Nyaya Deep (2014), National Legal service Authority, New Delhi.**

This volume begins with a project on the issue of manual scavenging deep rooted in Indian society which is denounced as a practice in violations of human rights and human dignity . The survey conducted in this regard emphasizes the abolition of this practice though there is legislation against it. The volume deals with issues that covers a wide area of question that necessitate the provisions of legal aid to the poor and other backward sections of the society. It also explores the cases of violation of human rights and dignity in different states in India and contains some reports on the successful organization of legal aid camps in the separate parts of the country. The volume reminds us that social justice will remain incomplete if the state does not provide for legal aid to ensure legal justice to deserving individuals.

**(15) Eradication of Manual Scavenging in India – the adequacy of law Examined! 2014, K. Mayilsamy, Assist Professor, BMS College of Law, Bangalore, Naya Deep, New Delhi.**

This is a study of overriding importance regarding the violation of human rights and derogation of human dignity. It studies manual scavenging which is a traditional occupation of a particular class of people which belongs to Dalits in India. Prof Mayilswamy denounces it as an inhuman practice and explores and examines how it has tarnished and is still tarnishing the Indian Social life. Manual scavenging is a national shame for India and the state is armed with laws which are adequate for doing away with inhuman practice is opposed to the spirit of the Indian constitution and the principle of welfare state. He warns that the continuation of such practices in Indian Society will lead to the widening of class discrimination and class division and strengthen class division social deprivation and exploitation . The study has been made to highlight how menial work or occupation deters our effort to ensure equality and justice. The entire

study is presented in simple and lucid language with ample illustrations and references.

**(16) West Bengal Correctional Services Act, 1992 and Prison reform in West Bengal , 2014, Caeser Roy, Assistant Professor of Law, Midnapore Law College, Vidyasagar university, Paschim Midnapore, WB.**

This is an analytical study of the meaning and implication of West Bengal Correctional Act, 1992 and focuses on the conditions of prisoners and prisons management in the state. This is a new law to provide democratic and human treatment to prisoners with the noble vision and mission to let them realize their crimes and to effect reforms in them. The study explores and examines some of the progressive provisions in consequence with the new correctional philosophy. It also deals with some practical problems of prison like overcrowding, delay in trial neglect of health and hygiene insufficient foods and inadequate cloth, deplorable conditions of prison staff and sheds light on the conditions of women prisoners and lack of legal aid to the prisoners. What is special about the study is that it traces the commendable role of the judiciary in bridging about prison reforms. Apart from these, Prof. Roy has appended in this study prison statistics in India and salient features of this Act and points out a few drawback of this Act. Finally he concludes that the prisons are like hospitals , prisoners are patients and the prison employees are doctors whose role may prove to be very in causing correction in them. The study is systematic and documentary.

**(17)Democracy and Social change in India (1999) by Subrata K. Mitra and V.B.singh , Sage publications , New Delhi.**

The book deals with the overlapping themes of modernization and democracy in India . Its narrative strategy gives light on specific puzzles on each chapter . The resilience of Indian democracy in the face of the problems of wide spread poverty , illiteracy and religious linguistic heterogeneity coupled with the challenges posed by modernization and accelerated social change , is explained in this book with reference to the cultural, institutional and social context of India's competitive free and fair electoral process. The book also gives an insightful account of how the citizens of India evaluate the structure and process

of Indian democracy. In the beginning of the book there is a theoretical introduction to major schools of thought in the areas of social change. An analysis of how Indians consider their state and their government in terms of reality of social competition for power follows this theoretical introduction. The authors of the book present an empirical analysis of a number of important issues associated with democracy and social change in India .

**(18) Changing Caste: Ideology , Identity and Mobility: 2013 ed , Surinder S. Jodhka . Sage , New Delhi.**

The volume (2) deals with different dimensions of the caste system in India . It discusses in details conceptual and theoretical issues and gives empirical account of different dimensions of castes and throws light on the continuous changes consecutive city life at a large population. The volume is the product of the author's , experiences about the community life which he has social mobility

It has also analyzed the pattern of social mobility among individual communities and sections of the population and focuses the different dimension of the political sociology of caste and identity politics.

**(19) On the Margins: Tribes , castes and other Social categories 2013 , edited by Abhijit Dasgupta , Sage , New Delhi.**

The volume (4) contains eleven essays . It investigates and explores different features of marginalization among the Scheduled castes , the Scheduled Tribes , the Backward Classes, Women workers , minorities and physically challenged persons and others . It discusses discriminations , deprivations and exploitation of which the poor , the weaker sections upon their plight and demonstrates how the deprived classes became active in their social protests and voice against discrimination and deprivation in different sphere of social life.

**(20) Life As a Dalit ed. By Subhdra Uitra Channe ( Scholar- in –Residence, University of South Carolina) and Jonn P. Mencher , Chair , The second Chance Foundation )**

The volume depicts caste society and is based on the life of the Dalits. It focuses on their world view and critical appraisal of their own position and of the higher groups. It deals with caste discrimination in Indian Society, atrocities and alienation in the urban social structure, changes in the life of so called untouchable community . Caste identity , struggle of dalit women for social justice , the clashes between Dalits and the upper caste and the reservations and the new caste alliances in India. The volume is a study of dalit life beset with social injustice and social insecurity.

**(21) Bridging the Social Gap - Perspective on Dalit Empowerment , 2014 , ed. Sukhdeo Thorat , Chairman , Indian Council of Social Science and Research , Nidhi sadan Sabharwal , Director , Indian Institute of Dalit Studies**

The book deals with issues of inter social group inequalities in human development and social discrimination both governing the life of the backward people. It traces incidents of deprivation that characterizes the socially disadvantaged groups in Indian society. Which has been ignored in the National Human development Reports and the State Development Reports. The book throws light upon and explores exclusion linked deprivation of socially disadvantaged of Scheduled Castes and Scheduled Tribes and captures inter social groups inequalities with respect to attainment of human development and human poverty . It analyses economic factors linked with high deprivation of the socially backward classes and finally examines the role of caste discrimination in civil and political spheres. The book criticizes denial of right to development of equal opportunities to the people of backward classes in Indian Society.

**(22) Rescuing Railway Children : Families from Indian Railway Platforms , 2013 by Malco Harper and lilitha lyre , Sage , New Delhi.**

The book is based on the plight of children in India , who run away from homes and catch trains . It presents the issues and challenges of reaching out to these 'railway children' while writing this book , the authors were inspired by the experiences of Sathi , an NGO based in Bengalooru which deserves credit

rescuing many such children with their families . The book deals with close to the stations . It examines carefully

**(23) State of India's Livelihoods Report 2013 (2014), edited by ACCESS PUBLICATION, sage . New Delhi.**

This is an annual publication and aims at documenting recent trends and issues connected with promotion of livelihood of the poor . It is a collection and combination of the experiences and challenges of the livelihood sector. It gives an analysis of case studies and reports of the progress of both government and privately agonized programmes. It causes the current state policy in India, the current economic scenario and employment prospect in 2013. It also explores the links to livelihood and behavior from social protection perspective.

**(24 ) Women and Law :Critical Feminist Perspective, 2014, edited by Kalpana Kannibiram, Director Council for Social Development, Hyderabad, Sage, New Delhi.**

The volume deals the problem of 'women and law' and examines women centered laws and their efficiency . It focuses on violence against society . It contains a range of concessions which includes domestic violence, empowerment and labour , anti discrimination jurisprudence , family laws and land rights , the right to health etc.,. It also examines the complexities in the intersection of women's rights with disability rights and women's experiences of repressive legislation such as TADA.

**(25) 10 Judgments That Changed India<sup>18</sup>.**

This is book written by Zia Mody creates enormous ripples among the legal fraternity and change seekers in our country.

Zia Mody, the daughter of former Attorney General , Soli Sorabjee , dissects and analyzes ten judgments which have had a significant impact on India. The forward of the book was written by Soli Sorabjee who says that 'Judiciary , at one

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<sup>18</sup> Computer generated material

time , was considered and projected to be the weakest branch of the state because it possessed neither power of the purse nor power of the sword. This myth has been abolished’.

Ten Judgments That Changed India has ten chapters , each dealing with a judgment, though it actually covers a number of judgments leading up to the title judgment and in many cases , follow on cases , which are equally important. Thus the chapter on Maneka Gandhi case also covers the ADM Jabalpur case where the Supreme Court ruled that a detenue could not file habeas corpus petition challenging the legality of his detention during an emergency. The chapter of Shah Banu Judgment also covers the Daniel Latifi case which succeeded it. Zia Mody says as much when she suggests that in Keshvananda Bhararti and Golaknath cases ‘the decisions were the kind where the judges primarily decided on the ends and then set out to discover the means to achieve those pre determined ends’. The verdict caused huge anger among the government officials.

When Zia Mody’s narrative reaches the controversial waters of reservation ocean. There are sub headings such as “And Along came the Mandal Commission”, “The Mandal Challenge”, “off with the creamy layer”, etc. There is a nice and neat summary of the Indian caste system, the history of reservations in India, developments after India’s independence and then the grand arrival of the Mandal Commission. Zia Mody stays easy and neutral till the very end when she expresses her view on what she expects Indian policy makers to do regarding reservations.

**26. A Tribute to Mr. M.K. Nambiar by Soli J Sorabjee , former Attorney General of India and Sr. advocate , Supreme Court of India .**

This book by Soli J. Sorabjee is a valuable addition to the history of Indian Constitutional Law and contains a glowing tribute of the author to Mr. Melloth Krishna Nambiyar who began his career as district lawyer practising in a district court in Mangalore and reached the zenith of professional success in the Supreme Court of India by virtue of his incalculable contribution to the evolution and development of Indian Constitutional law , which led the Apex court to

overstep the literal meaning of the Articles 19, 21 and 22 of the Fundamental Rights and impelled it to give a broader reinterpretation of the Articles. The author became immensely impressed by Nambiyar's astoundingly rational approach to those Articles under Fundamental Rights that drew out wider implications therefrom.

In this book the author has chronologically pointed out the landmark cases in the Supreme Court which were deeply influenced by Nambiyar's pointed arguments in the A.K. Gopalan case. Nambiyar's pointed, rational arguments have given a new directions to the subsequent cases, that has ultimately led to the new interpretation of Fundamental Rights guaranteed in the Constitution of India. In the case A.K. Gopalan vs. State of Madras, his rational, sagacious and pointed argument led the Apex Court to be convinced of the fact that no law can influence the Fundamental Rights. The court later admitted the contention that the Maintenance of Internal Security Act, 1971 violated the right guaranteed by Art. 19 (1) d.

A.K. Gopalan case has a wide ranging impact upon the subsequent cases in the High Courts and Supreme Court. It has led to a healthy development of constitutional law, which has ultimately secured judicial acceptance by the Supreme Court. Mr. Nambiyar's arguments have been fully justified. The consequence of this historic case led the Supreme Court to declare section 14 of the Preventive Detention Act as unconstitutional on the ground of the section being in contravention of provisions of Article 22 (5) of the Constitution. Even the judges of the Supreme Court have several times praised Nambiyar for his inordinate and exceeding arguments in the A.K. Gopalan case. Keeping in view the immensely wide implications of Nambiyar's re interpretation of several Articles of Fundamental Rights Soli J Sorabjee's assessment of Nambiyar's contribution to India's constitutional law has been aptly made in simple lucid and unambiguous language.

**(26) Justice V.R. Krishna Iyer on Fundamental Rights and Directive Principles by Shailja Chander. Deep and Deep Publications , New Delhi..**

This is the most important and comprehensive book that I have come across in connection with Directive Principles and Social justice issues. Justice Iyer through his enormous acumen have developed the concept of justice. Mr. 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 direct its policy towards securing the objectives set out in clauses (a) to (f) of the Article. But Iyer's most profound contribution is to trace the history of evolution of Fundamental Rights and Directive principles with special reference to B. N. Rau's observation ; why Directive principles were made to be non justiciable , Shailja Chaunder with reference to Justice Iyer was beautifully given.

**(27) Human Rights And Social Justice: Fundamental Rights Vis-A- Vis Directive Principles by Justice V.R. Krishna Ayer**

The present book gives an universally applicable formula for the removal of various inconsistencies and dichotomies between fundamental rights and directive principles, and provides complete information and up-to-date law with regard to present study. The first part of this book deals with the historical background and present position. The second part comprises in itself the detailed study of each and every fundamental right vis-a-vis directive principles along with comparative table of relevant fundamental rights of foreign nations, constitutional positions of articles 31B and 31 C and inter se relations between fundamental rights and directive principles as a whole. The third part covers within its purview the basic and fundamental principles the social justice and the human rights and various impediments in the advancement of principles of social justice and human rights within the constitution.

The uniqueness of the book is that it has given enormous importance on Article 31C. social legislations including 24<sup>th</sup> Constitutional Amendment Act, 25<sup>th</sup>

Constitutional Amendment Acts, late Mrs. Indira Gandhi's 20 Point Programme hinge on article 31C and 9<sup>th</sup> Schedule of the Constitution of India .

Author wrote " Article 31B was first introduced by 1<sup>st</sup> Constitutional Amendment Act. It validated certain laws that without Article 31A none of the acts and regulations specified in 9<sup>th</sup> schedule or any provisions thereof shall be deemed to be void.

Although the constitutional validity of this provision was upheld continuously in Sajjan Singh, Shankari Prasad , Golaknath cases and Keshavananda Bharati case.

In the case of Minerva Mills Ltd., vs Union of India , it was told that Article 31B was conceived together with Article 31A as part of the same design adopted to give protection providing for acquisition or an estate or any rights therein. Modern Indian Political Thought , Vikash Publishing House,

**(28) Coalition Politics in India: Problems and Prospects Mahendra Prasad Singh, Anil Mishra, Manohar, 2004**

With the replacement of the dominant party system in India, minority and/or coalition governments in New Delhi have become the order of the day. Except for the Congress minority government of P.V. Narasimha Rao and National Democratic Alliance government of Atal Behari Vajpayee, all such governments since 1989 have been unstable. Yet instability apart, coalition governments have been effective in enhancing democratic legitimacy, representativeness and national unity. Major policy shifts like neo-liberal economic reforms, federal decentring, and grass roots decentralization, in theory or practice, are largely attributable to the onset of federal coalitional governance. Coalition governments in states and at the centre have also facilitated gradual transition of the Marxist-Left and the Hindu-Right into the political establishment, and thus contributed to the integration of the party system as well as the nation. The same major national parties which initially rejected the idea of coalition politics have today accepted it and are maturing into skilled and virtuoso performers at the game. In a rather short span of over a decade, India has witnessed coalition governments of three major muted hues: (a) middle-of-the-road Centrist Congress minority

government of P.V. Narasimha Rao, going against its Left of Centre reputation, initiated neo-liberal economic reforms in 1991; (b) three Left-of-Centre governments formed by the Janata Dal-led National/United Front; and (c) two Right-of-Centre coalition governments formed by the Bharatiya Janata Party-led National Democratic Alliance under Atal Behari Vajpayee, a votary of secular version of Hindu nationalism. In the wake of the decline of Congress dominance, the fragmentation of the national party system and the emergence of party systems at the regional level have turned India into a chequered federal chessboard. The past and likely future patterns of coalition governments in New Delhi are suggestive of at least three models of power sharing: (a) coalition of more or less equal partners, e.g. the National Front and the United Front, (b) coalition of relatively smaller parties led by a major party, e.g. National Democratic Alliance; and (c) coalition of relatively smaller parties facilitated but not necessarily led by a prime minister from the major parties formed in 2004 around the Indian National Congress, avowing secular Indian nationalism. The fifteen papers in this book analyse the various dimensions of coalition government at the Centre and in some of the states of the Indian federation against the background of a theoretical framework that seeks to integrate coalitions among parties, castes and communities and tribes, as well as classes at electoral, parliamentary, and cabinet levels. The fifteen papers in this book analyse the various dimensions of coalition government at the Centre and in some of the states of the Indian federation against the background of a theoretical framework that seeks to integrate coalitions among parties, castes and communities and tribes, as well as classes at electoral, parliamentary, and cabinet levels.

**(29) The Oxford Companion to Politics in India: Student Edition Paperback – 7 Oct 2011 by *Niraja Gopal Jayal (Author), Pratap Bhanu Mehta (Author)***

That a diverse country like India has succeeded for over half a century as a thriving democracy raises many questions about the relationship between cultural diversity and social and economic inequality; the robustness of some institutions and the weakness of others; the negotiation of political space, ideologies, and identities by the state, political parties, and civil society; the

capacity of the state to redistribute wealth and alleviate poverty; and the perceptions of India on the global stage. The Oxford Companion to Politics in India provides answers through the most comprehensive survey of the Indian political system till date. The depth and breadth of issues covered range from elections to economic reforms; business and politics to redistribution and social justice; coalition politics to judicial activism; and foreign policy. The 38 incisive essays, written by well-known experts, have proved to be invaluable to students and teachers of political science, sociology, journalism, history, and public administration, as well as general readers. This paperback edition, with a new Preface, revisits the enduring debates in Indian politics that will make this already popular text more accessible to students and scholars.

(30) Bharatiya Janata Party : Periphery to centre by C.P.Bhambri. Delhi : Shipra Publications, 2001

The central question of this book seeks to address is "how have the forces of Hindutva become powerful in the decades of 1980s and 1990s while they were always marginal during the 1950s, 1960s, and even in 1970s. Given the determinedly secular and quasi socialist policies that had emerged through the unraveling of what Rajni Kothari has called the congress system (with its skilled leadership, institutional resources, historical legitimacy, internal coalition, cross sectional mobilization, patron client arrangements, and agenda coherence), through factional infighting, defections, and policy failures. Some have looked at the rising tide of regionalism provoked by parochial parties courting ethnic, regional, primordial sentiments through traditional means. Others have examined the instabilities inherent in the post Congress "post charismatic anxieties". Other have looked at the world wide phenomena of religious fundamentalism skillfully orchestrated in India by a group of activities who were able to channel the myths, symbols, and shibboleths of Hinduism into a political message of chest thumping machismo, cultural pride and Aryan dynasty (quoted in the website)

(31) Rise of the Plebeians?: The Changing Face of the Indian Legislative Assemblies (Exploring the Political in South Asia), 9 Mar 2009

Christophe Jaffrelot (Editor), Sanjay Kumar(Editor)

The review of this book is written following Ajay K. Mehra ( in UNDERSTANDING THE EMERGING CONTOURS OF INDIAN POLITICS , MAINSTREAM WEEKLY , OCTO. 2, 2010)

and is quoted freely by me .According to Mehra the book analyses the question of 'mirror representation' in the State Legislative Assemblies and whether (and if yes how and to what extent) it is changing the power balance and political equations in States. It also unravels the policy impact of the growing 'politics of presence' at a nodal point of democratisation of the Indian society and polity. Taking caste as the key variable, as compared especially with class, the book studies 'how India's caste-based social diversity translated into politics in a dynamic perspective, over more than 60 years, at the State level'. 'Mirror representation' is neither proportionate as yet, nor uniform across States, yet the rules of the political game are not the same now, they appear to have been changing since the 1970s and are decidedly different now, whether or not the 'plebeians', the phrase used by the editors to describe the rise of the 'lower castes', have wrested power. The 'politics of presence' has also visibly impacted the 'politics of accommodation', or Centrism, as the Rudolphs have termed it. The volume consisting of rich data and quantitative analysis indicates that the process of democratisation in India, though stable and functional, has also been slow and incremental.

This analytical narrative of the 'Rise of the Plebeians' in India brings out an uneven and unanticipated process through which the social (or caste) composition of the representatives to the Legislative Assemblies in States from various regions across the country is getting transformed. In the Hindi belt the focus is on Uttar Pradesh, Madhya Pradesh and Bihar; Punjab, in the northwestern region; on Rajasthan and Gujarat; in the Deccan plateau on Maharashtra, Karnataka and Andhra Pradesh; in the areas populated by the Adivasis such as Jharkhand and Chhattisgarh; the Communist-ruled States West Bengal and Kerala; Himachal Pradesh and the NCT of Delhi; and finally, Tamil Nadu where this transformation began early. Aside from analysing the data,

chapters focusing on each of the above mentioned States trace the trajectory of the historical development of caste dynamics in Legislative Assemblies. The emerging narrative brings out the interface between the 'upper castes', OBCs and the Dalits and maps the shift from the predominance of the upper castes to the newly emerging dominance of the OBCs and Dalits. The crucial element that emerges is a new pattern of a dynamic social coalition, wherein each coalitioning segment is crucial for the other in the new power game.

**(32) A new phase of the polity (article) , The Hindu , 22 May 2014**

**In a series of articles over the next few days, The Hindu presents findings of the National Election Study 2014, a post-poll survey coordinated by Lokniti, Programme for Comparative Democracy at the Centre for the Study of Developing Societies, Delhi. The overview of the series by Suhas Palshikar talks about the five markers of this critical election**

In this paper Prof. Suhash palshikar says that in the second decade of the post-Congress polity (1999-2009), elections at last began to produce majorities. The ruling coalitions remained comfortably in power for entire tenures, and by 2009, one of the two main contenders managed to inch ahead of the other in terms of seats and votes. Following that trend, Elections 2014 have firmly pushed the polity back into the era of single-party majority. The post-Congress polity has taken a firmly non-Congress route.

Second, the outcome of 2014 is likely to transform the terms of trade between "national" and State parties. Through the 1990s we witnessed the rewriting of the terms of power-sharing between the two larger parties on the one hand and the many State-level parties on the other. Except for their reach, the distinction between "regional" and "national" parties almost disappeared.

Palshikar further asks : Will that change now? Of course, there is a remarkable stability to the votes and seats shared by non-Congress and non-BJP parties amidst the political upheaval of 2014. However, the roles and leveraging capacity of the State parties will undergo a change. As the structure of competition gets transformed, State-level parties will face their biggest challenges in the coming

years. Some parties have emerged, if not stronger at least intact mostly thanks to their alliance with the BJP. Some others have withstood the rise of the BJP and held on to their own strength.

But it is clear that the ruling party will no more require a coalition arrangement to come to power, Palshikar thinks. In a sense, the National Democratic Alliance (NDA) now becomes redundant. Sure enough, the BJP will not immediately dump its partners. But in the absence of their relevance for the survival of the government, NDA partners will have lost much of their shine.

Besides, State parties will now be pushed back to the corner of their respective States. None of them will have much of a say in the so-called national affairs of policy, or in power-sharing. Their assertiveness will be limited to the matter of Central aid to their respective States. This leaves a huge vacuum in terms of the oppositional space. But previously Palshikar along with Yogendra Yadav says that states and state politics now assume a more significant position in national politics.

THE emerging scenario of Indian politics has two variations in the context of social coalitions and the politics of the coalitioning social components. First, its political manifestation moderates political ideologies, facilitating alliances between contradictory and even conflicting social forces. Second, the rise of intermediary castes and classes creates a social class balance in the economic field as well as an economic dynamics that impacts political alliances and party programmes.

Jaffrelot underlines the pattern in the Hindi belt in a well-articulated Introduction: 'In all these States, the proportion of the upper-caste MLAs has steadily declined from about 40-55 per cent in the 1950s to about 25-35 per cent today whereas the share of the OBC grew from 10-20 per cent to about 20-40 per cent.' The rise of the Bahujan Samaj Party (BSP) has signalled the meteoric rise in the representation for the Dalits. However, there has been a significant change in the assertive Dalit-bahujan alliance. While in 1993 there were no upper-caste MLAs in the BSP, by 1998 15 per cent of the party's MLAs were from the 'upper castes' including Brahmins, and in 2007, which is not covered in this volume, the

BSP supremo transformed the bahujan into sarvajan with great effect. Jasmine Zérinini notes in the chapter on UP: 'The rise in the upper-caste MLAs had been achieved at the expense of SCs whose share in the party's representation in the Assembly had gone down to 30 per cent.' This is what I have referred to as the shift to 'sarvajan'. However, it is still unclear as to whether it is a strategic election-driven shift or an ideological one replacing the BSP's anti-Brahmin rhetoric expressed in the 'bahujan' slogan.

The Deccan Plateau has had a different political dynamics from the Gangetic plain. It has observed the 'unchallenged rule of dominant castes' who have been the rich farmer class. No wonder the emergence of regional parties with their support, such as the Telugu Desam Party (TDP) in Andhra Pradesh, has led to investment of the agricultural surplus in the new emerging avenues in the film, hospitality and construction industries rather than the old established sectors of industries. The TDP could thus forge an alliance between the upwardly mobile backward castes (40-50 per cent of the State's population) and the dominant kamma caste to great effect till the 2004 elections.

**(32) Indian Politics and Society since Independence: Events, Processes and Ideology , Bidyut Chakrabarty , Routledge, 2008**

ISBN0415408679

*Focusing on politics and society in India, this book explores new areas enmeshed in the complex social, economic and political processes in the country. Linking the structural characteristics with the broader sociological context, the book emphasizes the strong influence of sociological issues on politics, such as social milieu shaping and the articulation of the political in day-to-day events. Political events are connected with the ever-changing social, economic and political processes in order to provide an analytical framework to explain 'peculiarities' of Indian politics. Bidyut Chakrabarty argues that three major ideological influences of colonialism, nationalism and democracy have provided the foundational values of Indian politics.*

*Structured thematically and chronologically, this work is a useful resource for students of political science, sociology and South Asian studies*

(quoted in the website)

**(33) India Today: Economy, Politics and Society (Politics Today) Hardcover- 26 Oct 2012**

by Stuart Corbridge(Author), John Harriss

Twenty years ago India was still generally thought of as an archetypal developing country, home to the largest number of poor people of any country in the world, and beset by problems of low economic growth, casteism and violent religious conflict. Now India is being feted as an economic power-house which might well become the second largest economy in the world before the middle of this century. Its democratic traditions, moreover, remain broadly intact.

How and why has this historic transformation come about? And what are its implications for the people of India, for Indian society and politics? These are the big questions addressed in this book by three scholars who have lived and researched in different parts of India during the period of this great transformation. Each of the 13 chapters seeks to answer a particular question: When and why did India take off? How did a weak state promote audacious reform? Is government in India becoming more responsive (and to whom)? Does India have a civil society? Does caste still matter? Why is India threatened by a Maoist insurgency? In addressing these and other pressing questions, the authors take full account of vibrant new scholarship that has emerged over the past decade or so, both from Indian writers and India specialists, and from social scientists who have studied India in a comparative context.

*India Today* is a comprehensive and compelling text for students of South Asia, political economy, development and comparative politics as well as anyone interested in the future of the world's largest democracy.

When India was invented as a "modern" country in the years after Independence in 1947 it styled itself as a secular, federal, democratic Republic committed to an ideology of development. Nehru's India never quite fulfilled this promise, but more recently his vision of India has been challenged by two "revolts of the elites": those of economic liberalization and Hindu nationalism. These revolts have been challenged, in turn, by various movements, including those of India's "Backward Classes". These movements have exploited the democratic spaces of India both to challenge for power and to contest prevailing accounts of politics, the state and modernity.

***Reinventing India*** offers an analytical account of the history of modern India and of its contemporary reinvention. Part One traces India's transformation under colonial rule, and the ideas and social forces which underlay the deliberations of the Constituent Assembly in 1946 to consider the shaping of the post-colonial state. Part Two then narrates the story of the making and unmaking of this modern India in the period from 1950 to the present day. It pays attention to both economic and political developments, and engages with the interpretations of India's recent history through key writers such as Francine Frankel, Sudipta Kaviraj and Partha Chatterjee. Part Three consists of chapters on the dialectics of economic reform, religion, the politics of Hindu nationalism, and on popular democracy. These chapters articulate a distinct position on the state and society in India at the end of the century, and they allow the authors to engage with the key debates which concern public intellectuals in contemporary India.

*Reinventing India* is a lucid and eminently readable account of the transformations which are shaking India more than fifty years after Independence. It will be welcomed by all students of South Asia, and will be of interest to students of comparative politics and development studies.

(34) Coalition Types and Economic Reform in UPIASI Web site  
India in Transition  
**2010 Center for the Advanced Study of India and the Trustees of the University of Pennsylvania**

About IIT

*India in Transition (IIT)*, allows scholars from all over the world, the opportunity to exchange various analyses and innovative ideas about India's current status and growth. A complete archive of issues is maintained here.

*IIT* presents brief, analytical perspectives on the ongoing transformations in contemporary India based on cutting-edge research in the areas of economy, environment, foreign policy and security, human capital, science and technology, and society and culture. A Hindi translation accompanies each published article and can be found on CASI's Web site along with related online resources.

### **Coalition Types and Economic Reform E. Sridharan (Article)**

October 9, 2012

Sridharan raises a pertinent question : Can coalition governments in India be stable? And if so, can they undertake economic reforms and, more generically, policies that have short-term political costs but only long-term benefits? And if they do so, can they remain stable? The withdrawal from the United Progressive Alliance (UPA) coalition government of its second-largest constituent, the Trinamul Congress of West Bengal led by Mamata Banerjee, in September 2012, over policy announcements of reduction of fuel subsidies to tackle the fiscal deficit and liberalization of foreign direct investment, sharply poses these questions.

Sridharan remains concerned about stability of the coalition government. On coalition government stability in general and in India, the literature indicates that on average, the more the number of parties and the less their ideological connectedness, the less stable the coalition. By type of coalition, single-party majority governments are more durable than minority and/or coalition governments on average (and/or since coalition governments can be minority governments too). If we disaggregate by type of minority and/or coalition government, single-party majority governments are on average the most stable, worldwide, followed by majority coalitions, more so than minority governments,

whether coalition or single party. Within majority coalitions, minimal winning coalitions – those that have the minimum necessary number of parties, not necessarily legislators, for a majority – are found to be more stable than surplus majority coalitions, or those that have more parties than necessary for a majority. However, if one changes the literature's standard definition to one in which the exit or entry of parties does not change the coalition if the leading party remains the same, then surplus majority coalitions would be more stable on average.

### **(35) Coalition Politics in India**

#### **Selected Issues at the Centre and the States**

E. Sridharan (Ed.)

Publisher:

Academic Foundation

India is in an era of coalition politics in which state politics plays a major role. This compact book breaks new ground in empirical discoveries about the basis of stable coalitions in Indian states, and also theorises the viability of multi-party coalition governments at the national level in comparative perspective, and examines the dynamics of competition and coalition formation. It consists of two chapters on national-level coalitions and five chapters on states that have had significant experience of coalition politics—West Bengal, Kerala, Punjab, Maharashtra and Bihar. All chapters are based on extensive data collection and interview-based fieldwork with political actors. The key findings are summarised in the concluding chapter, that is, there is a clear pattern across states to the stability of coalitions at the state level over time, and consists of two central factors—stable pre-electoral seat-sharing and portfolio-sharing arrangements. (quoted from website)

### **(36) Why the Rise of Regional Parties Isn't So Bad**

**Adam Ziegfeld**

October 11, 2010 **India in Transition 2010**, Center for the Advanced Study of India and the Trustees of the University of Pennsylvania

Over the past fifteen years, the rise of regional political parties has been one of the most important trends in India's electoral politics. Whereas, thirty years ago, these parties were marginal players on the national scene, today, they are fixtures in national-level governments. Most observers have greeted the rise of regional parties with suspicion; one source of concern is the belief that regional parties reflect narrow regional identities that threaten the integrity of the Indian state. A second concern is that regional parties are thought to bring about instability. However, the evidence in support of both claims is slim, suggesting that the negative influence of regional parties may be overstated.

Regional parties are, furthermore, not to blame for ushering in the coalition era. Congress' decline and the fracturing of the old Janata Party ensured that no single party could win a majority on its own. In the late 1980s and early 1990s, the beneficiaries of Congress' electoral losses were national parties, the BJP and Janata Dal, not regional parties. The rise of regional parties in the 1990s did not truly begin until well after Congress' decline and the advent of the coalition era. Though coalition politics has certainly benefited regional parties, they were not the ones to bring it about.

Coalition government is not inherently destabilizing. Multi-party coalitions offer stable governance in a number of countries; however, in many of these countries, ideological considerations keep instability at bay. For instance, a conservative religious party is unlikely to bring down a center-right government since the party's voters might punish it for joining a center-left coalition or for helping to bring such a government to power. In India – where personalism, caste loyalties, patronage, and vote-buying often figure into elections – such ideological considerations are rarely at play. As a result, parties can credibly threaten to quit one alliance and join hands with another without fear that the electorate will

punish them for their ideological inconstancy. Parties have no reason not to foment instability since they rarely pay a price at election time. Thus, the sources of India's instability, particularly in the 1990s, have not been regional parties, but rather coalition politics in a context in which policy debates and ideological considerations do not drive electoral politics. Regional parties are not responsible for this state of affairs; they have simply exploited it.

### **(37) The making of a 'neo-Hindu' democracy**

SUHAS PALSHIKAR

Here Palshikar contrasts the dominant two party system in two decades. Actually Jeffrelot, Yogendra Yadav, Sanjay Kumar, Irfan nooruddin, Vora, Zoya Hassan, belong to same genre. While they have interpreted BJP's Hindutva politics differently, but the contents and tenor are basically same.

The following footnotes given in this article "The making of a neo Hindu democracy", i.e.,

1. Suhas Palshikar, 'The Defeat of the Congress', *Economic and Political Weekly* 49(39), 27 September 2014, pp. 57-63.
2. Suhas Palshikar and K.C. Suri, 'India's 2014 Lok Sabha Elections: Critical Shifts in the Long Term, Caution in the Short Term', *Economic and Political Weekly* 49(39), 27 September 2014, pp. 39-49.
3. Yogendra Yadav, 'The Elusive Mandate', *Economic and Political Weekly* 39(51), 18 December 2004, pp. 5383-98 and Suhas Palshikar, 'Majoritarian Middle Ground?', *Economic and Political Weekly* 39(51), 18 December 2004, pp. 5426-30.
4. S. Palshikar, *ibid.*, p. 5427.
5. Pradeep Chibber and Rahul Verma, 'The BJP's 2014 "Modi Wave": An Ideological Consolidation of the Right', *Economic and Political Weekly* 49(39), 27 September 2014, pp. 50-56.

6. Yogendra Yadav and Suhas Palshikar, 'From Hegemony to Convergence: Party System and Electoral Politics in the Indian States, 1952-2002', *Journal of Indian School of Political Economy* 15(1&2), 2003, pp.5-44.
7. Rajendra Vora and Suhas Palshikar, 'Neo-Hinduism: Case of Distorted Consciousness', in Jayant Lele and Rajendra Vora (eds.), *State and Society in India*. Chanakya, Delhi, 1990, pp. 213-243.
8. Suhas Palshikar, 'Cleansing Gandhi of Radicalism', *Indian Express*, 7 October 2014, <http://epaper.indianexpress.com/351651/Indian-Express/07-October-2014#page/11/2> etc., **amply corroborates my contention .**

He first looked at the election outcome. Three things strike even a casual observer. One, ever since the Congress party government of Rajiv Gandhi was defeated, a single party majority government has come to power for the first time. Two, even if, as is often the case under the first past the post (FPTP) system, the BJP got 'only' 31 per cent of the votes, this is the highest any party has polled after 1991. Three, and perhaps most crucially, the main opposition of the BJP, the Congress, finds itself hopelessly marginalized and demoralized. Together, these three features make the outcome of the 16th Lok Sabha election not only dramatic but full of possibilities. On the one hand, they indicate the arrival of a political dispensation that may become the new centre of competitive politics. On the other, they suggest that the nature of political competition itself will change. But just as these two developments craft a dominant party system once again, they also contain a possibility that the nature of India's democracy would alter in a major way.

Traditional wisdom about India's politics revolved around the Congress party; even the political strategy of most parties invariably centred on that party. This is best evidenced by the long life of the politics of 'non-Congressism', which emerged originally in the sixties and continued in the seventies. Much of the coalition making since 1989 to 1999, too, was a continuation of non-Congressism. That Congress-centric political calculation and political analysis is now likely to get a burial. In this sense, the outcome of the general election of 2014 has inaugurated a new phase of Indian politics.

For some time now, analysts have written about the decline of the Congress and the halting rise of a 'post-Congress' polity. That process of change has now culminated in the rise of the BJP. Ironically, this is not so much because the BJP won the election (which it indeed did), but more the manner in which the Congress lost! Going down to a historic low in terms of both seats and votes (44 and 19 per cent respectively) and getting wiped out in most states (including even seemingly invincible strong-holds like Andhra and Maharashtra), the defeat of the Congress marks a paradigmatic change in India's politics.<sup>1</sup>

These developments have given rise to a new centre of competitive politics – the BJP. Before we turn to the question of just how durable the BJP victory may be, we need to appreciate that all assembly elections following the parliamentary election of April-May 2014 are likely to have the BJP as a central factor. Assembly elections in both Haryana and Maharashtra in October 2014 have indicated this trend. In Jharkhand and Bihar, the BJP is already a major player, and looks forward to gaining power on its own. In Jammu and Kashmir too, the BJP is set to replace the Congress and, thereby, change the inter-community and inter-region balance in the state.

The real weak spot of the BJP, traditionally, has been its rather narrow catchment area, garnering votes mainly from the upper castes and some OBC sections. This was already attended to in the last general election. Despite the huge upper caste support that the BJP received in the 2014 election, it would be incorrect to accuse the party of being 'a party of *only* upper caste/class' voters. Its support was rather impressively spread across the OBCs, adivasis and scheduled caste voters, and also across the lower income groups.<sup>2</sup> So, in all likelihood, the BJP will occupy a central place in competitive politics, smaller parties would gravitate towards it, state parties would not be willing and/or able to put up a real alternative and the fragmented and disunited opposition is likely to further magnify the dominance of the BJP.

The emergence of such a dominant force does not merely signify the changing nature of competitive politics, it also indicates that the emerging political dominance is likely to be based on more durable changes in the normative basis

of politics. While the failings of the UPA government and the Congress party contributed to the 2014 outcome, the BJP victory is indicative of long-term processes rather than merely contingent factors. In a sense, the interregnum of around twenty-five years since 1990 is the period during which many characteristics of the earlier Congress system were displaced and a new consensus shaped.

The nineties witnessed intense contestation over three issues. One was the claim of the backward classes to power, another was the shift towards a more market oriented economy, and the third was the issue of religio-cultural basis of national identity. Of these three, the issue of economy was rather quietly set aside as most parties chose to adopt the same approach to economic policy during that period, the difference being one of scale, style and emphasis rather than the basic approach. On the other hand, the issue of OBC claims proved to be more durable and complicated.

Over the years, the meaning of democracy has shifted from a consensual and accommodative approach to an exclusionary and militant assertiveness. Compared to 2004, a substantially larger population has tilted towards a majoritarian position today. In 2004, 35 per cent respondents could be identified as majoritarian<sup>4</sup> while in 2014 it has gone up to 52 per cent (author's calculation based on data from NES 2014, CSDS Data Unit). Though there is a sizable presence of majoritarian voters among Congress too, the BJP attracts a greater proportion of majoritarian voters. It has also been argued that socially conservative voters are more likely to vote for the BJP.

More substantively, the new normative regime is poised to popularize a political imagination that would have a majoritarian emphasis as its basis. The majoritarian shift we mentioned above is relevant in this respect. The Jan Sangh always nursed the ambition to shape India's political personality around such majoritarianism. Its ideological position was characterized by two dimensions – one, a deep-seated suspicion of diversity and minorities and two, a fluctuating belief in conservative Hindu tradition as the ideological basis for Indian nationalism. Precisely the same claims are now emanating, not so much through

formal efforts by the party and government but through scattered initiatives emanating from outside. Already, in the short time since the last parliamentary elections, claims have been made about 'all residents of India' being Hindus, and yet it has been argued that non-Hindus should not be allowed to participate in the Navaratri celebrations. Above all, we see the unleashing of a harsh rhetoric on inter-religious marriages. Such signals about boundary maintenance and a majoritarian construction of culture and nation intimate the arrival of a new hegemony.

These are all symptoms of a neo-Hindu ideological manoeuvre. It is 'neo-Hindu' in the sense that it does not always follow religious orthodoxy but nevertheless resorts to it occasionally; it conveniently draws on Hindu religious tradition and symbolism, but moves away from the traditional culture and religiosity if tactically required. Rather than following only Guruji Golwalkar, it draws heavily on the nationalist vision of Savarkar. It is also neo-Hindu in the sense that its main votaries are the non-Brahmanical castes – mostly the OBCs. It mixes the modern nationalist imagination with popular belief in a glorious past and in Hindu mythology, and it adopts a militant, confrontationist posture vis-à-vis perceived adversaries of Hindu nationalism.

For decades, India has been a conservative democracy governed by the upper caste notables coming from the urban bourgeoisie, the landowning aristocracy and the intelligentsia. The democratisation of the 'world's largest democracy' started with the rise of peasants' parties and the politicisation of the lower castes who voted their own representatives to power as soon as they emancipated themselves from the elite's domination. In Indian state politics, caste plays a major role and this book successfully studies how this caste-based social diversity gets translated into politics.

This is the first comprehensive study of the sociological profile of Indian political personnel at the state level. It examines the individual trajectory of 16 states, from the 1950s to 2000s, according to one dominant parameter—the evolution of the caste background of their elected representatives known as Members of

the Legislative Assembly, or MLAs. The study also takes into account other variables like occupation, gender, age , cats, voting pattern, voting behavior, historical trends of voting , over and above the coalition governments.

As stated, I have made use of a number of sources while preparing the research methodology for the study: (i) reference literature; (ii) research periodicals; (iii) abstracts; (iv) government documents; (iv) monographs ; (vii) newspapers and (viii) computer generated reference materials for the identification , selection and cultivation of related literature.

I have studied a number of research periodicals and journals which have provided in-depth ideas about recent developments in the socio- political situation of our country. These are dependable sources for reports on recent research studies. In India many periodicals are published by some authors and institutions which have provided wide circulation of researches in political science and exchange of experience among research scholars , teachers and others interested on Indian politics and Constitution of India . Abstracts have provided me brief summaries of the contents of the research studies or articles and serves one of the most useful reference guides for me and keep me abreast of the work being done related my field of research. Many professional journals , research surveys , news papers and pamphlets published in India and abroad have provided me excellent sources of information about my research . Government documents and monographs are also major sources of information. They include official records, court judgments and legislative decisions.

In the dissertation, **Coalition Politics and the Issues of Social Justice....** I have made use of maximum references of news papers, magazines and periodicals. I found **The Hindu Businessline** very useful in studying coalition politics although this is basically and economic new paper. Also I have made use of a number of sources while preparing the research methodology for the study: (i) reference literature; (ii) research periodicals; (iii) abstracts; (iv) government documents; (iv) monographs ; (vii) newspapers and (viii) computer generated reference materials for the identification , selection and cultivation of related literature.

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### **3.1 Importance of Survey and Review of Related literature**

The review of related literature has acquainted me with the current knowledge of the field in which I have conducted the research. It has provided me the theoretical and empirical framework from which the topic of my study has been derived. The review has eliminated the risk of duplication of what has been done. It has helped me as a researcher to define the scope of the study and limit it. The study of research literature has updated my knowledge on the results of the work. This background information has enabled me to state and formulate the objectives and hypotheses of research study. The comprehensive review of the related literature has given me a scope to investigate the role of coalition politics in India since 1977 in terms of the governments initiative to implement the "Directive Principles of State Policy " so as to do full social justice to each individual of India. The study of related literature has given me an understanding leading to the research methodology.

A careful review of the related literature reflected in research journals, books, dissertations, theses, newspapers and other sources of information on the topic of the research study to be investigated is one of the important steps in the

planning of my research study. It would have not been possible for me to plan my research study if I failed to study and review the books and articles related to it.

### **3.2 Meaning and importance of Hypothesis**

Hypothesis is the presumptive state of a proposition or an intelligent guess, based on the available evidence, which researcher seeks to prove through a study or investigation that the ensuring study may lead either to its rejection. The hypothesis is precisely defined as a tentative or working proposition suggested as a solution to a problem.

Hypothesis is formulated only as a suggested solution to the problems with the objective that the ensuring study may lead either to its rejection or to its retention. It helps us to locate and identify the variable involved in the study and suggest me to do logical procedures that are to be employed in the conduct of the study.

The role of hypothesis is consisted to be utmost importance. It provides direction to the research. It helps us in realizing the objective of study and also in determining type of the data needed in the conduct of research. It helps us to relate relevant facts and variables that we need in the study. Hypothesis provides a basis for selecting the research design and data analysis techniques. It also helps us to delimit the study with respect to number of variable and area of investigation.

Hypothesis provides rational statements, which guide us in the tentative explanation of facts and phenomena. "Such explanations lead to generalizations if held valid after testing". Hypothesis helps us provide basis for reporting the conclusion of the study. Hypothesis are the product of considerable speculation and imaginative guess work based on available literature, experience, and research evidence. Hypothesis should be formulated that it can be tested or verified. Such a hypothesis enables us to determine whether those consequences that are derived deductively, actually occur or not. If the hypothesis is not

testable or verifiable, it would be impossible either to contradict it and hence it help us to draw conclusions.

### **3.3 Hypothesis Formulated on the Research Study**

(a) The British Colonial Rule in India was one of exploitation and oppression. The people of India were ruthlessly exploited and inhuman treated. They were denied even minimum rights to live in their own lands as human beings. They were hated as inferior to the Europeans and never treated on a footing of equality. The British colonialism had a damaging impact on Indian traditional social and educational system. It appeared to the Indians not only economically ruinous but also politically unjust. The Indian political thinkers during the British rule in India voiced against ruthless British exploitation. They called for country's freedom from the colonial rule to secure justice to Indians.

(b) The Preamble to the Indian Constitution is the declaration of the framers of the constitution to continue the country's sustained effort to secure to all Indians social, economic and political justice to uproot equality through socialism, to preclude discrimination on the religious ground through secularism and to establish democracy through unrestricted people's participation in politics. We should not stick to the view that the Preamble is a mere borrowing from the Irish Constitution into the Constitution of India because every Constitution begins with a Preamble. The Preamble is added to our constitution with definite aims and objectives to ensure social justice to Indians which they were deprived by the British imperialism. It is regarded as the key to unlock the minds of the framers of the Constitution and is expressive of the dreams of a new order they had been dreamt of for years. Hence the Preamble is a very significant part of the Constitution of India.

(c) The 'Directive Principles of State Policy', though not enforceable in the court of law is considered to be fundamental as guiding principles for making and administering laws. The principles as enunciated in the Directive Principles are regarded as the ideal or goal of free India and aim at combining political justice with economic and social justice. This combination will pave the way for India to

secure an egalitarian society. The “Directive Principles of State Policy” constitutes very comprehensive political, social and economic programmes for India. The Central government and the state governments have taken various measures to implement a large number of the Directive Principles and much remains to be done to establish a social order based on social and economic justice.

(d) The Constitution of India upholds the dignity of the individual by guaranteeing certain fundamental rights to all citizens irrespective of caste , creed, religion , sex, etc. The Fundamental Rights have helped to a great extent, in the consolidation of democratic principles and roused the political consciousness of the people.

(e) Public Interest Litigation, a distinctive innovation by the Supreme Court, aims at ensuring social justice. It has been playing significant roles in protecting the rights of the individual against the executive and against oppressive legislation. Hence PIL is intended to ensure basic human rights, constitutional as well as legal to those who are in a socially and economically disadvantaged position on account of poverty , disability or other special economic impediments. On the basis of PIL the area of judicial intervention has been immensely widened.

(f) Free Legal aid Services constitute a very effective way to the guarantee of legal justice to the poor , helpless women and other eligible persons of India. This provision aims at legal justice as a step towards social justice.

(g) Coalition politics has introduced a new political situation—a situation to secure political, social and economic justice to people. Over the last two decades the coalition government has launched several programmes which aim at keeping directly the problems of poverty, unemployment, disease and illiteracy. If coalition politics succeeds in consolidating its political ground, many more directive principles are expected to be implemented as the attempt to ensure social justice to people. Coalition politics, despite its weakening impact on the stability of government has acted as positive force leading the Union government to implement a large list of Directive Principles.

**Hypotheses on the Study :**

- 1) The Directive Principles of State Policy as enunciated in our Constitution are designed to promote all- round welfare of the people of India , especially of women , farmers , daily wagers. The programmes and schemes already launched in India aim at poverty alleviation , women empowerment, health security, social security and social justice.
- 2) Several programmes launched and introduced by the Central Government as well as by state governments since the dawn of coalition politics in India have substantially contributed to the social and economic development of people especially of those who are socially, educationally and economically backward.
- 3) Pro- people programmes introduced and being implemented draw their inspiration from the Directive Principles of State Policies. Coalition Politics in India may be called a significant event in the line with the government's special emphasis on socio -economic , socio cultural and socio - educational uplift of the weaker sections in the country.
- 4) Coalition Politics led and is also leading the central as well as the state governments to adopt programmes from time to time with the aim to remove inequalities from our social life and thus to ensure social justice to all.
- 5) Many schemes launched by the Central Government as well as by the state governments have paved the way for the guarantee of people's basic rights of which a section of people have long been deprived.
- 6) There have been some schemes and programmes already implemented , which provide legal justice to people who were otherwise unable to get justice from the court of law.
- 7) Many programmes and schemes which have already been announced by the Central Government as well as the state governments are welcomed and greatly appreciated because those

will , if properly implemented , usher in a new era of equality and justice in our social and political life.

- 8) Almost all welfare programmes and schemes which are implemented , being implemented and announced are based on the Directive Principles of State Policies. They have strengthened human rights and given many articles of the directive principles legal validity and constitutional status.
- 9) The implementation of many articles of the Directive Principles through the government's programmes and schemes directed towards social welfare leads to the solidification of Indian socialism and the removal and banishment of many social evils like casteism , racialism , communalism, etc from our society.
- 10) The Government has already introduced a number of programmes and schemes for minorities which have strengthened secularism and the secular character of the country.
- 11) Some programmes to combat illiteracy and to provide , compulsory education to all children not only increased the rate literacy but also ensures education to all. This has been stated in our Directive Principles.
- 12) The programmes already introduced need to be kept from the ambit of narrow politics.

### **3. 4 Data Collection and Data Analysis**

Data collection is an indispensable of the researcher. He is to collect data or evidences from reliable sources. The information or materials which the researcher collects are correctly structured. They need to be analyzed and validated to establish the hypothesis.

As a researcher, I have collected relevant books from libraries , materials from reliable sources like magazines and research journals on economic , sociology , political science and laws , news papers and studied those carefully to strengthen and update my knowledge of the area of research study.

Besides government documents and reports , judgments of Supreme Court , views of judges of the Supreme Court on the meaning , implication, role , importance and value of the Preamble to the Constitution, the Fundamental Rights and the Directive Principles of State Policy in redressing social, political, human and economic justice to the people of India. The Constitution of India under the headings of Preamble, the Fundamental Rights, and the Directive Principles of State Policy has laid emphasis on building up an egalitarian society and on the concept of socio economic justice and also on minimization of social disparity among people of all classes and communities. The materials which I have so far collected and studied validate that important social security , poverty alleviation and social welfare measures which are being implemented by various Ministries and Departments of Government of India , state government and civil society.

The data or evidences which I have collected shed light on the poor and pitiable conditions of children and women in the Indian society. In the words of Ram Ahuja –“ Women in India have been victims of humiliation , torture and exploitation for as long as we have written records of social organization and family life”. This is the real picture of the condition of our women in society. The government of India has made laws to ban torture on and social injustice to women.

Law has been framed to proscribe child labour and enactment has been made to provide education free of cost to all children of India. Sarva Siksha Mission (SSA= Education for All) is a national programme intended to provide education to all children . The Right to Education (RTE) Act, enacted in 2009 gave a statutory base for providing education. Many other welfare programmes to render social justice to all have been launched as parts of the implementation of the Directive Principles of State Policy. The Indian National Food security Act 2013 is an important implementation of Directive Principles to ensure the provision of subsidized food grains and the Supreme Courts’ recognition of the transgender as the third gender ) April 15, 2014 ) is one of the most remarkable judicial decisions to protect their rights as human beings. I have discussed this in details in separate chapters in this research study.

## **CHAPTER – IV**

### **Denial of Social Justice to Indians in British India**

India has a long history of deprivation , exploitation , oppression , bloodshed and above all violating rights, strangulation of voice of freedom and denial of justice . Foreign power , in different periods , invaded India just to exploit the Indians and in the process of exploitation they unleashed the reign of terror , oppression and carnage. During British period rules were promulgated to deny Justice to the Indians . The words freedom , justice , rights etc., were deleted from the lexicon of the British Indian cultural , social and political ethos.

#### **4.1 British rule: A Rule of Exploitation and Injustice**

The British Rule in India may be interpreted as the dark and disastrous time for Indian people. It was the rule solely aiming to strengthen the British Imperialism at the cost of the social security and social justice of the people of India who were everywhere in society crushed by poverty and exploitation, denied the minimum amount of social justice, deprived of rights as human beings and humiliated as inferior creatures not better than animals that we keep, tame and domesticate. No plausible argument whatsoever could challenge the cruel, inhuman and discriminatory reality of the Indian social life in British India.

The Conquest of India by the British and their continued presence in the country thereafter, opened a chapter of sustained economic exploitation of and political domination over the Indian people. The invader colonized India and began exploiting the country only to make Britain an economic giant. They had stayed in India for about two centuries but never sought assimilation into Indian society. They had continued to maintain a distinct British or colonial social identity. They had ruled India as rulers and had been least interested in the socio-economic development of Indian social life. Social welfare or security for the people of India was perhaps not their concern. What was the supreme concern for the British colonial power in India was to firmly establish its rule in the country and to exploit the country to the maximum extent. We find no

attempt or initiative of the Britishers in India to become an integral part of the social and cultural fabric of India.

The history of the British rule in India has given us a grim picture of Indian social, political and economic life. The British rulers almost did nothing to develop Indian society dominated by obscurantism and superstition and to adopt and introduce constructive education policy in order to develop and spread education in India to unify caste-ridden society to awake socio-political consciousness in the Indian people and to secure them social justice. The Western education that the British rulers introduced in India was intended to strengthen and facilitate the British administration in the country. The purpose was to consolidate the British imperialism in India and then to continue exploitation unabated . No initiative was taken to narrow the gap prevailing Indian society between the rulers and the ruled in British India on the footing of equality and justice.

#### **4.2 Impact of British rule on Indian Social Life**

British imperialism in India harmed Indian social life and the structure of society which was governed by social rule framed and enforced to uphold social security, peace and justice, though the nature of the society feudal since pre British period. It does not mean that the pre-British society was exploitation-free and social justice was the prevailing feature of the Indian social life. Exploitation that prevailed in the society was limited to the small region and to the small extent and social injustice was not reduced to the inhuman level. Social stability which was an aspect of Indian society was conducive to social justice and social security.

The advent of British rule in India initially proved disastrous as it was the rule meant to exploit the Indians. It powerfully destabilized society in several critical aspects. It exercised a destabilizing effect on the Indian social system in general. The British rulers looked upon the Indians as somewhat inferior-natives. The Indians and Europeans were never treated on a footing of equality. Consequently, the seeds of social inequality and discrimination were sown,

watered and nurtured, and the evils of it have vitiated not only the pre-independent Indian society but the post-independent Indian society as well. The British devised a system of education which developed the indigenous system of education which was praised by scholars like Hieun Tsang in ancient time and Al-Beruni in the medieval period. They introduced English education to produce clerks to serve their commercial and political interests. The immediate impacts of English education were (I) disintegration of the existing system of education and (II) the growth of a source of their inherent inferiority in the minds of Indians themselves.

The British laid railways, developed road communication and introduced posts and telegraphs, not to develop Indian social and national life but to meet the needs of administration and commerce. A wide network of roads was built up to facilitate quick movement of the army, though these activities to improve the system of communication were of great necessity for the improvement of the infrastructure of British administration in India. "The growth of manufacturing industries and consequent urbanization and the land settlement system introduced by the British inevitably led to the disintegration of the system of joint family in India. The new system also led to the emergence of a powerful middle class consisting of absentee zamindars, lawyers, teachers and traders." The British imperial expansion was the direct consequence of maturing capitalism in England. The British needed India as a secure market for their surplus industrial products and also as a source of supply of cheap tropical raw materials. In this respect, the British exploited the working class, the agrarian class and the weaker sections of the society. Workers were subjected to inhuman work exploitation in British industrial institutions and paid far less in comparison to their labour. The motive of British rule was to bring about prosperity for the British bourgeoisie at the cost of the Indian peasants and poor artisans. This deprived class was denied justice everywhere. The people of India were beset with social insecurity and victims of social discriminations during the British rule in India. Crisis of food and shelter was the all-pervading reality of Indian life.

### **4.3 Impact of British Rule on the Economic Sphere of Indian Social life**

The consequences of economic exploitation by the British colonial rule eroded the foundation of both rural and urban economy of India. The East India Company almost sucked the blood of Indians. It made all ruinous attempts to exploit the country with zero intention to render some services to the people of India. Rights peculiar to human beings were outrageously denied to them. Even prisoners of war are better treated than the Indians were treated by the Company. Sir Lewis rightly observed that "No civilized government ever existed on the face of the earth which was more corrupt, more perfidious and more rapacious than the government of the East India Company". The same is more or less true of the subsequent British rule till independence in 1947.

The British colonial rule in India exposed the ugliest face of British imperialism. The British rule in India was designed and motivated only to exploit India, and to oppress the people of India. The British oppression on Indians crossed all human limits and for them, equality, liberty and justice became words of dream. India was subjected to the most ruinous economic exploitation. Indian agriculture, industry and commerce – all had to bear the brunt of British exploitation.

Indian agriculture was most affected by the British rule. The British introduced different types of land revenue system in different parts of India – all intended to earn and collect the highest possible revenue at the cost of Indian peasants and Indian agriculture. The peasants' interests were always ignored and denied. Lord Cornwallis introduced the system of Permanent Settlement in Bengal. This system created a class of zamindars who were only interested in realizing ever-increasing revenue from the helpless peasants and did not have any interest in the improvement of land or the condition of the helpless peasants or tillers. The resumption of rent free land by the Company also had a tremendous debilitating effect on India's village economy. The Indian rulers had granted Brahmin and Muslim saints and other noble people rent-free lands in recognition of their scholarship and distinguished services to the State. The Company, in its bid to

raise as much revenue as possible resumed the rent-free lands. This resumption recommended by the Indian Commission of 1852, deprived as many as 21000 rent-free grant- holders of their livelihood. Indian traders were denied justice because of the unfair policy of trade and commerce of the political rulers. The colonial rule not only destroyed Indian industries, but played havoc with Indian agriculture and village and cottage industries, and thus snapped the backbone of Indian economy. Indeed before the advent of British rule, agriculture and cottage industry were the pillars of the Indian economy. The British rule ruined both the trade policy that was formulated to unduly favour British exporters and led to the ruin of Indian industry. The land revenue system which the British introduced ruined Indian agriculture. The British land revenue system created a class of exploiting zamindar class with no interest in the development of either the land or the cultivators or tillers of land.

#### **4.4 Impact of British Rule on Indian Politics**

Colonialism in India was an economic, political and cultural phenomenon. Its history is the history of the conquest of India by the East India Company. It paved the way for the British colonial rule and eventually of the whole of India. Having acquired the vast empire of India, the Company devised suitable methods of government to control and administer it. The main objects of the administrative policy were to increase the Company's profits, to enhance the profitability of its Indian possessions to Britain, and to maintain and strengthen the British hold over India. The company's administration was structured, shaped and developed in order to facilitate exploitation of the resources of India.

The purpose of the British Raj was the exploitation of Indian resources to serve British economic and political interests. As a result, the economic policies pursued by the British imperial government transformed India by the end of the nineteenth century into a classic colony. Though the British rule unified India politically, the Indian economic and social development was completely subordinated to the interests of capitalists of Britain. Indian agriculture was highly taxed for imperial interests. The transformation of India's economic and social structure within the overall parameter of colonial relation to which India

was subjected in the words of Andre Gunder Frank to the underdevelopment of India or 'the development of underdevelopment'.

The people of the country were exposed to ruthless exploitation. This generated in them intense animosity toward the British rule. The people resented the discriminatory attitude of the British administration towards the natives. Indians were not appointed to the high posts in British administration in India. Even through the Charter Act of 1833<sup>19</sup> or the Queen's Proclamation of 1858<sup>20</sup> it was assured that no discrimination would be made on grounds of race, colour or religion but in reality, Indians were not even given the post of police superintendent or any army post above that of a sergeant. This was combined with the total denial of political rights of the Indians in the British administration prior to 1858. They had no right to send any representative to the Council of the Governor or the Council of the Governor General. Dr. R.C. Majumder commented "All the while the Indians were mere passive onlookers – they had no place or power in the administration of their own country." Thus it is quite clear that during the British rule the Indians were deprived of political rights and became victims of discrimination. They were denied equality and justice at all levels in the British Raj.

Because of ruthless economic exploitation Indian trade, industry and agriculture suffered limitlessly and this had an adverse impact on Indian Indigenous economy and caused widespread poverty and crisis of food that often gave rise to famine which cost unaccountable lives. The British Government did nothing to combat the deplorable conditions of Indians who were reduced to destitution. This was undeniably one of the factors behind extreme poverty of Indians. R.C. Dutta in Economic History of India and Dadabhai Naoroji pointed out that the British rule was bleeding India white. S.N. Banerjee charged that the British were treating Indian as "helots of the land, the hewers of wood and drawer of water."

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<sup>19</sup> The Charter Act of 1813 legalized the British Colonization of India and the territorial possessions of the company were allowed to remain under its government but were held in trust for his majesty, his heirs and successors" for the service of government of India.

<sup>20</sup> The important feature of queen's proclamation were the following. The Act laid down that hence forth India shall be governed by and in the name of queens

“Economic discontent was compounded by political discontent generated by the British policies. British rule appeared to the Indians not only economically ruinous but also politically unjust.” Lord Dalhousie’s ‘Doctrine of Lapse’, Lytton’s Arms Act and Vernacular Press Act<sup>21</sup>, etc. are but few instances of how the British regime rode roughshod over values and aspiration of the Indian people. They were subjected to racial discrimination, the result of which was their deprivation of equality with the British people. The defeat of the Ilbert Bill which sought to give the Indian magistrates the power to try white convicts clearly demonstrated that the British looked upon the Indians as inferior people. S.N. Banerjee protested – “No self-respecting Indian could sit idle under the fierce light of that revelation. “Lala Lajpat Rai in 1920 described the British Government as a ‘Satan’.

#### **4.5 Views of leading Indian Political thinkers on the consequences of the British Rule in India**

The British rule had a demoralizing, destabilizing and disorganizing impact upon the socio-economic, socio-cultural and socio-political life of Indians. It was more a curse than a blessing for Indians. Though it is held that the British rule produced some notable beneficial effects as it powerfully contributed towards bringing about a political unification to a politically fragmented country and brought India in contact with the West, and this aroused India from medieval slumber, it was held responsible for the miseries of people. It was a rule to be branded as tyrannical, exploitative and purely undemocratic.

#### **4.6 Views on Education**

The introduction of English system of education was a landmark in the history of modern Indian education. Through English education the British transmitted the culture and temper of the European Renaissance and the reformation to the people of India. English education led them to be acquainted with the ideas of

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<sup>21</sup> In 1878 Vernacular Press Act was passed. This Act empowered the Magistrate to secure and undertaking from the editor, publisher and printer of a vernacular newspaper that nothing would be published against the English government.

Bentham, Mill and Carlyle and the concepts of democracy and rule of law. The feeling of patriotism and the sense of nationalism was one of the valuable gifts of the British rule in India. The modern Indian nationalism came to appreciate the value of ideals like liberty, democracy and rule of law. English education introduced in India, paved the way for India's regeneration and led India to experience a socio-cultural renaissance which acted as the soil for the growth of Indian nationalism. English education proved to be an inspiring force for great Indians to uproot social evils from Indian society. Raja Ram Mohan Roy fought against the practice of Sati and finally succeeded in abolishing it. Vidyasagar introduced widow marriage and M.K Gandhi did away with untouchability.

#### **4.7 Adverse Impact on Indian Socio-economic life**

Here almost ends the good effects produced by the introduction of British imperialism in India. The major and all -pervading effects of the British rule on the Indian social, political and economic life are damaging and destructive. The British rule sapped the Indian economic strength and gave birth to various social discriminations and inequalities. It widened the gap of class division and created a new class called the capitalist class which was out to exploit and oppress the weaker and the working class in the Indian society. The Indian society became a ground for class conflicts. The weaker sections of the society were subjected to political oppression and socio-economic injustice. Economic deprivation and social injustice reigned supreme in the society. The British government did nothing to ensure social security to the people of India. Hence, the British rule in India might be interpreted as one of disastrous impact upon India as a whole.

The Indian political thinkers were very much critical of the British rule in India. Most of them condemned exploitation, oppression and discrimination which gripped the social life in India. They advocated not only political democracy but also economic planning and socialism in order to secure social security and justice for the people of India. They viewed that the British rule was responsible for India's economic ruination and political subjugation. They demanded the British to stop exploitation, social and political discrimination and to ensure equality, liberty and justice to all.

#### **4.8 Views of Bankim Chandra Chatterjee on British Exploitation and Oppression**

Bankim Chandra Chatterjee propagated and preached the ideals of political freedom and social principle of equality, which form the basis of social justice. To him, equality does not mean equality of circumstances but equality in terms of equal rights and equal opportunities. This concept of equality means equal treatment to persons with similar socio-economic standing. He opposed the exploitation of humans by Brahmans and also by the capitalists, because this exploitation was motivated by the selfishness of the exploiters. He condemned caste division which facilitated and perpetuated exploitation and oppression. The framers of our Constitution sought to adopt a number of measures to prohibit and preclude discrimination and exploitation. Vivekananda championed the cause of the emancipation of the poor and the downtrodden.

#### **4.9 Naoroji , Gokhle and Lajpat Rai's Criticism of British Rule in India**

Naoroji was opposed to imperialism and he advocated the concept of moral foundations of political authorities. He was very much critical of the British Political structures, which , according to him, were based on injustice, inequality and inhumanity. He was the first to formulate an economic interpretation of Indian politics. He was also the first to build up the theory of the economic foundation of Indian nationalism. He was the first Indian politician to draw the attention of Indians and that of the Britishers to the drain of Indian's wealth to Great Britain. This drain resulted in poverty of the people of India. This theory pointed out that Indian economy was subjected to a heavy drain which retarded the growth of capital formation in the country. Thus he analyzed the causes of Indian poverty. He also emphasized the concept of natural rights. Govinda Ranade emphasized social mobility, urbanization, enterprise , freedom of thought and expression to bring about growth in the economic sense. He also emphasized that industrialization was the essence of economic development; it was a key to the removal of India's mass poverty and economic progress. According to him, non-industrialization and non-modernization of agriculture

were the main reasons for the poverty of the country . Gokhale was the founder of the framework of the basic concepts of the welfare state in India and an ardent advocate of industrialization through a judicious policy of protection of the infant industry and public support for home-made goods.

#### **4.10 Views of Aurobinda , Gandhiji and Tagore**

Lajpat Rai showed the necessity of the educational, social and economic uplift of the country. Aurobindo Ghosh pointed out the flaws of the capitalist system of economy and severely criticized authoritarianism, concentration of power and increasing control of bureaucracy. However, he respected the egalitarian philosophy of socialism. Rabindranath Tagore denounced imperialism and exploitation of man by man. He pleaded for liberty of thought and action and liberty of conscience . Gandhi denounced capitalism and parliamentary democracy of the liberal variety. He was against greed for material wealth, gigantic industrialization, ecological degradation and bourgeois democracy. He was opposed to both centralization of political power and urbanisation of economic powers. He showed the necessity of rural reconstruction and a social and economic order. Behind these views there was a deliberate attempt of Gandhiji to make the people of India aware of the capitalist policy of the British colonialism towards continuous exploitation of Indians .

#### **4.11 B.R. Ambedkar's Reaction to British Exploitation in India**

B.R. Ambedkar was very keen to establish a genuinely liberal and democratic system of governance in India. He was the champion of the untouchables. His scholarly writings, his erudite speeches, , his leadership and his constructive campaigns for social justice, the weaker classes of the Indian society made the whole nation aware of the political, economic and social problems of the untouchable community. He sought to vindicate people's dignity, right and equality in social relations and vehemently opposed class discrimination that dominated the Indian social life. He fought for the cause of social equality and ultimately succeeded, to a great extent, in ushering in a silent revolution in Indian society. He stood for the social liberation, economic emancipation and

political advancement of the deprived classes whom the British colonial rule attempted to isolate from Indian mainstream with the foul intention to weaken the unity among Indians.

#### **4.12 View of Acharya Narendra Deva**

Acharya Narendra Deva who was a bitter critic of British rule in India, believed in democratic socialism and favoured decentralisation of power and responsibility. Though he was influenced by the Marxian ideology of class struggle, he was opposed to totalitarianism. He believed that decentralisation in administration and economic sphere alone would save the state from totalitarianism. It was his firm belief that for the maximisation of production of wealth and human welfare socialisation of industry and planned economy is indispensable. In his opinion, co-operatives are an essential factor in socialism. His aim was to establish an industrial democracy in India.

Acharya Narendra Deva, who was an outstanding socialist intellectual stood for social ownership and opposed trusteeship idea as advocated by Gandhi. He believed that property rights should be in consequence with national interests. He stressed the necessity of the end of exploitation and oppression of the working classes which is indispensable for social justice and security. "He attempted to give the Indian Freedom Movement a socialistic orientation. His emphasis on economic programme for mobilising mass action enabled him to combine the nationalist freedom struggle with the agitation for emancipating the working class and peasants."

#### **4.13 View of Dr. Rammonohar Lohia**

Dr. Ram Manohar Lohia, another eminent socialist intellectual, propagated socialist thought in India. He advocated the significance of a decentralised economy based on the resuscitation of cottage industries. He was opposed to both capitalism and communism which used to dilute the value and importance of cottage industries which play a constructive role in enabling rural people to attain economic self-reliance. The British colonial rule was so much destructive for Indian rural economy and social progress that it sealed all passages for its

revival for many years in independent India. Dr. Lohia realized that the end of British colonialism in India could alone protect the country's economy, safeguard the social and economic interest of people and paved the way for rights and social justice for the people of India.

Dr. Lohia stood for egalitarian society --equality between sex, equality between classes and every other kind of equality was dear to him. He strongly opposed the caste system of Indian society. According to him, caste represents restricted opportunity, constrict ability, and constricted ability further restricts opportunity when caste prevents opportunity and ability that are restricted to ever narrowing scope of opportunities for the people. The British rule prepared the ground for further casteist problem and the problem of class division in Indian society. According to him, "Caste turns a country into the arid desert of intellectual inadequacy." Lohia pungently lambasted and denounced caste oppression and deprivation in British India. He believed that Indian political failure was doomed without the uplift of the shudras, harijans, the tribal population and other backward classes. He advocated professional treatment for the downtrodden to enable them to act at par with the rest.

Dr. Lohia stood up as a lone and inveterate prophet of social justice. He championed social equality and crusaded against caste and sex discrimination. He always stood for all kinds of liberties, economic equality and uplift of the deprived and the neglected classes. His socialistic principles inspired the political leaders and the constitution framers of India. His socialism by and large was based on humanistic foundations which sacrificed the interest neither of the individual nor of the society, neither of the country nor of the world. As an Indian socialist thinker, he advocated the synthesis of political liberty and economic reconstruction.

Dr. Lohia was opposed to capitalism which leads to centralization, mass production and profits. He was for decentralisation, social welfare, small machine-technology and economic equality. He held that capitalist competition leads to increased selfishness and greed which are opposed to the foundation of the socialist order, viz., social equality and prosperity. To him, socialism is

superior to capitalism because socialism is not based on exploitation nor does it allow discrimination and inequality which characterized the British rule in India.

#### **4.14 Jaya Prakash Narayan – a champion of democratic rights of Indians in British India.**

Jaya Prakash Narayan was the foremost leader, propagandist and spokesman of Indian socialism. He was inspired by M.N. Roy and deeply impressed by the Marxian philosophy of revolution. But he did not admit or recognize Marxism as an appropriate solution for India's problems. This made him change his ideology in favour of democratic socialism. He regarded the British rule in India as an evil. In post-independent India, he had emerged himself as a new force for social justice and democracy of which the people of India were deprived in British India. In the early 1970s, he played a crucial role of a valiant fighter against political autocracy and administrative corruption and the champion of people's democratic rights against the infamous 'internal emergency' imposed by late Prime Minister Indira Gandhi. During this phase of his life he translated his unique ideology of 'Total Revolution'. The idea 'Total Revolution' aims at bringing about a complete change in the prevailing system of Indian society. It is not only a system of social and economic reconstruction of the Indian society but also a philosophy of moral and spiritual rebirth of the people of India. According to Brahmanas, writer of the book entitled "Towards Total Revolution" he states that total revolution is essentially a people's movement and not a partisan movement, aiming at a thorough social transformation in every human activity, economics, politics, education, culture, social relations and other social realities related to social justice. It visualizes setting up of a real and effective people's power for the uplift of all. In short, Narayan's total resolution is a blend of seven revolutions – civil, economic, political, cultural, ideological, intellectual, educational and spiritual. Narayan was considered as an authority on Indian socialist thinking. He had a clear understanding of the ills of the bourgeois society in India and propagated democratic socialism as an answer to India's backwardness and political vulnerability as democracy. He was committed to his goal of working for a harmless society free from all kinds of exploitation of the

class- based society by the strong , of poor by the rich. The goal of the total revolution is not to capture political power.

It aims at comprehensive reconstruction of life's condition with a view to securing freedom, equality and dignity of the individual and security in social living. He stressed socialistic pattern of society and policy and socialism to be inextricably related to democracy and the socialist reconstruction for the sustained benefit to human and attraction to individual ethics and public morality. His political philosophy impelled the Government of India to constitutionalize many directive principles to preclude exploitation and secure social justice. He played an instrumental role in causing the end of one party (Congress) dominance in Indian politics and is regarded as one of the forces that brought about the defeat of the so called autocratic government led by Mrs. Indira Gandhi . This is historically very important in Indian politics because it heralded the dawn of coalition politics in India.

#### **4.15 View of Jawaharlal Nehru**

Jawaharlal Nehru was deeply influenced by the English humanist liberation, the rationalist and democratic egalitarian tradition of Bernard Shaw, Sidney Webb and Bertrand Russell. He initiated the experiment of democracy and economic development under state leadership. He wanted to lay the foundation of a strong, democratic, secular and socialist India. Nehru had his own vision of life based on some kind of socialistic India. He basically followed the British socialists when thinking of and implementing socialism in India. He shared their belief that concentration of economic power of land and capital in a few hands must first be abolished to bring socialism. His government adopted legislative measures to encourage land reforms and to abolish zamindari system. All land reforms-legislations were put beyond judicial scrutiny by including them in the Ninth Schedule of the Constitution.

He sought to introduce a change in the socio-economic fabric that was considered necessary in order to improve the living condition of the masses. He did not forsake the norms of democratic administration. Democracy, along with

socialism, was an article of faith of Nehru. He was instrumental in introducing universal adult suffrage in India. His attempt was to transform India into a perfect welfare state.

#### **4.16 Netaji Subhash Ch. Bose and his ideas**

Netaji Subhas Bose was a dynamic political activist as well as a dynamic political thinker. His own vision was to reconstruct the India. He fought not only for political freedom of India but also for social and economic freedom for them. He viewed social and economic equality as the basis of freedom. He struggled hard for the country's emancipation from imperial exploitation and also for achieving socialism in India. In his presidential speech at Haripur Congress (1938)<sup>22</sup> he mentioned, "I have no doubt in my mind that our chief national problems relating to the eradication of poverty, illiteracy and disease and to scientific production and distribution can be effectively tackled only along socialistic lines". He was a socialist by conviction. But he was led to build up socialism in India in an Indian way. Indian socialism, he argued, was to be built up taking into account India's history and tradition, her economy, sociology and culture, He was for the abolition of landlordism, liquidation of agricultural loans and provision of cheap agricultural loans or credit in rural areas. In recent times, we have seen that the Government of India has introduced many schemes in this direction to improve agriculture and to provide financial and technical support to farmers as a step towards justice to them.

#### **4.17 Attitude of the Indian Political Thinkers towards the British Rule in India**

The Indian political thinkers are very much critical of the British rule in India. British imperialism in India had a ruinous effect on the Indian social and economic life. It broke the spinal of Indian economy, it exposed the country to maximum exploitation. People were denied rights and basic liberties. They were

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<sup>22</sup> The India National Congress held its 51<sup>st</sup> sessions during last month at Haripura in Bardoli under the leadership Jawharlal Nehru who has held office for more than eighteen month, the Congress has grown by leaps and bounds...

oppressed with no end. There was no institution to dispense justice to them. Everywhere they were victims of discrimination and deprivation. They were looked upon as inferior to the British people and accordingly deprived of equality, liberty and justice. The Indian political thinkers were unanimous in their decision to liberate Indian from the British rule, they demanded the end of foreign exploitation, they voiced for the end of the foreign rule.

Colonialism cannot be a permanent force or institution in a country. A time comes when it ceases to exist. During the British rule, our leaders, struggling for freedom, were optimistic of the country's freedom which meant the end of colonialism in India. The British colonial rule was a misrule that disregarded human values, human dignity and human rights in India. They felt that the end of the misrule of the British would be the end of deprivation and discrimination, of oppression and exploitation. and of all evils that denied social justice and security to the people of India. They noticed and experienced from a very close distance the horrible consequences of the reign of terror of the British rule. They were the powerless spectators of tyrannies to the Indians; they could do nothing to protect the helpless farmers and working class against exploitation and oppression. They hardened their mind to organise, mobilise and lead nation-wide movement to compel the British to quit India.

### **Summary**

India achieves freedom in 1947. This was the culmination of a whole series of anti-imperialist movements, which were the integral parts of the Indian national movement. India which became independent needed the Constitution to ensure good governance and justice and protection against all forms of deprivation to which the people of India were subjected in British India. The national leaders and political thinkers vowed to rebuild India into a real nation which would dispense justice to people, protect the weak and the poor against exploitation and oppression to ensure equality and justice to all and secure freedom for all. India would develop into a land where there would be no discrimination and deprivation. There was the basis and spirit of our national leaders and constitution framers. Accordingly, the Constitution of India was framed, adopted

and introduced and the Preamble to the Constitution' reflects the hopes and aspirations of our national leaders and constitution frames about the future shape, identity and role of India.

The British colonial rule was a rule of exploitation , deprivation and discrimination. It imposed capitalism on India and exploited the entire nation inhumanly. It made India a dying patient with no hope of her recuperation. It destabilized and weakened the foundation of Indian economy and social wealth. It also depleted our national resources almost to the extreme extent. The independence of India has brought back a new hope for justice which was almost eliminated by the British imperial power. By virtue of several initiatives of our Union Government and State Governments India is marching towards the new position in the world—the position of a world power .

## **CHAPTER – V**

### **Preamble to the Constitution – A Declaration of the State of India to Secure Justice and Security to the People**

Every constitution begins with a Preamble. The Preamble embodies the objectives or aims or basic purposes of the constitution. It is a preface or the introduction to the constitution. The interpretation of the Constitution is based on spirit of the Preamble. The Constitution of India begins with a Preamble which has a special significance. We cannot regard it or underestimate it as a collection of useless rhetoric. It contains the ideal, aspirations and declaration of the nation to ensure justice and to build up the country as a true welfare state. The Preamble declares the aims and objectives of the Constitution and indicates the source of its authority. It does not form part of the operative position of the Constitution. It is a key to unlock the minds of the makers of the Constitution. Prof. M.V. Pylee writes, "Here was an opportunity for them to give expression to the dreams of a new order they had been dreaming of year."<sup>23</sup>

#### **5.1 Meaning of the Constitution**

A Constitution is a set of rules governing an organization. It contains the supreme laws and rights of a people of a country. Longman Dictionary of Contemporary English defines constitution as "the system of laws and principles, usually written down according to which a country or an organization is governed. A Constitution aims at building up a governmental structure in certain basic principles. "It is a political and economic document. It represents a specific political economy." It necessarily reflects the basic interests and values of the classes in society that have been responsible for its formulation. The Constitution of India is drafted in legalistic forms making it a "lawyer's paradise". It provides for the basic law and very detailed and minute administrative progressions.

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<sup>23</sup> M.V .Pylee

The Preamble is an integral part of the Constitution of India. Our discussion of the 'Directive Principles of State Policy' and the 'Fundamental Rights' as enunciated in the Constitution of India will remain incomplete, fragmental and incomprehensive if we do not shed light on and explain the Preamble, because the Preamble is inseparably related to both the 'Directive Principles of State Policy' and the 'Fundamental Rights' as far as the ideas of rights, social justice, social security and dignity of man as man are concerned. Before discussing, explaining and analyzing the value of Directive Principles in term of social justice, we need to discuss the implications of the Preamble.

“The Preamble is an ornamental part of the Constitution and is couched in lofty and stirring language. These words like justice, liberty, equality and fraternity evoke in our mind, the memories of the great struggles the nations had to go through in order to secure them. These words tell us why we in India fought the protracted freedom struggle in which thousands of our people died. With noble ideas like justice, liberty, equality and fraternity enshrined in the Preamble, we can build India of our dreams. The Preamble is an embodiment of the principles in the objective resolution adopted by the Constituent Assembly in 1947.” (A.T. Philips and K.H. Shivaji Rao).

The Preamble is a very significant part of the Constitution of India. It is used to explain and elucidate any type of ambiguity of the statute. The Supreme Court of India endorses the importance of Preamble. Justice Patanjali Sastri observes, “The court could only search for the objective intent of the legislature primarily in the words used in the enactment, aided by such historical material as reports of statutory committees, Preamble etc.” He gives only secondary importance to the Preamble in the interpretation of the provisions of the Constitution. But Justice Mahajan attached great importance to it when he observed : “The interpretation that I am inclined to place on clause (5) Article 22 is justified by the solemn words of the declaration contained in the Preamble to the Constitution. It is the declaration that makes our Constitution sublime .....”. A.K. Gopalan vs. State of Madras, 1950 SCS P-236. “The court was, however, against the importation of the idea of the spirit of the Constitution in the interpretation of its provisions on the strength of the declaration of its objectives embodied in

the Preamble, such as the establishment of justice, liberty, equality, fraternity, etc. It is quite clear that the Preamble contains the aims and objects which the Constitution seeks to establish and promote.

## 5.2 The Preamble Designed to Make India a Welfare State

The 42<sup>nd</sup> Amendment to the Constitution of India, 1976 has added the words 'Socialist', 'Secular' and 'Integrity of Nation' to the Preamble in our Constitution. The Republic has now become 'Socialist' and 'Secular'. The decision to include the word 'SOCIALIST' is significant. India has been steadily marching towards some form of socialism since 1953 when the Congress party accepted it as its ideal a socialist commonwealth. The aim is to establish socialism in India. Socialism will be achieved by the parliamentary Acts.

The Government of India has adopted a number of measures to give a socialistic shape to India. It has already nationalized the banks and the means of production; the right to private property has been removed from the list of Fundamental Rights through a constitutional amendment. It has introduced the policy of giving various concessions to the economically backward people to reduce inequality and thus through many other measures. India has been going ahead towards socialism. Land distribution policy and **barga operation** ( In West Bengal) were socialistic in nature<sup>24</sup> . The land distribution policy of Government of West Bengal is designed to distribute and hand over lands to the landless tillers. Socialism to which India is committed to a positive and bold step of the Indian leadership to secure equality to all to root out discrimination from the society and to protect the disadvantaged classes against deprivation.

Secularism is the aim of the country. Democracy without socialism and secularism is meaningless. Secularism is a glaring necessity in India's socio-political context. India is declared as a democratic state and democracy does not

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<sup>24</sup> Operation Barga was a land reform movement throughout rural west Bengal for recording the names of the share croppers while avoiding the time consuming method through the settlement machinery . It bestowed on Bargadars , the legal protection against eviction by the landlords, and entitled them to the due share of the produce. Operation Barga was launched in 1978 and concluded by the mid 1980s. It is in line with the Directive Principles of State Policy ( Article 34)

allow cultural and religious discrimination. Religious discrimination is antithetical to the concept of a welfare state. People of the minority community enjoy as much freedom and equality as those of the majority community. Besides, the Government of India has adopted some measures to promote the social and economic life of the minority community in India. India's secularism ensures that religious minorities do not suffer a sense of inferiority as do the minority communities in Pakistan and Bangladesh. The Indian democratic system protects all religions equally and does not itself uphold any state religion. The idea of secularism implies full freedom and equal respect for all religions. This is a definite way for India to ensure social justice to the minorities.

To build up an ideal democracy, the Preamble emphasizes justice, liberty, equality and fraternity as political ideals. The Preamble envisages not only a democratic form of Government but also a democratic society which is infused with the ideals and spirit of "Justice, Liberty, Equality and Fraternity". Dr. M.V. Pylee writes in his book **Constitutional Government in India**, "The Preamble proceeds further to define the objectives of the Indian Republic. These objectives are four in number – Justice, Liberty, Equality and Fraternity" Democracy is not merely a form of government but also a socio-economic system based on these concepts. "This part seems to be the climax of all democratic constitutions." (Pylee)

Since India had been long subjected to all kinds of injustice – political, economic and social – under the British Government, it was but natural that the framers of our Constitution hope for justice for all and strive for the removal of all inequalities and discrimination from the society. Justice can exist only in an egalitarian society because justice will be a reality when everybody has equal access to equality to be real, must be given equally. Justice means, "A harmonious reconciliation of individual conduct with the general welfare of society. The essence of justice is the attainment of the common good. It embraces, as the Preamble proclaims the entire social, economic and political spheres of human activity."

The ideal of justice implies a system where individuals can realise their full potentialities. In the view of our founding fathers it is not enough that there is a political or legal justice. Political and legal justice is a myth unless accompanied by social and economic justice. Social justice implies that all social discriminations like caste or untouchability must be ended. Economic justice implies that economic exploitation should be ended. India is striving her best to secure social and economic justice to all and adopts policies and programmes to build up a society of equals and frames rules and laws to provide equality of status and opportunity. These ideals have been embodied in Articles 14-18 (Rights to Equality), 19-22 (Right to Life and Liberty) and specially in Article 38 (to promote the welfare of the people).

The Preamble may not have any legal value because it cannot normally qualify the provision of the Constitution. Yet in cases of doubt, the Supreme Court of India has referred to the Preamble to elucidate vague provisions of the Constitution. The real value of the Preamble lies in its psychological appeal because it contains words surcharged with emotions – justice, liberty, equality and fraternity. The philosophy of the Constitution is embodied in the Preamble. As Justice Hidayatulla said, The Preamble is more than a declaration. It is the soul of our Constitution and lays down the pattern of our political society. It contains a solemn resolve which nothing but a resolution can alter. Grenville Austin says that the Indian Constitution is a social document. It aims at establishing a better society on the basis of justice, liberty, equality and fraternity and the Preamble commits the Constitution to a social revolution. The whole of the Indian Constitution is an elaboration and an elucidation of the Preamble.

The ideals and values proclaimed in the Preamble, according to Chief Justice P.B. Gajendragadkar, constitutes India's commitment to the ideal of welfare state and to the establishment of socio-economic justice. Social justice as declared in the Preamble prohibits discrimination on artificial grounds; it also prohibits forces creating artificial social barriers. Economic or distributive justice is a corollary to social justice. It means freedom from hunger and destitution, non-exploitation of the working class, and reshaping economy in a way that its benefits are equitably or justly available to the common mass. This socio-economic justice has been

translated into several Articles in Part III and Part IV of the Constitution. The goal of social justice and security is embodied in the concept of a welfare state and the establishment of 'socialist states'.

The Preamble constitutes a perfect document of a democratic welfare state. India is working hard to ensure the triumph of justice, liberty, equality and fraternity, Chief Justice Subba Rao in *Golaknath vs State of Punjab, 1967*, observed: "The Preamble contains in a nutshell , its ideals and aspiration." It lays down the principal objectives which the Government of India should strive to achieve. It is expressive of the political, moral and religious values which the Constitution is intended to promote. Pandit Thakur Das Bhargava, a member of the Constituent Assembly commented: "The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution."

### **5.3 Legal implication of the Preamble**

The Preamble is a priceless addition to the Constitution of India and hence is recognised as a part of the Constitution but not as a part of its operative provisions as it is stated in the *Keshavananda Bharati Case, 1973*. The Preamble is not an enactment ; it is not enforceable in the court of law. It lets the constitution framers know the evils or inconveniences which they intended to remedy.

The Preamble enables the court to dispel the ambiguity of language or expression found in a constitutional provision and to explain and elucidate its appropriate meaning and significance. This view was nicely expressed by the

Supreme Court in the Berubari Case (1968)<sup>25</sup>, Bhim Singh vs. Union of India, 1981<sup>26</sup>; Gopalan vs State of Madras, 1950. "The functioning of the Preamble is illuminative and not restrictive or expansive." In Keshavananda Case, though the Supreme Court declared the Preamble as a part of the Constitution, it could not suggest that the government could derive any additional power from the Preamble. Hence, the court cannot be expected to examine the constitutional validity of a legislative enactment or administrative measure by keeping their attention confined to the Preamble. The Preamble may better be looked upon as a 'guiding star' in the interpretation of law.

Dr. Durga Das Basu has made a very significant comment on the legal implication of the Preamble. He observes that "The proper functioning of a Preamble is to explain certain facts which are necessary to be explained before the provisions contained in the Act can be understood."<sup>27</sup> But the Preamble itself as the then Chief Justice of the Supreme Court P.B. Gajendragadkar aptly observes, "is neither a source of power nor a source of the privation of power."

The recent observation of the Supreme Court on the implication of the Preamble in matter of rational interpretation of Fundamental Rights is quite significant. The court is inclined to give expression to the view that since the Preamble sets forth the aims and objectives of the political system of India, "it may be invoked to determine the scope of Fundamental Rights." (Minerva Mills vs. Union of India, 1980) and the 'Directive Principles of State Policy' (State of Kerala vs. Thomas

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<sup>25</sup> The Berubari Union and ..... Unknown on 14 March , 1960 . Judgment.

Gajendragadkar J. This will be so divided as to give half the area to Pakistan the other half adjacent to India lies retained by India. The division of Berubari Union no 12 will be horizontal, starting from North East corner of Debigunj thana. The division should be made in such a manner that the Cooch Behar enclave of Pachaghar thana of east Pakistan and Berubari Union no. 12 of Jalpaiguri thana of West Bengal will remain connected as present with Indian lower down between Boda thana of east Pakistan and Berubari union No. 12 will be exchanged along with general exchange of enclaves and will go to Pakistan"

<sup>26</sup> Bhim Singh Vs. Union of India & Another; Judge, Manomohan Sarin ; decided on Jul. 26 - 2000

<sup>27</sup> D.D. Basu's Introduction to the Indian Constitution

1996, Waman Rao And others vs. Union of India 1980<sup>28</sup>) ; what led the Supreme Court to express this view about the Preamble is the interrelationship between the 'Preamble' and 'Fundamental Rights'. It attaches this importance to the Preamble because the ideals of socialism, secularism and democracy are elaborated by the provisions of the Constitution. In the case of Linogappa vs State of Maharastra, 1985 and Indira Swaney vs. Union of India, 1992, the Supreme Court proceeded further in this respect. In its view, the words 'social justice' in the Preamble makes it obligatory for the State to enact positive measures in order to protect the tribals and the weaker section of the community.

#### **5.4 Legal and Constitutional Importance of the Preamble**

No one can deny the legal and constitutional importance of the Preamble. The Preamble contains the ideals and aspirations of the constitution-framers. It is a key to the Constitution which aims at giving a real socialistic and democratic shape to Indian society in which equality and justice will always prevail . The nature and character of the Constitution of India and the political system of the country are easily understood by reading the Preamble. The Preamble cannot be enforced by the court of law, but it helps and enables the court to explain and interpret constitutional provision. In Keshavananda Bharati Case, Justice Shikri annotated that the Preamble is "of extreme importance and Constitution should be read and interpreted in the light of grand and noble vision expressed in the Preamble." The Court also observed that "the edifice of our Constitution is based upon the basic elements mentioned in the Preamble."

The Supreme Court's observation on the value and importance of the Preamble in Atma Prakash's Case, 1986, as quoted below, illuminates and makes it clear

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<sup>28</sup> A ceiling on agriculture holdings was imposed in Maharashtra by the Maharashtra Agricultural lands (ceiling on Holdings) act, 1961 which was brought into operation on January 26, 1962. The ceilings fixed by that Act (the Principal Act) , was lowered and certain other amendments were made to that Act by Acts 21 of 1975 . The validity of the Acts was challenged in the Bombay High Court in a large group of over 2660 petitions. A divison Bench of the High Court sitting at Nagpur repelled that challenge by a judgement

that the Preamble to the Constitution of India is not a collection of useless rhetoric:

“Whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered a cardinal rule is to look to the Preamble to the Constitution as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation. The Preamble embodies and expresses the hopes and aspirations of the people. What people of independent India expect from the State of India or the Government of India has been unequivocally expressed in the Preamble to the Constitution. The Directive Principles set approximate goals. When it is the task of examining statutes against the Constitution, it is through these glasses that the Court must look, 'distinct vision' or 'near-vision'.

### **Summary**

The Preamble to the Constitution of India is not a conventional addition but an addition with utmost value and importance of the polity which India as a social welfare state strives to establish . The spirit of the Constitution has been virtually epitomized by and embodied in the Preamble. Though the Preamble is not justifiable or enforceable, it defines the boundary of functions of the Constitution. India cannot overstep or override the Preamble in the formulation of laws and adoption and introduction of policies. It can be said that to override the Preamble is definitely to override the Constitution. The spirit of the Constitution is announced in the simple few words of the Constitution . That India is committed to social welfare and social justice is declared in it.

## 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

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<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

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<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.

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<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 guests. 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 bright 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 is 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 is to strike a balance between individual

liberty and social control." This is a reference to the opinion of the Supreme Court in *Collector of Madras vs. Natheela Sampathu Chetty* (1962) that the court will ultimately determine the reasonable restriction 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 to be imposed on liberty and need social control." This is a presence 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 provides 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

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<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 Fari- dabad 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 provail- ing 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 off 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)*

## **CHAPTER – VII**

### **Human Rights Movements and Social Justice in India**

#### **7.1 Human Rights and Social Security**

Basic rights to life which are indispensably required for an individual to lead a life of security, justice and human dignity constitute human rights. Human Rights are central to democracy and form the basis of equality, freedom, and justice without which an individual in the society is reduced to a slave. We all know that slavery has been banned as it has been hostile to human existence in society. No society can claim to be civilized if human rights are grossly violated.

The practice of slavery has been abolished as it is inimical to humanity as well as to decent, democratic human existence in society. It has been universally condemned as it has disgraced the humanity. Life without freedom, democratic right, social, political, and economic equality, honour and dignity etc. is slavery. Slavery is a state of denial of rights and freedom, of deprivation and oppression, of exploitation and injustice, insecurity and danger of the existence of life. Slavery negates honour and dignity to individuals in society and has nothing to do with protection of rights and freedom and prohibition of all types of violence. It cannot guarantee the rights of people. In society justice is a myth if the basic rights of people are diluted and denied.

Right to life is the foundation of all rights that people enjoy. It is the most important of all rights. If man is deprived of right to life, all his rights prove to be meaningless and useless. Man can acquire strength and enjoy his other rights only if he is allowed the right to life. This right to life is based on the instinct of self-preservation. Hence, it is one of the fundamental duties and responsibilities of the state to ensure its citizens' right to life and provide adequately for the safety and security of their life. The State needs to protect the life of an individual against possible attack by other members of the society.

Right to life is specific to human being in society. Man is born with the rights which he is entitled to enjoy in society and of which the democratic state cannot

deprive him. "Man is a social animal" and he is supposed to live in a civilized society to lead a civilized life. The rights which People are allowed to enjoy in the society are known as civil rights which cannot be violated, and the violation of civil rights stands for the violation of human rights. No civilized society permits the social situation and the State system to deprive its members of those rights which are essential for a decent social life. Civil rights are normally guaranteed by all democratic States to its citizens for the development of the individual personality. They contribute to the facilitation of all-round development of the individual personality. In addition to the basic rights, the State needs to provide guarantee against economic insecurity and exploitation, opportunities for education, to preclude disparity and discrimination and to ensure equality in all fields.

## **7.2 Human Life and Natural Rights**

Rights are basic to human life. Everybody has the natural right to lead a normal life. Even an individual has no right to terminate his own life. An individual has life to live and enjoy because man is born free. To restrict freedom or to deny one's natural rights is a violation of natural rights and a denial of natural justice, not to put an end to it. Hence to commit suicide is an offence. It is a crime or vice or sin as it is interpreted. So, suicide is discouraged from the individual as well as social point of view. It is judicially prohibited in all countries of the world. Society condemns suicide and denounces the situation that leads or compels an individual to commit suicide. There are score of incidents of suicidal death in our society.

## **7.3 Suicide or Death Penalty – A Violation of Human Rights**

Death is thought as a way of relief from unbearable memories by those who attempt to commit suicide. The poor and destitute commit suicide to get relief from poverty, some commit suicide to get relief from the burden of debt, to forget insult and humiliation, to protest discrimination, exploitation and injustice. There are several incidents of dowry suicidal death. Women attempt to commit suicide or commit suicide to get rid of family or social violence against

them. Hence, suicide is the consequence of violation of human rights. Law of the land permits the State to sentence a murderer or one who is convicted of heinous crime to death and it deprives him of his right to life. But this is a wild justice, and civil society does not approve of death-penalty.

The path of suicide is often chosen by an individual when he/she is not able to brave an awkward situation of life. He/she is compelled to end his/her life to save his/her honour, prestige and dignity. Women are sometimes heard to have committed suicide to be relieved of humiliation and endless torture in their in-laws' houses. It is also heard that an aggrieved woman has been compelled to commit suicide in protest against denial of justice in society. One such an incident occurred in a village (Manickchak) of Malda. A woman set herself on fire after she had been raped by a neighbouring youth, and she failed to get justice in a Kangaroo Court<sup>35</sup> (The Statesman, 4. 4. 2014) She killed herself to protest injustice but she did injustice to her own life, for she was born in this world, not to commit suicide. Her suicide was a crime in the eye of law.

M. Karunanidhi, President of the DMK party, is opposed to capital punishment. "Reflecting party provided M. Karunanidhi's long-stated position, DMK today (Feb 15, 2014, The Statesman) pitched for abolition of death sentence, emphasizing that capital punishment would "neither eradicate nor reduce crimes" (Feb 16, 2014 The Statesman)<sup>36</sup>. The party expressed grievance over the government's indifference to the persistent pleas against capital punishment. The DMK President has been insisting on abolishing death sentence which can only take away lives in an inhuman manner." The party stated: "Change of heart is needed for eradicating crime and death penalty will not be an appropriate solution to this. Hence, the Centre must bring amendments to this law to stop and abrogate death penalty." The DMK resolution assumes significance in the backdrop of persistent pleas for commuting death penalty of three convicts in the late Prime Minister Rajiv Gandhi's assassination case."

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<sup>35</sup> The Statesman, 4.4.2014

<sup>36</sup> The Statesman, 16.2.2014

## 7.4 Meaning of Human Rights

Human rights are considered as basic rights which most nations agree that all people should be allowed to enjoy natural rights in order to lead a normal, decent and dignified life. This principle holds that every living person should have those rights such as rights to freedom, justice, equality etc. which are basic to human life. **Longman Dictionary of Contemporary English** defines the term 'human rights' as "the non-political rights of freedom, equality, etc. which belong to any person without regard to race, religion, colour, sex etc." Human rights are the rights provided to people by state laws for satisfying their requirements and safeguarding interests. These rights are attached to the principle of humanity. The rights oppose any attempt of the State or its agencies or the society or any one to deny anybody's basic rights or to violate these. Human rights defend the basic rights of man and uphold their value. The exponents of human rights consider the basic rights of man to be inviolable everywhere and even on the battlefield. To violate the basic rights of war-prisoner is interpreted as a type of war crime. To torture and kill civilians during war is a gross violation of human rights. Human Rights are concerned with humanity, dignity and social justice.

## 7.5 Evolution of Human Rights as a Movement for Human Justice

Human Rights have become a global movement to protect the basic rights of man against their violation and to let him live a life of man as man. The origin of this movement dates back to the post-World War II era. The War led to the gross violation of the rights of man, and the colonial rule that covered a larger part of the world denied rights to people and deprived them of justice, as it is historically branded as the rule of oppression and exploitation. The end of World War II led the World to awaken to the necessity of protecting the rights of people and then to render justice to them. The World leaders came to realize that human rights are the inherent, inalienable rights which every individual must enjoy as a human being.

“Human rights are those conditions of social life without which no person can seek, in general, to be his best.”<sup>37</sup> The world leaders laid emphasis on the basic rights of people which need to be protected against violation by the State.

### **7.6 UN Declaration on Human Rights**

“On December 10, 1948, the General Assembly of United Nations Organisation (UNO) adopted the UN Declaration on Human Rights, a document outlining tasks for the accomplishment of which all peoples and States should strive. The Declaration contains an enumeration of fundamental human rights such as equality without discrimination, the right to life, liberty and security of person, the right to the inviolability of dignity, reputation and the home, and to the protection of the rights by an impartial tribunal. The Declaration calls upon the States to incorporate in the Constitutions such as civil and political rights and freedom of thought, conscience and religion, freedom of convictions, peaceful assembly and association, and universal and equal suffrage by secret ballot. The Declaration also proclaims social and economic rights: the right to work and to equal pay for equal work, the right to form trade unions, the right to rest and leisure and to social security, the right to education, and the right to participate in the cultural life of the community. Exercise of real human rights depends on the actual conditions of life in society, on its social, economic and political systems”.<sup>38</sup>

### **7.7 The Indian Constitution— An Echo of UN Declaration of Human Rights**

The UN Declaration stresses socialism as the positive principle to protect people's rights and to ensure social justice. It announces its mission to stop exploitation of man by man. It proclaims moral, political and ideological unity, based on the community of interests and world outlook of the workers in order to usher in a new era of human rights and justice in the world. It stresses the deepening and broadening of socialist democracy with a view to ensuring

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<sup>37</sup> D.C.Bhattacharya , Indian Govt. and Politics , 2012

<sup>38</sup> Political Terms –A short guide , 1982, Novosti Press Agency Publishing House, Moscow

genuine freedom of development of the individual. A genuine government by people combining with the active participation of working people in running their State takes special initiative in protecting human rights. The legal guarantees are provided by laws that ensure the exercise by citizens of their constitutional rights.

The study of the Constitution of India reveals that the Constitution framers had been deeply inspired by the UN Declaration, 1948 on the matters of the "Fundamental Principles" and the "Directive Principles of State Policy." The 'Fundamental Rights' enshrined in the Constitution seem to be an echo of the UN Declaration of Human Rights.

### **7.8 Violations of Human Rights in India**

Since the independence of India in 1947 there have been many cases of violating the basic rights of people. There arose allegations against the Union Government and State Governments of not attributing importance to the protection of people's basic rights which are indispensable for normal and healthy social and political life. The indifference of the State to the improvement of people's living standard, to the protection of people's civil rights, to the need of providing social protection to the backward classes, women, children and minorities, to the protection of human dignity against police atrocities and administrative injustice has led to the emergence of the Human Rights movements in India. The United Nations initiated the movement as a necessary condition for international peace, progress and prosperity and in India, the movements have popularised themselves as the positive force of and initiative in rendering social, political and economic security to people and in ensuring social peace, progress and security.

The basic concern of the framers of the Indian Constitution was to ensure "justice – social, economic and political "to all citizen, and the Constitution has been so framed as to guarantee freedom, fundamental rights and freedom without discrimination. Parts III and IV of the Constitution provide for civil, political and socio-economic rights. This is a necessity that the government should adopt measures to protect the right of the socially and economically disadvantaged

classes such as the Scheduled Castes and Scheduled Tribes. Apart from these, the Government needs to make an attempt to improve socio-economic and political condition of all the people and those of all regions alike so that the disparity among them may be minimized.

Social and economic rights are judicially not justiciable and enforceable. These are emphasized in part IV of the Constitution of India. The Government of the India and State Governments have made impressive efforts to translate many of the Directives into practices. "The commitment to achieve sustainable development and the existence of process is for the promotion of human rights in a pluralistic Indian society can be considered as the hallmark of Indian polity."<sup>39</sup> But what now deeply worries us are the facts that human rights are being violated in various ways and forms which include the engagement or employment of children in hazardous jobs, cases of bonded labour, atrocities against Dalits ,custodial deaths, police atrocities, arbitrary restrictions on frivolous grounds to curb freedom of speech and assembly. These concerns have been the realities that lie behind the organization of human rights movements in India. Such realities are clearly hostile to human rights and thereby opposed to the principle of social justice. Police atrocities are violative of human rights. The police are often charged with excesses. Several allegations have been instituted against the army deployed in Punjab, and in North Eastern States of India. These actions are examples of violation of human rights and are branded and condemned as gross injustice.

### **7.9 Human Rights Movements and Social Justice in India**

#### **Naxalite Movement and Human Rights**

The Naxalite movement in West Bengal was organised to protest social injustice, deprivation and exploitation of the weaker sections in the society by the stronger and richer classes. The exponents of this movement were of the view that rural poverty of Bengal was caused by exploitation by the wealthy and the strong upon the poor and the weak . Their movement could alone liberate the exploited class

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<sup>39</sup> D.C. Bhattacharya , 2012, Indian Government and Politics

from the oppressive hands of those who controlled and dominated the society of rural Bengal. The movement was a brave and strong voice of the deprived class of the society, but the State adopted brutal and inhuman means and ways to suppress it. The repressive action of the State against the Naxalite movement was condemned by the civil society and attracted the attention of human rights activists. This was, in reality, a movement for democratic rights of the oppressed and exploited segments of society for equality and justice. But the bloody paths which the Maoists chose and trod and are still treading in the name of social movement in the country is characterized of inhumanity, cruelty and barbarism and is openly charged with gross violation of human rights. In the perspective of broader humanity the Maoists movements in India may be described as wild and vindictive, and democracy does not permit it because the Maoist activists have had recourse to murder and bloodshed. Bloodshed cannot be the way of solution of any problem.

### **7.10 Imposition of Emergency in 1975 – A Challenge to Democracy.**

The imposition of emergency in June, 1975 is considered as the dark period of Indian democracy. Democracy in India was suspended and people were deprived of rights and freedom during emergency. Fundamental rights granted to people by the Constitution were deactivated and people's rights were denied and human rights were grossly violated. Numerous innocent people were sent to jail. This ended not here; they were inhumanly treated inside the jails. Opposition political leaders were illegally detained. Law ceased to exist, and J.P. Narayan and Justice Tarkunde strongly reacted to this situation and took the initiative in setting up Human Rights Organisations. Some black laws, and draconian rules were made and enforced to gag people's voice and to refuse democratic demands. Ghanashyam Shah observed, "..... This shaped the intellectual and political milieu that led to the origin of civil and democratic rights movements." The violation of human rights and freedom and denial of justice to people gave birth to human rights movements in which the principal aim was to restore rights, freedom to people and to ensure justice.

### **7.11 Movements Against Anti – People laws and National Human Rights Commission**

In view of several incidents of violation of human rights in India a number of human rights groups have been formed to protest atrocities, executive callousness towards basic rights of people, dilution of people's demands for justice and government agencies' non-interest in the question of security of life. These organizations continue to protest the cases of the violation and denial of human rights. They are very active in their efforts to protect rights and freedom of the sufferers or /and victims of social injustices in our society. They lead movements to create pressure upon the authority or government to render justice to the victims or to those who have been kept out of the ambit of justice. They have striven to shed light on several areas of violation of rights like the cases of bonded labour, labour in the form of slavery, police atrocities like illegal detention, torture in lock-ups and custodial deaths, crimes against weaker sections of society, acts of violence against women including dowry torture and dowry deaths, human trafficking, anti-people laws like TADA and POTA, violation of Forest Acts and oppression and exploitation of the tribal communities who fall victims to the process of urbanization and industrialization. Their displacement due to urbanization and industrialization is a flagrant violation of their basic right of shelter because they are not provided compensatory justice for rehabilitation. In this regard, the construction of Narmada Dam in Gujrat may be mentioned because in this process, scores of poor families have been displaced against their will or consent with no scheme from the government for their adequate rehabilitation. The displaced families have been rendered homeless and destitute and are presently beset with extreme poverty with no visible means of their livelihood.

The role played by various human rights groups is hailed as the social and human force to protest the violation of the basic rights of man and to bring justice to those who have been denied it. The groups have been able to influence all the three organs of government – the executive, the legislative and the judiciary. The government has been compelled to consider various demands of

the rights groups relating to human rights and the executive and the legislature have finally taken back the anti-people Acts like Maintenance of Internal Security Act (MISA),

National Security Act (NSA) and provided for compensation to the victims of mob violence and state neglects. Recently the National Human Rights Commission (NHRC) has directed the Government of India to compensate five Assam encounter victim families with rupees five lacs each for a suspected encounter case that took place in 2009.

“The NHRC has recommended that the Union Ministry of Home affairs pay a sum of Rs. 5 lakh each of the next kin of Prabhat Basumatary, Deithan Basumatary, Krishna Basumatary, Junish Ali and Bablu Ali, who died in an encounter with Assam Rifles at Akabasti village under Rangapore Police Station in Sonitpur district on April 19, 2009,” said in a statement issued by the NHRC. The Commission has observed that it has not provided any proof that any of these five men had either handled or fired the weapons allegedly recovered from the scene of the incident. Hence, it did not accept the report from the Assam Rifles in this matter. Further, there was no explanation offered by the Union Home Ministry to show that there was no violation of human rights in the incident and for that reason, the next of kin of the five deceased should be compensated, added the NHRC statement”.<sup>40</sup>

In view of rampant violation of human rights in the form of denial of justice, the government has also passed laws to protect the interests of the marginalised sections of society. Women are inhumanly treated in society as several reports and cases of violence against women reveal and thus confirm violence against women. Violence against women may be categorized into criminal violence, social violence and domestic violence. Laws have been made to protect women against those forms of violence. These forms of violence which are rampant in our society are set to deprive women of their rights to live as human beings.

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<sup>40</sup> The Statesman , 16.2.2014

It is strange to think that our society always neglected the members of transgender. It did not ever consider them as human beings only because of their gender problem or issue. Though biologically they are human beings and are born from the womb of human mother, neither the society nor the State so far recognized them as human beings. This attitude of the society and the State was quite unfortunate and is undoubtedly a matter of gross violation of human rights because members of transgender are human beings. Members of transgender have been long deprived of their basic rights in the form of recognition as human beings. They had been treated as creatures neither of human groups nor of animal group. They had no rights of human beings. In a recent land mark judgment the Supreme court has recognized them as a third gender and entitled them to all human rights.<sup>41</sup>

### **7.12 Judicial Activism and to Protect Human rights**

'Judicial activism' has now proved to be an effective tool for vindication of rights and dispensation of justice to people in the society. The judiciary in India has taken itself the duty of enforcing the basic rights of the weaker sections of the society through the progressive interpretation of law and taking positive actions thereupon. Recently, the Supreme Court issued notice to the centre and all states on a PIL seeking its direction to them to frame guidelines to protect the people from the north-eastern states in various parts of the country against alleged social discrimination."

The Apex Court initially expressed reluctance to entertain the plea on the ground that Delhi High Court was hearing a similar petition and it agreed to examine the issue after the "petitioners pleaded that racial discrimination is prevalent across the country and the matter can be addressed by the highest court."

The petition filed by seven advocates, highlighted the recent attack on north eastern people, including the death of Arunachal Pradesh Youth Nido Tania. They submitted "that there was no system in place by the Ministry of Home affairs to

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<sup>41</sup> The Statesman, 16.4.2014 – 'Transgenders Third Gender", SC ruling brings cheers to the transgenders...'

protect these people." The petition stated that "most of the people from the region, who return to their states, have one or two tales of horrid, unspeakable and unimaginable proportions where they have been discriminated, taunted, molested, raped - -- and all because of their outward appearances. "The PIL urged the court to ensure that the culprits of such racial discrimination are punished and to lay down guidelines to protect citizens against it."<sup>42</sup>

Judicial activism has undoubtedly sought to ensure and strengthen the basic rights of people in India. In *Maneka Gandhi vs. Union of India* case, the Supreme Court ruled "that the right to live is not merely continuous physical existence but it includes within its ambit the right to live with human dignity." In *Francis Coralie vs. Union Territory of Delhi* case, the Supreme Court held that right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to live is not considered to be the protection of any faculty of limb through which life is enjoyed or the soul communicates with the outside world, but it also includes the rights to live with human dignity and that goes along with it, namely, the bare necessities of life such as 'adequate nutrition', 'clothing shelter' and facilities for reading, writing and expressing ourselves in diverse forms. Freely moving about and mixing and communicating with fellow human being and thereby gives effect to the directives given under Article 47 wherein the State was directed to raise the level of nutrition and standard of living." In **Peoples' Union for Democratic Rights vs. Union of India** case the Supreme Court maintained that "the non-payment of minimum wages to the workers employed in various Asian Projects in Delhi was a denial to them of their right to live with basic human dignity."

In **Chamile Singh vs State of U.P.**, the Supreme Court<sup>43</sup> argued and explained that right to shelter is a Fundamental Right under Article 21. Right to live

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<sup>42</sup> The Statesman, 14. 2.2014

<sup>43</sup> Initiated proceedings under land Acquisition Act by issuing notification under section 4 1 of the of Act to acquire the land for providing houses to persons belonging to SC/ST. The enquiry under section 5-A of the Act was dispensed with and the Government directed immediate taking up possessions. A division bench of Allahabad High Court repelled the challenge made to the acquisition proceedings. Before the Supreme court, it was

guaranteed in any civilised society implies right to food, water, decent environment, education, medical care and shelter. All civil political, social and cultural rights enshrined in the Universal Declaration of Human Rights and conventions or under the Constitution of India cannot be exercised without basic human rights. Shelter for human being therefore includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads, etc. These are the basic necessities of survival with human existence. The State's duty is to ensure and provide these facilities to people as its primary obligation as a welfare state. As far as the basic objectives of the Constitution of India are concerned, the State of India is obliged to fulfil the basic demands of human life.

The decisions of the Court as mentioned above stress the state's duty and responsibility to ensure and provide to its citizens all that are needed to lead a decent human life. The term 'human rights' has a wide range of meaning and implication that includes not only the 'Fundamental Rights' granted to people through the constitutional guarantee but also all the rights necessary for decent life as contrasted with animal life. The State will necessarily ensure the provision for food, clothes and shelter to citizens as a positive step to protect human rights. The failure of the State in this regard is enough to interpret it as its denial of basic rights in the eyes of society as well as in the eye of the spirit of law or in the broader perspective of human survival. Hence it is the liability of the State to provide for adequate areas of livelihood to raise the level of nutrition and the standard of living under Directives 39(a) and 47. In this respect, it is an offence on the part of the State to allow discrimination and disparity in any way or form on the basis of rank and profession, class and creed, caste and colour, sex and gender. Even the children of prostitutes have right to equality of opportunity, dignity, care, protection and rehabilitation so as to be a part of the main stream of social life.

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contended that in all acquisitions for housing purpose conducting enquiry should be the rule and dispensing with such enquiry.

### **7.13 Government's Initiative to Protect Basic Rights**

It is an admitted fact that the Central Government and State Government have adopted a number of measures to protect the basic rights of the people of India in consistence with the spirit of the Preamble, Fundamental Rights and Directive Principles of State Policy. This initiative is the result of various human rights movements, judicial activism and the commitments of the parties in power to the people in different pre-election periods at the national level and the provincial levels through their election manifestos and the aim of the leaders to make India a welfare state. The cry of civil society for social security, poverty alleviation, prevention of discrimination, protection to rights and freedom and welfare society has deeply influenced the government in framing pro-people policies, implementing them and launching various programmes to ensure education to all, to provide health security, to prohibit evil and hateful social practices like untouchability, to alleviate poverty, to ensure minimum wages to workers, to improve the living standard of life of the weaker sections, backward class and the minorities, to stop violence against women, to empower women, to introduce pension schemes for the senior citizens above the age of 65, to control the engagement of children to work and thus to ensure equality and establish democracy.

The State's indifference to the issue of health security may be interpreted as violation of human rights. It is the duty of a welfare state or a state of any political identity to make people aware of the roots and causes of terminal diseases like AIDS, Cancer etc. It is often found that several hundred people die of such diseases. The Government of India and the State Governments have launched some programmes to warn people against their bad habits that invite many life killing diseases to them. In this respect, NGOs in cooperation with the health departments have been playing admirable role to prevent terminal diseases. Besides, the pulse polio programme, though it is organized by World Health Organisation for third World Countries suffering from malnutrition, has been able to root out polio from India. The Health security programme serve two purposes – it is to honour and protect human right of healthy living and to ensure social justice to people.

### **7.14 Welfare state and Health security**

A welfare state is expected to attribute due importance to the issue of health security which cannot be alienated from the concept of welfare state and is regarded as one of the aims of a egalitarian state. The Congress led UPA coalition government introduced and launched National Health Mission in 2005 in consistence with Article 47 of the Directive Principles of State Place , which aims at protecting public health , and decided to expand it across urban India in 2013 after keeping it confined to rural India. But what was seen in actuality was that NHM failed to achieve its goal even to the minimum extent in urban areas, for its implementation had remained limited to a few big hospitals as the infrastructure for procurement and distribution was not put in place. National Rural Health Minimum (NRHM) in its rural branch and it is alleged to have been bogged down by several problems.

In 2014 the Congress led UPA Coalition government was replaced by the BJP led NDA government. The present government has announced its mission to implement NHM it order to provide health protection and security to all India citizens .It has decided to bring in experts and streamline the system to ensure effective implementation schemes such as providing free generic drugs to government health institutions throughout the country as part of measures to provide universal health care.

The present health minister decided to include experts from outside to revitalize the ambitious scheme and hold a meeting of health ministers from states under the aegis of Central Council of Health (CCH), which had not met for several years. His aim is to make the NHM a vehicle for supplying generic drugs to government health institution throughout the country. To make the NHM were participatory he sought involvement of voluntary sector professionals and experts in different specializations. The Ministry would launch a new scheme for health security for women , in which women specialists would receive special status as women are the worst victims of a dysfunctional public health system. The Ministry plans that " By the end of the programme , 348 drugs under the National List of Essential Medicines are to be provided free from 1.6 lakh sub centres, 23000

primary health centres , 5000 community health centers and 640 district hospitals” ( The Statesman, 31. 5. 2014).

Our national leaders accorded top priority to the protection and preservation of the dignity of life of the people of India as human beings because during the British colonial rule they had been bereft of it. They had been subjected to inhuman exploitation and brutal oppression after independence the leaders sought to protect their rights and dignity as human beings, though the process was very slow. The Government of India has become active in translating our national leaders’ aims, ideals and aspirations since 1980s. With the spread of education, people have now become considerably conscious of their rights and dignity. This consciousness may be pointed out as one of the forces leading or compelling the State to adopt many programmes to protect their rights and dignity and render justice to them.

### **Summary**

Human Rights and social justice are closely related. Social justice for people is unimaginable and unattainable if human rights are violated and denied. Human rights form a major part of social justice. Human Rights constitute sacred, democratic and human principle, and the rights basic to human decent existence in society need to be kept outside the purview of narrow, petty politics. Sometimes politicisation of some issues of human rights exercise a damaging impact upon the social health , political environment and national interest of the country and give rise to great concern for national security. The Government of India and the State Governments should attach more importance to the protection and preservation of human rights to ensure social justice to people and must not allow politicization of the issue of human rights.

## **CHAPTER – VIII**

### **Public Interest Litigation and Social Justice**

#### **8.1 Genesis of Public Interest Litigation**

Public Interest Litigation (PIL) is a distinctive litigation related to public interest. Some regard Public Interest Litigation as the legalistic recognition of the Directive Principles of State policy. The aim of this litigation is to protect people against the violation of public interest and to redress their grievances. It aims at vindicating public interest and ensuring justice of all forms to people. Sunia Hurrah writes in her article "**Public Interest Litigation**", "It is a litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social collective entities and different rights and interest vindicating public interest".

In 1979 the Supreme Court of India, in the interest of social justice and to discharge its constitutional duty to protect fundamental rights of citizens, made a distinctive innovation known as "Public Interest Litigation" (PIL). Since then Public Interest Litigation has been invoked in a number of times to protect public interest which has been overridden by the executive. PIL , thus, used has been dubbed by political elite as "judicial activism", which in their view, is inimical to democracy. The then Lok Sabha Speaker P. Sangma, commented in a symposium on "Judicial Activism" held in New Delhi in 1996 in reference to Public Interest Litigation that the judges "have lately shown a disturbing tendency to encroach on the executive domain" and that the judiciary should "strongly discourage tendencies towards abuse of the facility of recourse to public interest litigation". The Prime Minister described such role of the Judges as a menace to the executive.

#### **8.2 Role of Judiciary in securing Justice to people**

The role of the judiciary to restrain the executive from denying right and freedom to people and thus seeming justice to them thus was criticized as the encroachment of the judiciary upon the executive but it is misconceived and

misinterpreted. Public Interest Litigation (PIL) originated in securing justice which is denied to a class of people or to an individual being a victim of injustice on upholding their fundamental rights enshrined in the Constitution of India. The role of Judiciary is often hailed as the positive way of dispensation of justice. The Judiciary is compelled to intervene in the action and decision of the executive when it goes against the intent of an individual or a section of people in general. Thus judicial intervention becomes a necessity to secure justice for victims of injustice.

### **8.3 Vindication of PIL**

The internal emergency that was in force between 1975 and 1977 and its aftermath contributed significantly to the change in the judiciary's perception of its role in the working of the Constitution. The period of the emergency witnessed large scale violations of basic rights of life and liberty. There were also blatant violations of the rights to freedom of speech and expression. The end of the 'Emergency era' saw the emergence of a realignment of political forces. Nevertheless, the popularly elected government was weak, and in trying to find its feet, it did not last very long. It was already collapsing by 1978-1979, which was when the judiciary initiated the public interest litigation movement". The post-emergency period then provided the right environment for the judiciary to redeem itself as a protector and enforcer of the rule of law. Judges woke up to this and PIL was the tool the judiciary shaped and designed to achieve this end. "PIL was entirely a judge-led and judge-dominated movement."<sup>44</sup>( Upendra Baxi, Taking Suffering Seriously: Social Active Litigation in the Supreme Court of India", in Supreme Court on Public Interest Litigation, and Jagga Kapur, 1998.

### **8.4 First PIL and its victory**

In 1979 a socially motivated lawyer in the Supreme Court filed the first ever public interest litigation in the Supreme Court, without any power of attorney but on the basis of two articles published in The Indian Express which narrated

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<sup>44</sup> Upendra Baxi, 'Taking suffering seriously', Social Active Litigation in the Supreme Court of India, in Supreme Court on Public Interest Litigation, and Jagga kaur, 1998.

"a shocking state of affairs regarding the under-trial prisoners in the jails of Bihar". The newspaper exposed that a large number of men, women and children had been behind the bar, most of them for minor offences, for as many as twenty years. In the PIL it was mentioned that Hussainara Khatun and twelve other undertrials had been illegally detained and through the PIL the notice of the Court was drawn to their continued detention in violation of the fundamental right under Article 21 of the constitution in view of Section 428 of the Code of Criminal Procedure. The lawyer agreed that even if the said prisoners had been tried and convicted of the offences charged they would have been released ten years ago after serving their sentences. This is a classic example of justice rendered to the under trials through PIL.

### **8.5 PIL and the Role of the Supreme Court**

The court as the guardian of the constitution and protector of the fundamental rights of the people of India passed an order of the immediate release of forty thousand prisoners in Bihar on personal or no bond. This is the origin of PIL which is different from traditional or representative actions in its remedial, collaborative and non-adversarial nature."

"The concept of PIL has been firmly established by the subsequent matters entertained by the Supreme Court and its nature, scope and limitations have been clearly stated by the apex Court in a case relating to employment of children in the hazardous industries through such employment was prohibited by the constitution."<sup>45</sup>

Justice P.N. Bhagawati delivered a Supreme Court judgment on September 18, 1982 on a writ petition filed by the civil rights group. Peoples' Union for Democratic Rights, to ensure observance of labour laws and stated that the time has come when the court must become the court of the poor and struggling masses of this country. They must shed their character as upholder of the established order and the status quo. They must be satisfied to the need of the poor during justice to the large mass of people to whom justice has been denied

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<sup>45</sup> D. C. Bhattacharya 2012, India Government and Politics, Vijaya Publishing House, Kolkata.

by cruel and heartless society for generations"<sup>46</sup> . The Court will, therefore, entertain a writ petition from a public spirited person or a social action group for the vindication of a fundamental right of a person who is unable to enforce them because he belongs to a class or group of persons who are in a disadvantaged position on account of poverty, disability or other social or economic impediment and are unable to enforce these rights<sup>47</sup> (S.P. Gupta vs. President of India, 1982; Subhas vs State of Bihar, 1991).

The device of PIL has enabled the Court to take speedy cognizance of the violation of fundamental rights affecting tribals , and under trials, victim of police torture and of other acts of oppression by the influential groups or the state machinery (Bandhua Mukti Morch vs. Union of India, 1984) and of inaction on the part of the government machinery to enforce and implement the laws affecting the poor and the disadvantaged (e.g. The Minimum Wages Act, The Untouchability Offences Act, etc.).

The Supreme Court ruled that Public Interest Litigation is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the Courts to secure observance of the constitutional or legal rights, benefits and privileges enforced upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal to those who are in a socially disadvantaged position as the petitioner who brings the public interest litigation and showed in fact welcome it as it would give an opportunity to right, wrong, or redress at injustice done to the poor and weaker sections of the community whose welfare is and must be the public authority."

As the governments have forfeited people's faith in the dispensation of justice and in the protection of their rights, the people are looking forward to the intervention of the judiciary for the dispensation of justice, protection of their rights and punishment to the criminal and corrupt elements violating or

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<sup>46</sup> The Statesman , July 14

<sup>47</sup> S.P. Gupta vs President of India , 1982; Subhash vs. state of Bihar, 1991

infringing the law. As a result, the Courts are being saddled with increasing Public Interest Litigations in the entire range of human activity. It is found that PIL also includes environmental political, medical treatment, procurement and purchase of all categories of store and providing services which are their legal and professional responsibility.

The Supreme Courts' special initiative in rendering justice to people of which they have been denied by the Government of India as well as the State Governments, which is often dubbed as judicial activism is considered as a positive role in securing justice to the victims. The Supreme Court, has so far, on the basis of Public Interest Litigation, has awarded justice to them through protecting the rights of the individual against the executive and against oppressive legislation. "What made PIL unique was that it acknowledged that a majority of the population, on account of their social, economic and other disabilities, was unable to access the justice system. The insurmountable walls of procedure never dismantled and suddenly the doors of the Supreme Court were open to people and never that had reached these before, By relaxing the rules of standing and procedure to the point whenever a postcard could be treated as a writ petition, and the judiciary ushered in a new phase of activism where litigants are free from the strangle hold of formal law and lawyering".

### **8.6 PIL- A Judicial Platform for Dispensation of Justice**

Public Interest Litigation should not hereby be looked upon as one of the ways of making the court judicially active but also as a judicial platform for dispensation of justice to those who have been denied or deprived of justice by any of the agencies of the executive. It has considerably widened the range and scope of the judiciary and given it power to intervene in the areas of the legislature and executive areas within the judicial jurisdiction. It has thus restrained the legislature from formulating arbitrary laws—laws to override citizens' rights and the executive from authoritarian decisions to seal the passage of social justice and human dignity. Human dignity is related to social justice. To derogate human dignity is one of the ways which is hostile to social justice.

Through Public Interest Litigation the Supreme Court of India attempts to secure justice to the common and poor people and the deprived classes of the country. Commenting on it, Chief Justice P.N. Bhagawati said—"The Supreme Court has developed several new commitments. It has carried forward participative justice. It has laid just standards of procedures. It has made justice more accessible to citizens". It is here pertinent to say that the expansion of the court's jurisdiction is not to be seen or concluded such as the judicial intervention but as an instrument of social justice so far and so long denied to them.

On the strength of Public Interest Litigation, the Supreme Court has made several historic declarations with the decision to render justice to the deprived and disadvantaged classes. In 1995 it declared that health is the basic right of the people and as such the doctors were brought under the consumer's law. The next year the Supreme Court also declared that if the hospitals and the doctors refuse to admit a serious patient, it would be considered as a punishable offence. It is the doctor's professional duty and responsibility this duty and to attend patients and to take all possible steps to save his life. He cannot shirk responsibility. He can't neglect a patient's treatment on any ground. In the case of doctor's negligence causing the death of a patient, the concerned medical staff must be made accountable to criminal justice system.

Education is the pillar of progress for a nation. It is a human right and no one should be deprived of education. Article 41 of the Directive Principles of State policy calls upon the state to secure for people the right to education and if any one is deprived of the opportunity of education, social justice shall cease to exist in society. Since imparting education is essential the Supreme Court issued order that no professional institution would charge any capitation fees for admitting students. The court also regulated travelling sessions in medical and engineering institutions. Even the Delhi High Court also ordered all the Public School to keep compulsorily reserved some of their seats for the economically and socially backward students.

The aim and spirit of this direction of the court is that no one should be deprived of the facilities of education at all levels because of poverty and social backwardness.

The Constitution of India prohibits child labour and yet the system continues unabated and the government remained indifferent to this problem. Child labour is a social offence and an exploitation. It is matter of deprivation of a child of his rights to education, free normal life and the enjoyment of childhood. Employment of children to works or jobs at brick kilns, shops and restaurants, hotels and factories, it is inhuman and hostile to the rights of a child. This is to be looked upon as a violation of child rights and as an act of inhuman oppression and exploitation.

Hence in December 1996 the Supreme Court ordered to set up a Child Labour Rehabilitation Worker Fund and the employers of the child workers are to deposit these compulsorily a compensation of Rs. 20,000 per child worker and rehabilitate them accordingly. Through PIL the court enforces constitutional or legal right, protect human rights and dignity, resists exploitation and oppression to children and women and attempts to secure and validate social justice to all.

The recent incident of racial discrimination against North East People is a serious matter of violation of rights and freedoms of Indian citizens within India. A PIL filed seven advocates, some of them belonging to North East has highlighted the recent attacks on North Eastern People including the death of Arunachal Pradesh youth Nido Tania who was beaten by local shopkeepers in south Delhi. The PIL<sup>48</sup> (PIL to Protect North East People, 12 February, 2014, The Statesman) seeks to Supreme Court to direct the government of India to frame guidelines to protect the people from the North eastern states in the national capital and other parts of the country from racial discrimination. A state which claims to be welfare state cannot approve of racial discrimination to govern social and national life. Hence racial discrimination needs to be rooted out to secure justice to all.

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<sup>48</sup> The Statesman, February 12, 2014

## 8.7 Public Interest Litigation and Implementation of Directive

### Principals

Public Interest Litigation is playing a significant role in the implementation of the 'Directive Principles of State Policy'. It has facilitated enforcement and implementation of many directives and enabled the court to formulate various guidelines so as to do and ensure full justice to an aggrieved person, to recognize class or group rights, to protect freedom and to implement or to enforce the Directive Principles, which is not difficult for an individual to receive through ordinary litigation. The judiciary is seen to have taken upon itself the task of infusing into the constitutional provisions the spirit of social justice. *Maneka Gandhi vs. Union of India, 1978* is an illustration in point<sup>49</sup>. The Case was filed following the refusal by the government to grant a passport to the petitioner, which thus denied her liberty to travel. The case was heard and the court proceeded to explain the scope and content of the right to life and liberty. The court took a broader view of the scope and content of the fundamental right to life and liberty. Article 21 which deals with the right to life was interpreted to include a bundle of other incidental and integral rights.

On the basis of a PIL , filed by National Legal Services Authority urging the Supreme Court to give separate identity to transgenders by recognizing them as a third category of gender and directed the government to ensure that they would get job , reservations, and facilities, including voter card , driving license and passport. "The apex court said, the group would be considered as socially and economically backward classes and as entitled to reservations in jobs . The centers and the states also directed to take steps for bringing the community into the mainstream by providing adequate health care, education and employment.", "Recognition of transgender as a third gender is not merely a social or medical issue but a human right issue."

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<sup>49</sup> The decision in *Maneka Gandhi vs. union of India* where it was held a person could be deprived of his right to life only by a law which was just , fair and reasonable and in *Bandhua Mukti Morcha vs Union of India* case the S.C. conferred a verdict against the bonded labour system.

The court observed that members of transgender "are also citizens of India. It is the right of every human being to choose their gender. The spirit of the Constitution is to provide equal opportunity to every citizens to grow and attain their potential, irrespective of caste, religion or gender. The court's order also includes the

### **Rights Movements and Social Justice in India**

Protection of members of transgender against harassment and discrimination. This judgment is of recent , origin, however.

### **PILs As Instruments of Judicial Justice**

Public Interest Litigation should not be viewed as the judicial encroachment upon the executive because it has succeeded in meeting out justice to many who were denied it. It has now been recognized as judicial platform for the dispensation of justice. Its range is so wide that it covers all matters that come within purview of the constitution of India as well as Indian policy. It has protected public interest against being overridden or denied and upheld rule of law and the principle of justice and reinforced the spirit of the Constitution.

It has immensely widened the range and scope of the meaning and implication of the word 'justice' in the domain in the domain of Indian social and political system and lent a far extending significance to the interrelationship of rules and laws existing in Indian administration . Even the legislation that make laws are not outside the purview of PIL. Judicial decisions have often been seen challenged through PIL and finally the victory of PIL. Has also influenced allowed those. There are many cases that have gone far to restrain the executive from overstepping its boundary and to delimit it. In every decision and action the executive has been very much active

It is true that PILs , namely Bhagalpur Blinding case, Bandhua Mukti Case, Francis Coralie Mullin case, M.C. Mehta vs. Union of India, Bishakha vs State of Union and earlier Maneka vs. Union of India ( though not PIL strictly) are of enormously important in ensuring social justice. Needless to say the famous

Golaknath vs. State of Punjab , and Keshavnanda Bharati vs, state of Kerala , though not coming strictly under the purview of PIL led to a host of social legislation. In this dissertation, all this landmark cases appeared and reappeared in previous chapters indicating their importance in our discussion. The impact of Bishakha vs. State of Rajasthan on the question of social justice , are still felt . The sexual scandal involving Tarun Tejpal , the editor of Tahelka magazine of New Delhi , the case of Vishakha vs. state of Rajasthan was aptly invoked . Important point is , the gravity of the cases were so all comprehensive and all pervasive , that its impact has crossed the boundaries of ages ; it would have been effective to discuss the impacts of such landmarks judgments upon the issues of Directive Principles of State Policy and Social Justice in Coalition Politics. But space constraints is a bar to an elaboration of the direct and indirect impact of the cases of the judicial and executive initiative to implement various Directive Principles .

However, Indira Swahney case and Vishakah vs. State of Rajasthan are so important in ensuring social justice and justice to women in the workplace , that this point needs to be discussed as part of the analysis of research data. Even a cursory glance of **Indira Sawhney case** would amply prove how the Directive Principles and Fundamental Rights are interrelated in our Constitution. The constitution-makers also shaped the Constitution from the perspective of interrelationship between Directive Principles, Fundamental Rights and Preamble.

In the case it was stated that , 'Liberty , equality and fraternity' was the battle cry of the French Revolution. It is also the motto of our Constitution, with the concept of 'justice- social economic and political' – the sum total of modern political thought . ... liberty of thought, expression, belief, faith and worship has equally been an abiding faith of all human beings , and at all times in this country in particular. Fraternity assuring the dignity of the individual has a special relevance to the Indian context. as this judgment will illustrate in due course.

It has been frequently stated on several occasions in the present dissertation that the content of the expression "equality before the law" is contemplated. Its spirit

and aim is to minimizing the inequalities in income and eliminate the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people, to secure adequate means of livelihood to its citizens and to promote with special care the educational and economic interests of the weaker sections of the people, including in particular the Scheduled Castes and Scheduled Tribes and to protect them from social injustices and all forms of social exploitation and deprivation. In Indira Sawhney case , **it was categorically stated , indeed in a society where equality of status and opportunity do not obtain and where there are glaring inequalities in incomes , there is no room for equality – either equality before law or equality in any other respect.**

The doctrine of equality has many facets. It is a dynamic and evolving concept. Its main facets , relevant to Indian society , have been referred to in the Preamble and the Articles under the sub heading “Right to equality” –(Articles 14 -18). In short , the goal is “equality of status and of opportunity”. **Articles 14 to 18 must be understood not merely with reference to what they say but also in the light of several articles in Part IV (Directive Principles of State Policy)- “Justice, Social, Economic and Political”, is the sum total of the aspirations incorporated in part IV.**

**The content of expression “equality before law” is illustrated not only in Articles 15 to 18 but also in the several Articles in Part IV , in particular , Articles 38, 39 , 39A and 46.**

It is not my aim to discuss the legal implication of all those landmark judgments given by Hon’ble Supreme Court but to focus on their importance upon social legislations passed successively . I have already referred about Zia Mody’s **Ten Judgments that Have Changed India** in Book review section where Aruna Shanbaug case , ADM Jabalpur case, Maneka Gandhi case, Bhpal gas case find prominent place. **Firstpost.com , a news web page** , has also referred Zia Mody’s book while highlighting Vishakha vs. State of Rajasthan case .

### **What is the Vishakha judgment?**

As Zia Mody says in her book, *Ten Judgements that Changed India*, "Judicial activism reached its pinnacle in Vishakha Vs. State of Rajasthan." The judgment was unprecedented for several reasons: the Supreme Court acknowledged and relied to a great extent on international treaties that had not been transformed into municipal law; the Supreme Court provided the first authoritative decision of 'sexual harassment' in India; and confronted with a statutory vacuum, it went creative and proposed the route of 'judicial legislation'.

The Vishakha judgment was an offshoot of a rape case involving a social worker in Rajasthan. It laid down the requirements for employers dealing with complaints of sexual assault and stipulated the formation of committees to dispose of complaints from victims of harassment.

### **Some general points about the judgement:**

Below are some of the general points of the Vishakha judgment:

*Gender equality includes protection from sexual harassment and the right to work with dignity as per our constitution.*

**Extra-hazard for a working woman compared her male colleague is a clear violation of the fundamental rights of 'Gender Equality' and 'Right to Life and Liberty'.**

*Safe working environment is fundamental right of a working woman.*

**In no way working women should be discriminated at the workplace against male employees. (If a woman is, then it must be documented in company policies, for example, limitation of women in police and armed forces.)**

*Working with full dignity is the fundamental right of working women.*

**The right to work is an inalienable right of all working women.**

The Vishakha judgment had recommended a Complaints Committee at all workplaces, headed by a woman employee, with not less than half of its members being women. All complaints of sexual harassment by any woman employee would be directed to this committee. This is significant because an immediate supervisor may also be the perpetrator. The committee advises the victim on further course of action and recommends to the management the course of action against the man accused of harassment.

In Francies Coralie Mullin case the court declared. "The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessity of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing and combining with fellow human beings. The magnitude and components of this right would depend upon the content of economic development of the country, but it must, in any view of the matter, include the bare necessity of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human life."<sup>50</sup> (Francies Coralie Mullin vs. The Administrator , Union Territory of Delhi (1981) 2 SCR, p 529 BF).

"The combined effect of the expanded interpretation of the right to life and the use of PIL as a tool led the court into areas where there was a crying need for social justice. There were areas where there was a direct interaction between law and poverty, as in the case of bonded labour and child labour and crime and poverty, as in the case of undertrials in jails". The court examined human rights of dignity, living conditions, health in the ambit of the right to life as enunciated in the Directive Principles of State Policy and tried to enforce and implement these through various public interest litigations. What has impelled the court to become active in protecting human rights, value and dignity and in rendering justice to the poor, weaker classes and aggrieved person was the sense of justice and value of human life and liberty. The implementation of the Directive

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<sup>50</sup> Francies Coralie Mullin vs. The Administrator , Union Territory of Delhi (1981) 2 SCR, p 529 BF

Principles is the definite and positive way to give the Indian society the shape of a true civil society and to make India a true welfare state.

In *Bandhua Mukti Morcha vs. Union of India*, 1984, a PIL by an NGO (Non-government Organisation) highlighted the deplorable condition of bonded labourers in a quarry in Haryana, not far from the Supreme court. The court ruled a host of protective and welfare-oriented labour legislations, including the Bonded Labour (Abolition) Act and the Minimum Wages Act. In giving extensive direction to the State Government to enable it to discharge its constitutional obligation towards the bonded labourers, the court observed.

"The right to live with human dignity restrained in Article 21 derives its life breath from the Directive Principles of State Policy and particularly classes (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include protection of the health and strength of workers, men and women and of the tender age of children against abuse of opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

Since the Directive Principles of State Policy contained in Clauses (l) and (f) of Article 39, and Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the state providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obliged to ensure observance of such legislation, for inaction on the part of the state in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every state shall be so exercised as to

ensure compliance with the laws made by parliament and any existing laws which apply in that state."

Thus in **Vishakha vs State of Rajasthan case, 1997** (very significant case and landmark judgment was issued from it, already elaborated above), the court converted what seemed a non-justiciable issue into a justiciable one by invoking the wide sweep of the enforceable Article 21. More recently, the court performed a similar exercise when, in the context of Articles 21 and 42, it evolved legally binding guidelines to deal with the problems of sexual harassment of woman at the work place. In *National Textile Workers Union vs. P.R. Ramakrishna, 1983*, the court observed "It would indeed be strange that the workers who have contributed to the building of enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

This is a fact that denial of justice to people by the executive as well as the legislature led to the evolution of Public Interest Litigation. PIL covers a wide range of area of human life, right and freedom. PIL has restored to the victim of justice related to life, right and freedom, deprived by all agencies of the government. The Supreme Court has made itself active enough in rendering justice to aggrieved persons who have been victims of legal or administrative injustice because of the indifference of the concerned government agencies to the value, dignity, right of human beings. In *D.K. Basu vs. State of West Bengal, 1986*<sup>51</sup> the court expressed deep concern over the matter of police custodial death and directed the police to adopt great caution with respect to arrest. The court ruled that the police on duty can arrest an offender and detain a person for interrogation during investigations but law has not given to the police power to give the suspect third degree or to apply this method during interrogation and investigation. The application of third degree to the suspect during interrogation and investigation has been proscribed. In the opinion of the court "End cannot justify the means". The concept of third degree is very popular with the police as a means to elicit statements from the accused detained in the police station. But

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<sup>51</sup> Hon'ble Supreme Court laid down certain principles to be followed before arresting a person

it is widely criticized as a wild means used and applied by the police in the police station. In the civilized society, everybody condemns the concept of third degree traditionally applied by the police. It is an instance of glaring violation of human rights. The argument placed against the application of third degree is that the police are not entitled or empowered to impose physical or mental punishment upon a suspect detained in the police station. The duty of the police is to detect crimes and criminals and book them accordingly and finally forward the accused to the court for judicial action. It is up to the court, not up to the police to subject a suspect or an accused person detained in the police station, to physical punishment.

There are scores of cases of illegal detention of people in the Police Station. On many occasions it is alleged that the Police detained innocent persons in the Police Stations for days together without any specific charges against them. Apart from this the Police are often reported to have beaten to death many innocent or accused persons. These actions of the Police in the name of maintenance of law and order or peace in the locality are undoubtedly barbaric and inhuman. They are violations of law and rights granted to people. But judicial activism has greatly restrained the police from going beyond the defined jurisdiction and a number of PIL were filed against Police excesses. The Court passed many historic judgments of which a few have been cited and precisely discussed in this study, to show how PIL has become an effective tool for the protection of human rights and dignity. In *Sushil Basra vs. Delhi Administration* it was held that the writ of habeas corpus can be not only for releasing a person from illegal detention but also for protecting prisoners from inhuman treatment.

In the civil society no person is subject to injustice nor is it upheld under any circumstances. Right and justice constitute a unique human phenomenon. They cannot be overridden and any attempt to override them amounts to the violation of human dignity. The court directed the police to abide by obligatorily the duty that the police are duty-bound to inform the nearest relative of the detention of a person. The right of the detained person should be protected and violation of these instructions shall be treated as violation of the court. Violation of human rights shall entail compensation as the remedial measure, for the aim of PIL is to civilise the persons in power and to ascertain them that they are under the

similar law. In a PIL the Supreme Court convicted the State Police of Punjab of police custodial death and directed the State to pay Rs.2,00,000 to the parents of the deceased as compensation.

So long it was thought that appointment of judges, transfer of judges and promotion of judges were subject to the decision and jurisdiction of the executive or parliament, but in view of some public interest litigations the court reminds that it has something to say about these matters. In *S.P. Gupta vs. Union of India*<sup>52</sup> a senior advocate of the High Court of Allahabad filed a PIL challenging the decision of transfer of a judge of the court. But the Supreme Court reserved the form of verdict saying that the matter of transfer of judges is subject to the decision of the executive. After about one year a PIL was again filed to clarify this judgment and the case referred to the Division Bench. This case to be known as *Advocate-on-Records Association vs. Union of India* and the Supreme court declared that since then onwards the executive would issue the order of appointment of judges not in consultation with the judiciary but with the consent of the Chief Justice. In another PIL the court declared that the transfer of judges is not justiciable unless there is a deviation from the process. In consequence of this PIL, the Supreme Court was able to issue directives to the state government regarding the functions and discharge of duties of the lower courts and the appointment of judges.

Article 48 (A) of the Directive Principles of State Policy enjoins that the state should safeguard the wild lives and forests of the country. This means that the state should take the initiative in improving ecology and environment. But what we have found that the State was quite indifferent to the improvement of ecology and environment and this indifference has led to the creation of environment pollution in India. The nation-wide movement against pollution raised the consciousness of the government in the formulation of law to control pollution. Besides, the greatest reflection of public interest litigation is found in the world of Pollution Control Act. The credit of the legislation of Pollution Control set specially goes to M.C. Mehta, a distinguished lawyer in Supreme Court. Air is abnormally polluted by the rapid increase in number of motorised vehicles. In

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<sup>52</sup> Popularly known as Judges Transfer case.

Delhi air pollution has already exceeded all limits of safety marked by World Health Organisation (WHO).

Public Interest Litigation were filed in the matters of emission of odious gas in the populated area of Delhi, high pollution in the heart of the capital, oil refinery of Mathura greatly affecting the Taj Mahal, jam on the roads of Delhi vehicle regulation etc. The court has taken positive steps through passing verdicts on PILs to control pollutions. The court has played a significant role in bringing the western coastal areas of India under Pollution Control Act. It has helped in controlling pollution at the coastal area through its ruling to proscribe the culture of pollution. The court deserves the credit of controlling pollution by directing the Pollution Control Board to fine the organisations creating pollution. This has proved to be very effective in protecting life against disruption because of rapidly rising pollution by uncontrolled industrialisation. The court's principles of pollution control restrained leather factories or tanneries chemical factories in Rajasthan prawn breeding distillery factories in Tamil Nadu from polluting the air and the environment. The court has taken upon itself the responsibility to take into the steps adopted by those factories to neutralize water and soil pollution created. As a result many polluting organisations have been compelled to install pollution control machines and thus pollution has finally come under control.

The Supreme Court is not only the protector of right and liberty but also the institution to make India a pollution free nation. It has delivered some historic verdicts restraining factories and industries from polluting the air and environment, which is hazardous for life. The court's verdicts are the result of Public Interest Litigations when the inaction of the executive or of the agencies of the executive frustrated environmentalists, social workers and many other NGOs working hard to save our environment from being further polluted. People have always welcomed the directives of the Supreme Court to such factories and industries causing massive pollution.

"In *M.C. Metha vs. Union of India (Shriram Food and Fertilizer Case)* the Supreme Court ordered the closure of the units manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people

living in its neighbourhood and directed the companies to take all necessary safety measures before reopening the plants".

"In Rural Litigation and Entitlement Kendra vs. State of U.P. the Court ordered the closure of lime stone quarries those who caused large scale pollution adversely affecting the safety and health of the public living in the areas on the ground that there were serious deficiencies regarding safety and hazards in them". Environmental plunder has caused horrible environmental problem in India. It has also invited horrible consequences of life and human livelihood. The development of life has been hampered. The quality life in some larger cities has been lowered. Air has been polluted beyond limit and urban areas have been greatly congested. Deforestation has degraded our environment and adversely impacted people's traditional livelihood in such areas as Kalahandi in Odisha. In rural areas, the exploitation of ground water for irrigation has exceeded all limits causing sharp decline in ground water table. Keeping all these damaging activities, it can be said that more strident laws are required to control pollution. In M.C. Mehta Vs. Union of India relating to Ganga pollution case, the Supreme Court ordered the closure of tanneries at Jajmau near Kanpur, U.P. polluting the Ganga unless they took steps to set up treatment plants. In M.C. Metha vs. Union of India relating to Taj Mahal case the Supreme Court has directed the industries in Taj Trapezium zone to change over to natural gas as industrial fuel and if they could not do so they must stop functioning and to relocate the same to a place outside the Taj Trapezium zone. The Court has further given guidelines to safeguard the interests of the workers working in relocated units.

In M.C. Mehta Vs. Union of India, the Supreme Court has issued direction to take steps to prevent destruction or change to the environment flora and fauna and wild life. The direction are based the Article 48(A) of the Directive

Principles of State Policy. In Animal and Environment Legal Defence Fund vs. Union of India, the Supreme Court has directed to erect a boundary wall around a test firing range so that probable damages to animals are averted. This direction is in consistence with Article 48(A) of the Directive Principles of State Policy.

The National Green Tribunal (NGT) has expressed grave concern over alarming pollution caused by thermal power plant in Vidarbha using inferior quality coal in violation of Ministry of Environment and Forests' norms. A PIL had been filed by Ratnadeep Rangari, a social worker and resident of Mahadula village near Nagpur, charging coal and power utility with flouting Ministry and Forests' norms, which is polluting the air, poisoning the water and reducing Vidarbha to a gas chamber by not using clean coal technology. This has put lives of about twenty million people of Vidarbha in Maharashtra in danger. The petition urged the National Green Tribunal to direct coal and power utility to follow the notification of the ministry and all other regulatory and supervisory institution to ensure its compliance.

A division bench of the National Green Tribunal entertained the PIL writ and issued a notice to Maharashtra Chief Secretary, State Energy Department, Environment Department, Union Power and Coal Ministry, Ministry of

Environment and Forest, Maharashtra Control Board, Coal India Limited seeking a reply by March 19, 2014. It is expected that the Division Bench of NGT will pass a verdict directing the Government of Maharashtra and its related agencies to adopt all measures with an immediate effect to control air, water, and environment pollution which is apprehended to harm about twenty million people of Vidarbha and also direct thermal power plant in Vidarbha to use clean coal technology. This PIL is intended to control air pollution as well as to render justice to people because air pollution is a horrible hazard to life<sup>ii</sup>. (NGT takes serious note of pollution due to Vidharbha power plants, Feb 13, 2014, The Statesman)

Public Interest Litigation (PIL) is the new epoch in the history of the judicial system of India. It has opened up a new path for people to receive social, political and economic justice. This has brought to people justice, which was otherwise denied to them. PIL has rekindled the hope of justice through the judiciary when the executive has failed to ensure it. The directive principles which are not justiciable and enforceable in the court of law have been accorded legal status. PIL contributes to translate the spirit of the Directive Principles of State Policy into a reality. PIL should not be criticized as increasing the trend of the judicial

predominance over the executive nor should any attempt be made to restrict the range and scope of PIL. Any attempt to delimit the range of PIL may be termed or viewed as an attempt to deny justice.

### **Summary**

Public Interest Litigation is a new judicial intervention as well innovations in securing social and economic justice to the poorer and the depressed. Justice Krishna Aiyar and Justice Bhagawati led this movement within the judicial system for bringing speedy trial and justice . The orphans, the destitute , the social outcastes, the depressed women , the under trials , the victim of custodial torture , the helpless and the poorer parents of the killed , now can plead for themselves without going into the rigorous procedure of litigation. PIL has become a sure judicial process for people to get justice which is often denied either by the executive or even by the judiciary or by the both.

The concept of locus standi also underwent metamorphosis and the expanded concept of locus standi assumed a significant part in the parlance of PIL. PIL cannot be initiated in the court of law on individual ground ; it must focus on public interest ; cause of environmental degeneration , air pollution , sound pollution and its prevention may benefit the people or children and be sought justice and remedied through court of law and can be dubbed to be a perfect example of PIL which are generally entertained by the highest court.

The court entertains a writ petition from a public spirited person or a social action group for the vindication of Fundamental Rights of a person who is unable to enforce them because he belongs to a class or group of persons who are at a disadvantaged position on account of poverty. Disability or other social or economic impediment and are unable to enforce these rights. The Supreme Court ruled that Public Interest Litigation is essentially a cooperative or collaborative effort on the part of the petitioner and the courts to secure observance of the constitutional or legal rights.

## **CHAPTER IX**

### **Legal Aid Services and Social Justice in India**

The State of India is wedded to the principle of an ideal democracy. It seeks to achieve an egalitarian society for the people of India. It stresses the principle of welfarism directed towards the realization of the hopes and aspirations of the people for providing to them maximum possible social security so that they are able to lead a life with full protection against oppression, discrimination, exploitation and other acts of violence. The people of India expect the state to promote their general happiness and welfare and to regard itself more as an agency of social service than as an instrument of power.

The Preamble to the Constitution of India and the Directive Principles though non-justiciable, articulate and declare justice, liberty and equality to be secured for the people as there are very important and democratically significant political ideals aiming to render our democratic ideals into tangible realities and are designed to direct the state, on political, social, and humanitarian grounds, to adopt welfare politics and implement them to ensure and provide maximum possible benefit to people without any discrimination so that the right to life and the dignity of life are adequately protected and rightly preserved.

#### **9.1 Welfare State also stresses that no one should be deprived of legal justice**

A welfare state also stresses that no one should be deprived of legal justice. India that claims to be a welfare State seeks to provide necessary legal aid service to the poor, to the helpless, to an individual unable to bear expenses to start and continue a legal battle for legal justice and to the weaker section of the society. It is against the principle of a welfare State or a democratic society if an individual or a member of the poor and weaker sections is denied or deprived of legal justice for want of money required as expenses to start and continue a legal fight for justice in the court. This denial or deprivation of justice is a glaring instance of violation of human rights and social justice. As a State is committed to

democracy and social welfare, India deserves praise and appreciation for striving to secure the provisions for its citizens a wide range of social services which also include the provisions of free legal aid to the deserving individuals. In the field of social security, India strives to protect its people against denial or deprivation of legal justice through the scheme of free legal aid which is based on the objectives of the free, competent, effective and comprehensive legal services. The scheme no doubt, aims at strengthening the state's commitment to democracy and welfarism. Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society. The Legal Service Authority Act, 1987, as followed, as amended by the Act of 1994, which came into force on November 9, 1995 aims at establishing a nation-wide network for providing free and competent legal services to the weaker sections.

The Central Government has undertaken the responsibility of ensuring free legal aid to a citizen who deserves it as a positive step towards the implementation of Article 39A, of the Directive Principles. It has set up some important agencies to look into the matters of free legal aid and effective and comprehensive legal services to people so that the legal justice is dispensed to them and their right to legal justice is ensured and protected. It has set up National Legal Service Authority (NLSA) which is entrusted with the responsibility to implement and monitor legal aid programmes in the country. The Supreme Court Legal Service Committee has been constituted under the Act.

To facilitate the provisions of free legal Services to deserving individuals or of all the country, the government has established High Court Legal Services Committees, District Level Services Authorities and Taluk Legal Services Committees. In every High Court of the State, the High Court Legal Service Committee has been set up to provide free legal aid to the destitute or the deserving or eligible persons in matters that came before the High Courts. The aims of division of Legal Aid Services authority into various levels – from the national level to the taluk level – is to cover the provision of legal aid services to people of all ranks and classes and to ensure this provisions to all deserving persons and to expedite this process. The Central Authorities Constituted under sections 3 of the Legal Service Authority Act (amended in 1994) have taken steps

to set up vibrant legal aid programmes such as clinics in legal literacy , establishment of legal aid clinics in Universities and law colleges, training of para legals and holding aid camps and Lok Adalats.

## **9.2 Meaning of Legal Aid**

The term 'legal aid' means "payment from public funds for or towards the cost of legal advice or representation" (Oxford Advanced Learners' Dictionary). It refers to the services of a lawyer in a court case provided free to people too poor to pay for them. "Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to court system." It enables a poor, helpless person to have access to justice. It is meant for those who are unable to pay for the process of justice in the court of law. It is an instrument for ensuring equality before the law. Through legal aid the State seeks to ensure the right to counsel, and the right to a fair trial. The Constitutional guarantee of equality before law will not be a reality if the state fails to provide free legal aid to one who is entitled to avail oneself of it. India is committed to welfarism, and so it has ensured free legal aid to a deserving person. Legal aid is essential for social justice. Social justice is incomplete and thereby meaningless if the poor and the weaker sections of the society are unable to have access to justice in the court of law.

## **9.3 Legal Aid Service and Welfare state**

A welfare state aims at providing security and Justice to its citizens . It seeks to make sure that no one is deprived of it. It upholds the rule of the law in the sense that the law will treat everybody with an eye of equality. Law is not the prerogative to the rich; the poor shall have equal access to the law. Hence legal aid is intimately related to the welfare state, and the provision of legal aid by a State is influenced by attitude towards welfare programmes. The state cannot refuse to provide legal aid to people who are entitled to welfare provisions, such as social housing, with access to legal advice and the courts. Legal aid has enabled people to have their economic, social and cultural and even personal

rights protected. It is essential for the state to provide individuals with access to justice in order to uphold welfarism .

Legal justice is one of the cardinal features of social justice and welfarism. Social justice cannot prevail in a society if the State fails to ensure legal justice to its citizens. The State is required to adopt all possible measures to provide free legal aid or services to the poor and the needy and who are unable to afford services of a lawyer for the conduct of a case or a legal proceedings in any court of law or tribunal or before any state authority. The State cannot stand away from providing this service to such deserving persons. An individual should not be denied justice because of his poverty or want of money. Justice Blackmun in **Jackson vs. Bishop case** says " The concept of seeking Justice cannot be equated with the value of dollars . Money plays no role in seeking Justice".

Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity , and shall in particular provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizens by reason of economic or other disability". Right to equality is constitutionally guaranteed to the people of India. Equality before the law, including equal protection of the laws (Art. 14) is one of the principal rights to equality . This Article proclaims "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India". This principle is in conformity with the **Universal Declaration of Human Rights** which states that "All are equal before the law" which states that "all are equal before the law and are entitled without discrimination to equal protection of the laws"

It is the duty and responsibility of a welfare state to see that "equality before the law" and "equal protection of laws" that are being secured to all without discrimination. The Supreme Court has laid down that "equal protection means equal protection under similar circumstances that law should be applied to all in the same condition". It means right to equal treatment under equal

circumstances. The law shall not discriminate and the State shall not make law favouring one person and placing another under any disadvantage.

Article 14 prohibits class legislation but allows reasonable classification. This classification must be rational and be based on reasonable relation to the object sought to be achieved by the legislation ( P.K. Garg vs. Union of India , 1981, Prabhakar Rao vs State of Andhra Pradesh , 1986) . Article 14 stands right against discrimination and hence guarantees equality of right. The right to equality guaranteed in Article 14 is legal equality. Article 22 guarantees an important right because it is associated with personal freedom or personal liberty guaranteed in Article 21. Article 22 provides certain safeguards against arbitrary arrest and detention. In Madhu vs. State of Punjab , 1959 case the Supreme Court said that the man in custom must be informed as soon as possible , of the grounds of such arrest otherwise the detention shall be innocuous and unconstitutional even if his initial arrest was lawful and valid (State of Bombay vs. Atma Ram) . These two Articles “make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge fulfilled in its letter and spirit and equal justice is made available to the poor , downtrodden and weaker sections of the society”.

#### **9.4 Legal Aid Schemes to Ensure Legal Justice**

The Government of India has paid its attention to the issue of legal aid for the poor , and the needy classes of the society . In 1960, it draws some guidelines how to effectively provide legal aid through legal aid schemes. In the State of India legal aids schemes . In the State of India legal schemes were floated through legal aid Boards, Societies, and Law department. In 1980 a committee at the national level , chaired by justice P.N. Bhagawati , then a Judge of the Supreme Court was constituted to supervise legal aids programme throughout the country. This committee was designated as CILAS ( Committee for Implementing Legal Aid Schemes ) and it started monitoring Legal Aid activities throughout the country. Lok Adalat which has already been introduced lent a new dimension to the dispensation of Justice of the country. Lok Adalat provides a supplementary

forum to the litigants for conciliatory settlement of their disputes. In 1987, Parliament enacted Legal Service Authorities Act in order to accord a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced in 1995 after certain amendments had been introduced therein by the Amendment Act, 1994. The contribution of Justice V.R. Krishna lyre to the development and incorporation of the concept of legal aid in the Indian legal system has been of tremendous value. His Report entitled Professional Justice to the Poor by Justice V.R. Krishna lyre in 1973 showed the connection between law and poverty and spoke of Public Interest Litigation (PIL) in this context. It laid emphasis on the need for active and wide spread legal aid system that paved the way for law to reach people rather than for the people to reach law.

Justice Bhagwati and Justice lyre formed a two-member committee on juridicare and released the report of the committee in 1979 which stressed the need for new philosophy of legal service programme and at the same time cautioned that it must be framed in the light of socio economic conditions prevailing in the country. The Committee prepared a report on the specific needs and the peculiar problems of the poor of the country in view of traditional legal service programme. The report also included draft legislation for legal services and referred to Social Action Litigation. Justice lyre submitted his report in 1973 to the Government and the report came to be marked as a cornerstone of Legal Aid development in India. "it clearly laid down that it is a democratic obligation of the state towards its citizens to ensure that the legal system becomes an effective tool in helping secure the ends of social justice. He coined the word "juridicature" to cover a scheme of legal aid which brought justice to the doorstep of the lowly.

Free legal aid service to the poor and the weaker sections of the society is of overriding importance as far as legal justice is concerned. Law is an important instrument of social change which connotes social development. Social change, if systematic, democratic and welfaristic, leads inevitably to social development. There is law in India to protect the right to legal justice of those who approach the court to get justice. The 'concept of social justice' proves to be futile if an

individual is denied an opportunity to seek justice in the court of law. The 14<sup>th</sup> Law Commission Report defended the argument that the poor needed to be entitled to free legal service to justify the principle of an equality of opportunity to seek justice to all segments of society. If the state refuses or otherwise fails to ensure it to the poor or the helpless class of people or economically backward classes of society, their faith in the legal system is bound to evaporate, and the State that claims to be a welfare state will surely be untenable. India as a welfare state strives to provide free legal aid services to the deserving classes of people. Justice Krishna Iyer looked upon Legal Aid Programme as a very important initiative of the government to secure legal justice to those deprived of it because of their poverty or inability otherwise and also as a reminder to the State of its responsibility as declared in the Directive Principles of State Policy.

The Government is determined to provide the legal aid to the poor or the indigent and the helpless persons of society in accordance with the spirit and principles of the Constitution of India. State Legal Services Authority, West Bengal, lists the persons who are entitled to get free legal aid services:

- A woman or child
- A member of Scheduled caste or Scheduled Tribe
- An industrial labour
- Victim of trafficking in human beings, or beggar as referred to under Art. 23 (10) of the constitution;
- A mentally challenged person, or physically disabled person;
- A victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earth quake or industrial disaster
- A person who is unsteady in a protective home, or in juvenile home, or in a psychiatric hospitals or in psychiatric nursing home;
- A male having annual income of less than Rs. 1 lakh, if the case is before any court other than the Supreme Court and having annual income of less than Rs. 1.25 lakh, if the case is before Supreme Court.

- The list of the categories of person as shown above, who are entitled to enjoy free legal aid services justifies India's welfarism. It is comprehensive and is expressive of the State's endeavour to ensure legal justice to the indigent and the helpless

### **9.5 Indian Constitution, Laws and Proscription of Social injustice**

The Constitution of India guarantees individual rights and vows to protect the weaker classes of people against social inequalities and social injustices. It proscribes the violation of dignity of the individual and seeks to abolish all such traditional social practices as create division and discrimination between man and man in the society. The caste system which is deep-seated in the society continues to influence and encourage inhuman practices like manual scavenging which is a slur upon human dignity and hence, this a glaring example of the violation of human rights. Caste-based and hereditary occupations for dalits which still continue to be part of social life, unquestionably derogate the very existence of dignity of the people. Social equality which our Constitution proclaims for all is hard to achieve if casteism, caste-based occupations of the backward classes, caste-based discrimination and so on are not fully eradicated from the society. Casteism and caste-based occupations constitute an important factor of social inequality, social discrimination and social injustice in Indian society

Law is the instrument of social justice. There have been several legislations against social injustices. They are meant to uphold social justices, to protect rights of people and safeguard the interests of the weaker sections of the society. But laws against violence against women, children and exploitation of the poor working classes have not been properly and effectively enforced. Though there are laws to safeguard the interests of the weaker section, for lack of effective enforcement of the laws, they have become and are still becoming victims of deprivation in every sphere – social, economic, political. There should be laws for social change which paves the way for social development and social equality. Social development and Social equality form the pillar of social justice. Hence existing laws need to be adequately enforced to secure social justice for all. We

have laws against domestic violence which leads to the end of many innocent women's lives every year. Domestic violence includes dowry deaths, wife beating or torturing, torturing maid assistants, killing wives and maid servants, sexual violence against family members, etc.

Dowry death has assumed an alarming proportion, though Dowry Prohibition Act was passed in 1961. Statistics have shown that every year more than four thousands women, on an average, are becoming victims of dowry torture. Social violence is a violation of women's honour, right and dignity, and the existing laws of the state are still helpless to protect women against this violence. Women are eve-teased but society cannot protect them against this open humiliation; they are raped but laws fail to safeguard them and they are deprived of the share of the property but their families remain silent spectators. Incidents of gang rape and murder of women have maligned and tarnished our civilized society and prove that women are totally unguarded and unprotected in our society.

Strict laws are required to control family violence. The Government of India has enacted several laws – the Amended Acts on Rape in 1986, the Anti Dowry Act of 1984-86, the laws regarding molestation of women of 1986-87, etc. and even in case of **Vishakha vs. State of Rajasthan**, the Supreme Court have given verdicts against sexual harassment in 1997 and branded it as an act of violation of Human Rights. Yet the steps mentioned above are not adequate enough to contain the violence against women. What is required is a total transformation of our social mentality. What is more needed is to provide women in our society with protection, support and advice, specially to those who have become victims of family violence or other kinds of violence. There exist family courts in India to provide legal assistance to aggrieved women. The areas and jurisdiction of such court must be extended with greater earnestness so that the wailing mothers and women are properly and carefully redressed. The untold sufferings of the women must be addressed by law makers as well as by society. Offenders to women or criminals must be punished with all severity. What is more important is that women need to be made fully aware of their rights and positions in the society. They should not look forward to or depend upon their male counterparts for

realization of their rights, helps and assistance to protect themselves against social violence. They need be trained and educated properly for self-sufficiency and self-reliance physically and spiritually and even economically so as to enable them fight and resist all types of social oppression and violence against them.

The duty to proscribe all inhuman works and practices have been constitutionally devolved to the government which aims at building up an egalitarian society . Since equality is one of the cardinal features of the State of India, it should not allow the continuation of menial occupation that gives rise to class discrimination and derogates the dignity of mankind. Menial occupation is opposed to the principles of equality and social justice. It is an occupation that establishes social discriminations and gives validity to the violation of human rights and dignity The Parliament of India has since passed the Prohibition of Employment as Manual Scavenger and Their Rehabilitation Bill , 2012 and enacted the prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013. The aim of this Act is to eradicate manual scavenging in India in order to ensure just and human conditions of work as enunciated in Article 421 under the Directive Principles of State Policy.

K. Maylisamy , Assistant Professor , BMS College of Law , Bangalore , has made an intriguing study on manual scavenging as a social evil like untouchability and explores and explains how the anti-scavenging law needs to be exercised to eradicate this inhuman practice in his study entitled **“Eradicating Manual Scavenging in India – The Adequacy of the Law Examined”** Naya Deep 2014 , New Delhi. Like untouchability manual scavenging as a social evil has disgraced humanity at large . This practice is a social shame , national slur, flagrant violation of human right and direct tarnishing of the dignity of those whose traditional occupation is manual scavenging . According to the law , 1993, a manual scavenger is a person who is engaged or employed in manually carrying human waste. Manual scavenging soils the dignity not only of the class of a people but to the dignity of human dignity as well. In India , this traditional profession maligns the national dignity of India as one of the largest democracies in the world.

## **9.6 Legislations Made to Proscribe Inhuman Practices and to Protect Human Dignity.**

The class of people who is engaged in such inhuman practices belongs to the Scheduled Castes and Scheduled Tribes . People of these classes are traditionally deprived of social and economic equality , social justice and human dignity. In order to protect them against inequality and injustice and also to protect their dignity as human being, the Indian Parliament has made four legislations against the inhuman practice of scavenging. The laws are;

- (1) Protection of Civil Rights Act , 1955
- (2) The SC/ST (Prevention of Atrocities) Act, 1989
- (3) The Employment of Manual Scavenger and Construction of Dry Latrine (Prohibition ),Act 1993
- (4) National Commission for Safai Karmacharies Act, 1993

The Protection of Civil Rights Act, 1955 , proscribes the practice of the untouchability and social disabilities arising out of it against the members of Scheduled Castes and Scheduled Tribes. The SC/ST (Prevention of Atrocities ) Act, 1989 , aims at preventing Commission of offences of atrocities against the SC/ST people. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 prohibits manual scavenging practice in India. In the Preamble to the Act it is stated that “whereas fraternity assuring the dignity of the individual has been enshrined in the Preamble to the Constitution , whereas the dehumanizing practices of manual scavenging of human excreta still continues in many parts of India...whereas it is necessary to enact a uniform legislation for the whole India for abolishing manual scavenging by declaring employment of manual scavengers for removal of human excreta as an offence and thereby ban further proliferation of dry latrines in the country”.

National Commission for Safai Karmacharis Act, 1993 is another piece of legislation, dealing with matters associated with the manual scavenger. The Act recommends to the Central Government specific programmes for action.:

to eliminate inequalities in status,

to secure facilities and opportunities for safai karmacharis under a time bound action plan,

to study and evaluate the implementation of the programme and schemes relating to social and economic rehabilitation,

to adopt measures for social and economic promotion of Safai karmacharis.

### **Summary**

To sum up, we may unambiguously say that free legal aid and advice to the indigent and helpless is a part of social justice to all. Denial of legal justice is denial of social justice, for social justice and legal justice cannot be seen separately. India as a welfare state has attempted to introduce free legal aid and advice to deserving persons. To uphold the principles of social democracy and to ensure equality before law India regards it as an obligation to provide legal aid and advice to indigent and helpless. The State Legal Aid Committee has been playing an important role in this respect. The District Legal Aid Committee and the Taluk Legal Aid Committee continue to provide free legal aid support to the deserving persons to vindicate the principles of legal justice in the Indian Society. Free Legal aid and advice is provided to the undertrials also. The fact that undertrials have been languishing in different jails in India for years, is an indictment of legal injustice and violation of human rights. The State needs to be more active in providing such undertrials relief from such languishment, tantamounting to physical and mental tortures, as a right and just step towards the vindication of legal justice which is a universal human right.

Legal Justice can make democracy a reality ; justice will remain vague if legal justice is not ensured to all irrespective of caste , creed and class. Legal justice is not easy to secure for people . The government of India has already adopted some positive steps to facilitate legal justice for people but more positive steps are still required to make legal justice a universal aspect of the democratic polity and policy of the government. More laws are to be enacted in this direction. In

this case the government should attach due importance to the right enforcement of laws meant to ensure legal justice. The process of legal justice for the helpless , the indigent , aggrieved women should necessarily be streamlined .

## **CHAPTER –X**

### **Directive Principles of State Policy and Social Justice**

#### **10.1 Genesis of the Directive principles of State Policy**

Beginning from the Councils Act of 1861 down to the Government of India Act, 1935, there had been no explicit provision of Directive Principles of State policy. In the Government Act, 1935, there can be found provisions relating to the Directive Principles of State Policy only by implications. According to Dr. B.R. Ambedkar “Instrument of instructions” issued to the Government of the Provinces and the Governor-General in India had in section 53 and 13 of the Government of India act 1935, respectively can be regarded as the Directive Principles of State Policy as we find in Part IV in the Constitution of India.

The Directive Principles of State Policy, contained in Part IV, Articles 36-51 of the Constitution, constitute the core interesting and enchanting part of the Constitution. They have been described as the most novel feature of our constitutional government. The principles are basically presented with modern western liberal philosophy which considers that the object of a modern democratic society should be a “Welfare state” , which is called a social service state by Laski. The directive principles aim at making India such a state where full justice will be thrice to people and people will be protected against inequality, insecurity, exploitation, violence and discrimination in any form and in any way.

Many scholars of political science believe that the Directive Principles of State policy is a borrowing from the Constitution of the Irish republic which contains a chapter on Directive Principles of State Policy by the Irish Constitution in regard of the Directive Principles of State Policy as they were guided by the hopes, aspirations and ideals to make India a state Free from injustices and discrimination. Their aim perhaps was to develop India into a welfare state.

The Directive Principles is an important part of the Constitution. They are a set of positive directives upon the state to adopt measures in order to transform India

into a secular and socialist democracy. Glodwill opined in this respect that Fundamental Rights are institutions to prohibit the government from doing certain things and the directive principles are affirmative instructions to the government to do certain things. The Directive Principles contains the philosophy of the Constitution. They are interpreted as broad Directives given to the state in accordance with which the legislative and the executive powers of the state are to be exercised.

The constitution framers wanted to firmly establish social justice in India, and to achieve their goal they envisioned the Directive Principles and included them in the Constitution though they are non justiciable . Through the successful implementation of the Directive Principles India seeks to secure an egalitarian society. The framers of the constitution were not satisfied with only political justice, their aim was to ensure people social and economic justice; and so they sought to combine political justice with social and economic justice.

Many scholars appreciated the value of the Directive Principles. Sir B.N. Rau regards them as novel precepts' with an added value. Dr. Ambedkar considered them as powerful instruments for the transformation of India form a political democracy into an economic democracy. The spirit of the Directive Principles is the achievement of social justice and protection of rights and human dignity. In the realm of the dominance of coalition politics in India. We have seen that many of the Directive Principles have been to implement and shape India into a welfare state. The Directive Principles embody the aims and objects of the country under the republican constitution, i.e., that it is a welfare state and not a mere police state.

## **10.2 India's Welfarism through Directive Principles of State Policy**

India seeks to secure a welfare state. Its aim is to bring about socio-economic changes in society. India's welfarism consists in its role as an instrument of socio-economic changes. It presupposes the extension of sphere of its activity. India as a state seeks to preserve and maintain law and order and to provide conditions to promote the maximum good of the maximum number of people.

The Preamble, Directive Principles of State Policy and Fundamental rights combined to give shape to India's announcement and commitment of the welfare of all the members of the society. India aims at promoting human welfare protecting human rights. Directive Principles of State Policy, if implemented will pave the way for India to secure an egalitarian society and to render to people economic, social and political justice.

Since the adoption of the Constitution in 1949 the union government has been trying to implement the Directives as initiated in its Part IV of the Constitution. Articles 34-51 in order to provide for the social and economic security of people of the country by means of pensions, social security benefits, free health care have enunciated and many other welfare programs for conferring social justice. The Directive Principles form the basis of the very comprehensive political, social and cultural programme of India. The Constitution announces the commitment of India to democracy and hence, the state has adopted a number of programmes, derived from and based on the directive principles of state policy to eradicate illiteracy, to universalise education for childcare, to guarantee equality to politics, to prohibit discrimination on grounds of religion, caste, race, colour, class, family or sex to ensure equality to all in matter of opportunity, to provide medical facilities, to alleviate poverty and finally to stop exploitation, oppression and violence.

As a welfare state India has established health ministry to provide the health of the people. It has undertaken curative as well as preventive measures to stop to promote health, to provide ministry support to reduce child-death, the risk and danger of maternity. The government grants maternity leave and maternity pay on humanitarian ground and as a step to ensure human right. The government has established primary health centre under every block and medical facilities are being extended to people. Even those who belong to the Below Poverty Line (BPL) category are provided with free medical facilities. India has already marched far ahead with the step to establish economic and social democracy which is enunciated in the Preamble.

The Constitution of India makes elaborate references to the welfare idea in directive principle of state policy. Twenty-fifth Constitution Amendment clearly indicates the importance of the Directive Principles. In different cases, the Supreme Court had to have resort to clauses of Directive Principles. The Government of India and the state legislative machinery are trying to implement many of the provisions of the Principles, as for example, Minimum Wages Act was processed to implement provisions of article 43 which states that "the state shall endeavour to secure living wages, a decent standard of life and full employment and leisure and social and economic opportunities". The Employees Provident Fund Act, 1962 was passed in conformity with article 41 which declares that the state shall make effective provision for security the Right to work, to education, and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved work. Article 42 is concerned with just and humane condition of work and maternity relief which are intimately related to the question of human rights, security and dignity. Free primary education legislations have been passed in some states in conformity with Article 45 which directs the state to provide for free and compulsory education of children up to the age of 14. These are welfare measures in the country to prohibit and prevent exploitation of children below the age of 14 and to restrain many agencies and organisations or institutions from engaging them in hazardous works or jobs.

India's welfarism is clearly indicated by its commitment to socialism. The preamble declares that the state should strive to establish socialism to secure equality, equal opportunity, social security and human dignity to all. Article 38 declares that the state shall strive to promote the welfare of people by security and protecting a social order permeated by social, economic and political justice. Article 39 directs the state to secure a social order for the promotion of welfare of the people. The state shall direct its policies towards security (i) that the citizens have the right to an adequate means of livelihood, (ii) that the ownership and control of the material resources of the community are so distributed as to subserve the common welfare (iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the

common detriment, (v) that there is equal pay for equal work for both man and women, and (vi) that childhood and youth are protected against exploitation.

India as a welfare state performs a number of social services. Illiteracy is a curse to a nation. The governments' lack of initiative and effort to eradicate illiteracy may be interpreted as the government's failure to provide justice to people and to bring about changes in society which is indispensable for social development. The government has adopted many steps to eradicate illiteracy and to do away with such customs and practices which are detrimental to the principle of social security and justice. The government must not allow anything that amounts to the denial of human rights and dignity and the physical and psychological or mental security of an individual or a class or a community. The government of India has brought about a silent revolution without much fanfare and publicity by introducing a number of measures like abolition of child marriage, encouragement of widow marriage, promotion of inter-caste marriage, elimination of dowry system and the pursuit of secularism as a constitutional, social and political ideal.

We cannot ignore the importance and value of the implementation of Directive Principles of State Policy even to the least extent to translate welfarism into a reality in our society because our practical experience reveals the idea, in the case of India, of interdependence of welfarism and directive principles. India cannot ensure distributive justice to the poor and weaker sections of the society without legislation on some items of directive principles. In the cases *Comptroller vs Jagannathan*, 1987<sup>53</sup>, *Mukesh vs state of M.P* 1985<sup>54</sup> and *Laxmi*

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<sup>53</sup> *Comptroller vs. K.S. Jagannathan* ACT: Art. 226 – Powers of court – Writ of Mandamus – Issuance of – To direct Government / public authority to exercise its discretion in a particular manner . Articles 16 (4) , 46 and 335 – Qualifying examinations for promotion – Relaxation of standards in the case of Scheduled Caste/ Tribe candidates – validity / permissibility of – whether to be consistent with efficiency of service . The Comptroller and Auditor General's Manual of Standing orders ( Administrative ) Volume 1, Chapter v , paras 195 , 197, 198, 199 & 207 – Subordinate Accounts Service Examination (Ordinary) – Relaxation of Standards for Schedules castes/ Tribe candidates

<sup>54</sup> *Mukesh vs. state of MP* on 13 Aug, 2002 Bench NS Hegde, BP Sing; the appellant along with his lady friend was charged under Sections 302, 307 IPC ... for having committed murder of one Ramkrishna Mishra.

Kant vs Union of India, 1987<sup>55</sup> the Supreme Court has directed the government and administrative authorities to adopt positive steps to redress public grievances arising out of their failure to implement directive principles. The directions of the court lead them to the implementation and enforcement of the laws already legislated. The government has accordingly made laws to protect people's rights, to guarantee equality and to render justice to the weaker section in the society.

### **10.3 The 42nd Amendment Act and the Importance of Directive Principles**

Before we move into the core areas of impact of 42<sup>nd</sup> Constitution Amendment Act upon the Directive Principles, we must delve into different issues like the precedence or priority aspect of the two components of our Constitution—the Fundamental Rights and the Directive Principles of State Policy. In view of the aspect of non-justiciability of the Directive Principles, the priority of Fundamental Rights to Directive Principles, in other words, the differences between the two, the constitutional importance of the 24<sup>th</sup> and 25<sup>th</sup> Constitution Amendment Acts in influencing subsequent legislations on Directive principles in order to render social justice and secure social security cannot be and the Keshavananda Bharati case are all historically connected.

Dr. D.D. Basu, in his immaculate style of presentation said, From the standpoint of the individual, the difference between Directive Principles and Fundamental Rights is that between justiciable or non-justiciable rights – a classification which has been adopted by the framers. Thus though the Directives under Article 43 enjoins on the State to secure a living wage by means of an action in a court, so long as it is not implemented by appropriate legislation. In other words the courts are not competent to compel the Government to carry out any Directive,

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<sup>55</sup> Laxmikanta vs Union of India 11 April, 1997 order. Leave granted. We have heard counsel on both sides. This appeal, by special leave, arises from the judgment passed by MP High Court at Jabalpur Branch on Nov. 23 1995.

The appellant is a manufacturer of tooth paste, using tobacco as one of the ingredient therein. The Govt. exercising power under Sections 33 DDE of the Drugs and Cosmetics Order Act, 1940, issued notifications

e.g., to provide for free compulsory education within the time limited by Art. 45 or to undertake legislation to implement any of the Directive Principles.

It may be observed that the declaration that made in part IV of the Constitution are in many cases of a wider import than the declaration made in part III. Hence, the question of priority in case of conflict between the two classes of provisions may easily arise.

The foregoing general proposition, laid down by the Supreme Court in 1951, must now, however, be read subject

**Dr. Basu went to the length of saying...**, by subsequent amendments, the scope of Fundamental Rights has been narrowed down by introducing certain exceptions to the operations of fundamental rights, namely, Articles 31A, 31B, 31C, 31D.

Of these, Articles, 31A, 31C, are exceptions to Fundamental Rights enumerated in Articles 14 and 19; this means that any law falling under the Ambit of Article 31A ( e.g., a law for agrarian reform) , or Article 31C ( a law for the implementation of any of the Directive Principles contained in PartIV of the Constitution), cannot be invalidated by any court on the ground that it contravenes any of the Fundamental Rights guaranteed by Article 14.

By the 42<sup>nd</sup> Amendment Act, 1976, a countervailing factor has been introduced, namely the Fundamental duties mentioned in Article 51A

The 42<sup>nd</sup> Amendment Act has increased the number of directives and attaches importance to the Directives. It has added directions to part IV of the constitution to provide for (i) free legal aid to the economically backward classes, (ii) participation of workers in the management of organisation engaged in any industry, (iii) protection and improvement of environment and safeguarding forests and wild life. Thus the importance of the Directives is day by day increasing in order to establish a socialist, egalitarian and just state.

The Directive Principles of State Policy constitute a comprehensive blue print of social goals—the goals to establish social justice in India. They enshrine the

fundamentals of a social welfare state for the materialisation of the ideals and aspirations to which India is committed. Though they are non-justiciable and subordinate to the fundamental rights as it is outwardly seen, their importance and signification as the integral part of the Constitution cannot be ignored or denied. It has sometimes been seen that the Supreme Court has taken the help of the spirit and maxims of the Directive Principles in explaining and clarifying any of the articles under the Fundamental Rights if these meanings and implications appear to be inadequately expressed.

The Directive Principles are expressive of the goal of India policies, which is to establish a welfare state, which is envisaged in the Preamble to the Constitution of India. They lay emphasis on social welfare, social justice, social security, economic justice, human rights and dignity, crusade against exploitation, tirade against violence against human and other pro-people policies which can alone be rendered into realities if they are properly implemented and enforced. Their implementation is believed to herald a new social order in Indian society where everybody is expected to get food to satisfy his hunger to be rehabilitated not to die of ill-wealth, not to be exploited because of ignorance and illiteracy, not to remain unprotected against socio-economic injustices, not to be at the mercy of the whims of the executive and the legislature and not to be discriminated on any grounds. In *Keshavananda Bharati* case the Supreme Court opined that even the conditions for the exercise by each individual of his fundamental rights cannot be ensured unless and until the directives are implemented.

The significance of Directive Principles in relation to that of Fundamental Rights can be determined only by making a reference to the object of the constitution makers in making these principles an integral part of the Constitution (The Fundamental Rights and the Directive Principles constitute the conscience of our Constitution<sup>56</sup>). The purpose of the Fundamental Rights is to create an egalitarian society, to free all citizens from convention or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non

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<sup>56</sup> Dr. M.V. Pylee, *Constitutional government in India*, 1984

violent social revolution. Through such a social revolution, the constitution seeks to fulfil the basic needs of the common man and to change the structure of our society. It aims at making the Indian masses free in the positive sense. Without faithfully implementing the Directive Principles it is not possible to achieve the welfare state contemplated by the constitution.

Dr. Pylee rightly says that the Directive Principles guide the path which will lead the people of India to achieve the noble ideals which the Preamble to the Constitution proclaims justice, social, economic and political; Liberty, equality and fraternity. Directive principles lay the foundations on which a new democratic India is set to be built. They stand for the minimum of the ambitions and aspiration the by the people of India, set as a goal to be readied in a reasonable period of time. Indeed, when the station India translates these principles into reaction, the country law justly claim to be welfare state.

Fundamental Rights and Directive Principles are complementary in the case of welfarism of India. The Constitution of India aims at synthesising the two principles. Their proper synthesis is sure for India to establish justice in India. They form the core of the constitution. They stand for the basic principles which aim at creating a welfare state. The two principles combined to form a charter of economic and social democracy. They assure the people what they may expect and direct the central government and the government of state to adopt welfare policies to let people enjoy democratic rights and lead a life from injustice, exploitation, insecurity, oppression and discrimination.

#### **10.4 Implementation of directive principles to Ensure Social Protection**

The primary aim to implement the Directive Principles is to ensure social protection to the people and thus to secure the basic rights of people. The central government and state government have already implemented and enforced a number of the directive principles, as the measure to give India shape of a true welfare and socialist state. Before coalition politics taking root at the national level, the government of India become active to focus attention on the welfare of

people and on the reduction of disparity between the poor and the wealthy classes. As a first step, land reforms measures were adopted and land reforms has been implemented. In order to secure proper ownership and distribution of the wealth of the country, and the measures as abolition of the feudal zamindari system, enactment of land ceiling system act, fixation of land tenure, etc have been implemented. Land ceiling laws were passed in all the states to limit the size or amount of land an individual is allowed to keep or possess for his own cultivation and to redistribute surplus land to the poor peasants and to those who are landless. The "land to the tiller" legislation was not seriously implemented by many state governments, except CPI(M)- Led governments in Kerala and West Bengal.

In addition of these steps, the government of India adopted some positive measures to protect people against exploitation by the stronger and richer sections of the society. The nationalisation of Banks and Insurance and the abolition of privy purses have paved the way for the establishment of socialism in the country. Efforts have been made to establish economic equality through five year plans. During the prime ministership of Indira Gandhi (1966-1977) the government adopted some admirable steps to eradicate rural poverty, to spread education to uproot illiteracy, to launch afforestation drive, to develop slum areas to improve the living standard of the poor worker and daily wage earners, to introduce and launch food for work programme to protect people from starvation. These were the welfare activities of the state or the government. To implement these measures the government launched Green Revolution Programme, 20-point programme, Garibi Hatao Programme, etc.

During the Prime ministership of Rajiv Gandhi a number of measures has been adopted to improve the financial condition of the farmers and workers. This was a step towards the implementation of the policy as enunciated in the directive principles of state policy. When Viswanath Pratap Singh became prime minister of India, he launched various programmes to safeguard the interest of the backward classes and the minorities. He took a bold step to implement the report of the Mandal commission. Atal Bihari Vajpayee government introduced kishan credit card to provide bank loan to farmers for the cultivation of land.

This is primarily intended to protect poor farmers against exploitation by local money lenders. All these steps were meant to realise the dream of socialism in India.

Rural economy is central to Indian economy. It is the basis of the country's economic structure. Rural economic development leads to the development of national economy. The development of rural economy depends upon the social and economic development of rural population because more than 75% people live in rural India, and agricultural farming is their primary source of income. Realising this fact the central government and the governments of the states have laid greater emphasis of the improvement of rural life and development of agriculture. With an aim to raising the standard of living, particularly of the rural population various development oriented programmes like Community Development Project (CDP), Integrated Rural Development Programme (IRDP) Swarnajjayanti Gram Swarozgar Yojna (SGSY), National Rural Employment Programme (NRED) etc. have been launched with full national force and support. The aim of these programmes is to control directly the problems of poverty, unemployment and miseries. Integrated Rural Development Programme (IRDP) which is the main instrument of the central government to alleviate the poverty of the rural poor has made some progress in the eradication of poverty. Swarnajayanty Gram Swarozgar Yojna (SGSY), introduced and launched in 2001 has emerged as the single employment programme for the rural poor and aims at establishing a large number of micro-enterprises in rural India. Mahatma Gandhi National Rural Employment Guarantee Programmes (MGNREGP), 2006 has been implemented to improve the living standard of the people.

Social protection and Social justice are almost synonymous terms. Social protection is meaningless or impossible if social justice is not established and social justice cannot prevail if people are not socially and economically protected. Social protection is related to human dignity and to the basic rights of human beings. It has assumed a wide dimension in recent times in confirming of its value and importance. Social protection for people has now become a global demand. The state of India has attributed supreme importance to the issue of social protection in its policy of governance. Since India is committed to social

welfare for people, it is an imperative for the government to ensure social protection through legislation and executive decisions. Directive principles of state policy are virtually an instrument of social protection. The government of India and the state governments stress the implementation of the Directives and by the time a number of measures have been adopted to protect people's right to work, right to health, right to education, right to shelter, right to social security and justice, right to dignity to life, etc. Provision of social protection is enshrined in Article 38 which aims at security of social order for the promotion of welfare of the people, 39 enjoining on the state to secure the ownership and control of the material resources of the community to be so distributed as to subserve the common good, 41 dealing with right to work, education and public assistance in certain cases and extending education to be provided to all concerned and public assistance to be extended in the case of unemployment, old age and sickness, 42 wanting the government to secure just and human condition of work and maternity relief, and 43 enjoining the necessity of an adequate or living wage in all sectors of economic activity of the constitution of India as a part of the directive principles of state policy. Article 43 enjoins that healthy conditions of work should be provided and a decent standard of life should be guaranteed. It also stresses the right to leisure for all working people. Social protection programmes in India consist of the programme to improve living standard of the poor (ii) targeted social security programmes meant mainly for the very poor, (iii) social security measures meant to protect the interests of disorganised or informal sector worker and (iv) social security measures meant to provide economic or financial and human security to organised or formal sector workers.

### **10.5 Implementation of directive principle—a positive step towards social justice**

In this case the court observes that denial of medical facilities by government hospital to an injured person on the ground of non-availability of beds amounts to violation of Article 21 of the constitution of India, which deals with right to live with human dignity the government ensure refuse to provide health security through medical aid to one who stands face to face with the question of life and

death. Article 45 of the constitution of India, which is an article of the Directive Principle of State Policy, directs the state to provide for free and compulsory education of children up to the age of 14. The Constitution contemplated a crash programme being undertaken by the state to achieve the goal that set the act in this article. The Supreme Court (1984) clarified that the Right to Education means that an individual has a right to call upon the State to provide educational facilities to him within the limits up to its economic capacity and development. In compliance with the courts' observance, the government of India interfaced and launched Sarva Shiksha Abhiyan (SSA = Education for ALL) to ensure the provision for education to all. The Rights to Education Act (RTE), which was enacted in 2009 and enforced from April, 2010 gave a starting base for providing education. Sarva Shiksha Abhiyan, which was launched in 2001-2002, addresses the educational right of children in the age group of 6-14 years by strengthening educational infrastructure in terms of the opening of new schools construction, renovation and expansion of school buildings and providing other amenities like text books, etc., Lakhs of children all over the country get the benefit of this right to education. This law contributes to the fulfilment of the wish contained in Article 41 after about more than half a century country of its being in the paramount parchment, like primary education desired and conceived by this Article 45, having been given the status of fundamental right by the decision of the case, *Unnikrishnan J.P. Vs State of Andhra Pradesh, 1982*<sup>57</sup>.

Article 47 declares that the State shall raise the level of nutrition and the standard of living and improve public health. According to this Article, it is the duty of the state to adopt necessary possible steps to ensure the improvement of public health. The Supreme Court has always recognized the right to health and being an integral part of the right to life (AIR 1982, SC 86). The principle got tested in the case of an agricultural labourers whose condition, after a fall from a running train, worsened considerably when as many as four government hospitals in Calcutta refused to admit him as there did not have been any vacant bed. The supreme court did not stop at declaring the right to health to be a

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<sup>57</sup> *Unnikrishnan J.P. And others vs. state of Andhra Pradesh And others. Writ Petition ( C) No. 607 of 1992 ( under art. 32 the constitution of India)*

fundamental right and at enforcing that right of the labourer by the government of West Bengal to pay him compensation for the loss suffered. It directed the government to formulate a blue print for primary health care with particular reference to treatment of patient during an emergency<sup>58</sup> (Paschim Banga Khet Majdur Samity vs State of West Bengal, 1996(4 sec 37).

Medical negligence is viewed as an offence. A doctor attending his patient cannot neglect his duty and deny his service to him/her. As far as the law of health security is concerned, the doctor who attends the patient is bound to discharge his duty and render his service to him/ her. If the doctor is found guilty of it by way of wrong treatment or dereliction of duty or indifference to emergency medical service needed for the patient, he is liable to be punished. Even the hospital authority cannot be indifferent to any patient admitted therein. Such an incident took place in AMRI Hospital in Kolkata, and in this incident both the hospital authority and the three doctors attending a woman patient, Anuradha Saha, wife of Dr. Kunal Saha, were charged with the patient's death due to medical negligence. Dr. Saha had fought a legal battle for a long period of 15 years to get justice. Finally justice was meted out to him by the Supreme Court. In a historic judgment on October 24, 2013, the Supreme Court held AMRI Hospital and three senior Kolkata doctors guilty of 'medical negligence' and directed the Hospital to pay Rs. 11.5 crores as compensation within eight weeks<sup>59</sup>.

Since the court recognises the right to health as a fundamental right and the state realised that as a welfare state it is its bounded duty to provide health security to people, the central government has adopted a number of measures to ensure health security to its citizen and National Rural Health Mission (NRHM) launched in 2005 is a remarkable and commendable health welfare programme that fits a welfare state. This programme aims at providing health security, particularly to women, children and the poor who reside in rural areas. It adopts a comprehensive approach covering vital determinants of health like nutrition, sanitation, hygiene and safe drinking water. The principal goal of this health

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<sup>58</sup> Paschim Banga khetmazdoor Samity vs State of West Bengal, 1996 (4 sec 37)

<sup>59</sup> The Statesman, May 6, 2014.

security programme it to control and reduce the mortality rate of infants and maternity, to prevent communicable and non-communicable diseases and to provide people medical facilities to be cured of diseases from which they have been suffering for lack medical facilities. The programme has been instrumental in the decline in the infant mortality rate and increase in the institutional delivery. The top achievement of this programme is that it has greatly succeeded in creating awareness in rural , ignorant, and backward people of the necessity and value of healthy life.

The judiciary is found to be active in respect of health security to people. Health is basic to life. If health is ignored in India, the state will cease to be a welfare state. Denial of healthy security stands for denial of the basic right of human beings. The Apex court contends that it is one of the primary objectives of such a state in general to recognise and accept the right to health as a fundamental right of people, and this right has been being intimately linked to the right to life since the emergence of the dominance of coalition politics in India.

Health is universally interpreted as national as well as global wealth. The world has attributed prime importance to health security as one of the agenda for social security to the people of the world. World Health Organisation (WHO) is such a unit to initiate and launch any such programme to promote health of people of the world and thus to secure health security for the world. Health security is inseparably related to social security and is an important condition for social justice. Article 45. Under Part IV of the Constitution of India states that it is a duty of the State to provide health security for people . Health security is indispensable not only for social justice but also healthy population that facilitates realisation of nation's goal. Mr. Pranab Mukherjee , President of India , emphasized intensification of effort for sustainable expansion of health care medical education infrastructure in a function at Rashtrapati Bhawan auditorium on April 30, 2014 and stated , "A successful health care system should be comprehensive in terms of its quality, availability , and affordability". He added that "India's triumph in eradicating polio from our population, our success in checking kala azar and fifty per cent decline in malaria are result that give us reason to be proud of . However, such advanced health care is most often at a

cost that is beyond the reach of common people. While the Rashtriya Swastha Bima Yojana has been efficacious to an extent development of a more comprehensive facility available for primary, secondary and tertiary health care would go a long way in providing great health security to our people"<sup>60</sup>. Hence social security is unrealizable without health security in India.

In consumer education and research Centre vs Union of India, 1995 (3 sec 42), right to health and medical care is a fundamental right under Article 21 as it is only natural for making the life of the workman meaningful and purposeful with dignity of person. Right to life also includes right to livelihood, better standard of life, hygienic conditions in workplace and leisure. In Kirloskar Brother Ltd. Vs Employees State Insurance Corporation, 1996 (2 Sec 682) and in State of Punjab vs Mohinder Singh Chowla, (AIR 1997 SC 1225) the court contended that the right to health is a fundamental right of a workman and the amount spent towards treatment has to be reimbursed. In Vincent Parikarlagaro vs Union of India (Air 1980 SC 165), the court declared that the right to maintenance and improvement of public health is under the right to live with human dignity.

The working class in India constitutes a large chunk of Indian population. The state cannot deny its duty and liability to the welfare of this class. Any attempt to ignore the interest and security of life of workers and labourers is a gross disregard of the constitutional spirit and goal of India as a welfare state and is in contravention of the ideal and aspirations of our constitution framers. It is an important duty of the state to protect the right and interests of workers and labourers. India is declared to strive to secure social and economic justice to all irrespective of caste, class, sex, etc and to protect them against exploitation and deprivation. It is also the duty of the state to ensure healthy and human working condition for workers and also to provide laws for adequate, regular payment of wages in consistence with the nature and type of working discharged or done. The workers or labourers cannot be deprived of it, and deprivation of it will stand for exploitation and deprivation. Right to wages against works done is an inviolable right of workers. Article 38 states that the state shall strive to promote

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<sup>60</sup> 'Prez Pitches for Health Security', The Statesman , May 1, 2014

the welfare of the people and in Article 43 it is laid down that the state shall endeavour to secure a living wage, decent standard of life to all workers. The supreme court ruled (1995, 3 Sec 42) that the state cannot deny the minimum pay act in the pay scales of regularly employed workman even though the government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The government cannot take advantage of its dominant position and complacency worker to work even as a casual labourer on starvation wages. Though 60th central government and state governments fixed minimum value of wages under the minimum wages act, 1948 for various employments under the respective jurisdiction, the central government fixes the National Floor Level Minimum Wage (NFLMW), revising it from time to time. Presently it stands at Rs 115/- per day with effect from 01.04.2011. The state governments are advised to secure that in none of their scheduled employments, the minimum wages are fixed at a level not less than National Floor level Minimum Wage.

In order to render social security and justice to people the state should strive to provide employment to them as so to enable them to earn their livelihood. The state should provide work opportunities to them to promote their economic interests the government of India has already launched several programmes to provide work opportunities to the working sections of the society. It has guaranteed them 100-day work on a yearly basis to them. Under Swarnajayanti Gram Swarozar Yojana (SGSY) financial assistance is provided to number of Below Poverty Line (BPL) families for creating income generating assets through a mix to bank credit and subsidy. To alleviate poverty is one of aims of India, for this is very positive step to provide social and human security and protection to people. Swarna Jayanti Rozgar Yojana (SVSPY) is an employment oriented urban poverty alleviation scheme. Prime Minister Employment Generation Programme (PMEGP) has been launched in order to generate self employment by providing credit linked subsidy for setting up of micro enterprises economic protection to the weaker sections of the society. The central government seeks to provide this security through enactment the Mahatma Gandhi National Rural Employment guarantee act (MGNREGA) aims at enhancing the livelihood security of people in

rural areas by guaranteeing 100 days of wage employment in a financial year to a rural family or household. The Act covers 615 districts and have provided employment of about 2900 million person days in 2010-11. The scheme also has the potential of upgrading infrastructure and increasing agricultural productivity by altering the geography of poverty, empowering women and preventing distress migration.

Indira Gandhi National Old Age pension Scheme (IGNOAPS) is social security programme launched by the central government as a welfare and human step to provide financial assistance to allow persons of the age of 65 years. So that person like them who are living Below Poverty Line (BPL) do not die of starvation. Under this scheme all citizen belonging to BPL category and above the age of 65 years are provided pension of Rs 200/- per month from the central government. In addition to it, state governments provide old pension ranging from 200/- to Rs 1000/- per month. Indira Gandhi National Widow Pension Scheme (IGNWPS) is a scheme envisaged and launched by the central government to provide financial aid to widows for their livelihood. This is a very good programme to secure social and economic security to them. Under it, pension is given to the widows aged between 45 and 65 years of age of BPL household. The pension amount is 200/- per month per beneficiary paid by the central government. The state government's contribution is also expected to provide an equal amount to the person.

The aim of our constitution framers is to establish a new social order in which justice is declared to prevent in which no one will be a victim of discrimination and in which equality will be the main goal. Article 38 of the constitution lays down the duty of the state to promote the welfare of the citizens of India by security and promoting a social order to socially and economically uplift the national life. The social economic order is tested to be built is wedded to socialism and the aim of the state as stated in the preamble is to realise a socialistic pattern of society. The Directive Principles of state policy contain the principles for the state, though not justiceable, to provide for adequate protection and relief of livelihood for all citizens with out discrimination to ensure common good through distributive justice, to ensure equal pay for equal

work without discrimination of sex, to ensure right to work, to education and for public assistance in the cases of unemployment, old age, sickness and disablement, to provide for a living wage for all workers and to ensure a decent standard of life, to adopt measures to improve health for the working class, to ensure just and human condition of work and maternity relief and finally to protect and honor human basic rights and dignity.

The Indian polity is governed by egalitarian principles and stuck to secure an egalitarian society in which the principles for equal rights, benefits and opportunities guide and direct the policies of the state. The state claims to have a civilised society with full democracy granted to all uniformly. To ensure minimum basic necessity of citizens in civilised society and to establish a democratic set up rest on social justice. To implement and translate the directives for social justice into action, the central government and state government have taken so many steps based on the directives. The government has enacted social, labour and economic legislation besides industrial, agricultural and taxation policies. It has introduced and launched different comprehensive welfare scheme (HACWS). It has two components—(i) Rajiv Gandhi Shilpi Swasthya Bina Yojna (RGSSBY) and (ii) Bima Yojna for Handicrafts Artisans (BJHA). The scheme covers the artisans' family of four comprising the artisan himself or herself and three members of family and provides for annual health package amounting to Rs 15000/- including Rs 7000/- for Outdoor Patient Department (OPD). An insurance cover of Rs 0.1 Million is also available for the personal accident, death and disability of the insured artisan. Another such welfare scheme, namely, National scheme for welfare of Fishermen and training and extension (NSNITE) has been launched. The scheme provides for coverage of accident insurance for active fisherman, development of model fisherman villages, saving-cum-relief and training-cum-extensive facilities, etc. This scheme is intended for social and economic security for fisherman whose job is risky and accident prone. It will provide financial protection to the family of a fisherman if any accident happens to his life. A scheme namely, Rajiv Gandhi Shramik Kalyan Yojna (RGSKY) to provide social safety net to insured workers rendered unemployed through retrenchment, lay off, closure and partial

disability is being implemented by ESIC by way of providing about half of the wages and medical benefits for a period of one year.

The government has introduced public insurance and provident fund schemes together with the enactment of India Tribunal Disputes Act, Bonus act, Social Security Act, etc. have provided for the welfare of the working class. Besides, minimum wages have been fixed for the working sections as already mentioned, and wage board has been set up for the settlement of wage disputes of the workers. These are undoubtedly positive steps towards social security to the working classes in our country.

Inspired by the directives enshrined in the Directive Principles of State Policy, the government has enacted a good many number of laws to implement the organization of village panchayats as a unit of self government in accordance with article 40 which is directed towards the regeneration of village panchayats. The village panchayats have become a reality with the introduction of panchayati raj institutions in the wake of the recommendations made by Balwant Raj Mehta Committee. There are two million village panchyats covering 98 per cent of the rural population. These panchayats are elected on the basis of adult franchise. They are given a number of civic functions as well as judicial powers. The village panchayats have number of participation of people in the drive for rural reconstruction as well as for social and economic justice and security to rural people. The Government has enacted the historic seventy-third and seventy-fourth constitution amendment act, 1992 to build panchayeti raj institutions as an administrative unit. Now, panchayats have been assigned 29 departments with full power so that people of village can fulfil their living standards and dreams by their sufficient support and participation. Most of the states have enacted their own state panchayat act with the same spirit of the main act and devolved funds, functions and functionaries to make panchayat as an initiation of self-government.

Democratic decentralization is one of the pillar of democracy. It tends to vest power with people and paves the way for common peoples' participation in local administration, in local area development and problems faced by people at the

grass-root level, in the adoption and introduction of local programmes to promote living standards of life of local poorer people, to promote health, to create health awareness, to create opportunities for local complement or self-employment to arrange training facilities to develop work skills among the people of lesser god, to create awareness of basic laws and basic rights of life, to eradicate illiteracy and to alleviate poverty, to strive the worker sections of rural India, and in taking the initiative of social security and justice to rural people. Panchayati raj epitomizes the trend towards decentralisation and is expected to play an effective role in facilitating and expediting human empowerment, protecting them against violence in various form and safeguarding the working classes against exploitation. It also plays an important role, as seen to promote local communication and agriculture which is the basis of rural economy. Decentralisation encourages people to participate in social welfare activities and facilitates development that enables the state to gradually ensure social security to the deprived and the disadvantages classes. The creation of an autonomous state within the Indian Union and of Panchayati Raj institutions within the state is a good illustration of decentralisation.

The 73rd and 74th constitutional amendments were passed in 1993 (separately), making it compulsory for all states to have three-tier decentralization below the state level with compulsory elections every five years to the different tires. By April 1994, all states enacted legislation, as required by the constitutional amendment, to increase power and authority with panchayats to enable them to function as institutions of self-government this includes powers to prepare and implement plans for economic development and social justice, execute schemes estimated to them by the state and central government and exercise power as delegated in subjects listed in the eleventh schedules, annexed to the advertisement and the twelfth schedule in the case of Nagar Palikas. These are mostly in the realm of economic development and social justice suitable for being effective to local bodies. Both the constitutional amendment act have provided for reservation of seats for scheduled castes and scheduled tribes population to and not less than one-third for women and reservation of posts of chairperson in proportion to the population of scheduled caste and scheduled

tribes in the state. They provide for reservation of not less than one-third of the elected seats in each panchayat for women and also reservation of not less than one-third of the number of chairperson at each level of also provides few relation of reservation for women among the constituencies.

The institution of local self government have heralded a new age for grass roots democracy in the country which is positive instrument of social justice. Iqbal Narain writes, that democracy to be meaningful and purposeful welfare the state must orient itself towards decentralisation (The Democratic Decentralization in India, Journal of Political Science, 1960). Devolution of power from the higher to lower levels is an accessory method in a democratic polity. The Panchayati Raj institutions, which act as the units of self-government at the lowest level, will ensure and is striving to ensure peoples' participation in running their own affairs and has an effective system of grass root democracy. The grassroots democracy is the Indian versions of direct democracy. It may also be called participatory democracy.

The institution of gram panchayat has been vested with a long list of power to perform welfare reactions in order to promote rural life to a newer level and secure justice to people. Apart from its obligatory (MANDATORY) function, it has discretionary functions including civic, social welfare, agricultural and development activities.

There is provision in the Panchayet Act for setting up Nyaya Panchayet (Judicial Panchyats) intended to provide speedy and inexpensive system of justice in the villages. Its jurisdiction is to try partly civil suits relating to movable property having the maximum value of Rs. 250/- and minor offences. But the state government has not permitted gram panchyats to set up Nyaya Panchayats. Nyaya Panchayats needs to set up to settle up such petty matters to bring social justice to rural people.

The Panchayati raj system in West Bengal plays a very significant role in imparting social justice and in ensuring social security to the people of the state. It has struck deep roots within twelve years of left front government regained power since 1977 and is regarded as the most sincere realisation of the

nationalist leaderships dream of gram roots democracy and rural development gram panchayets have become the principal agency for the implementation of agrarian system, notably registration of sharecroppers for purposes of tenancy reform and provision of loans and identification of beneficiaries for anti-poverty programmes. The successful role of Gram Panchayat in eradicating illiteracy, spreading education, strengthening health care system and alleviating poverty in rural India is recognised by people and the government.

The aim and objective of the constitution of India, as envisaged in the Preamble, is to secure social and economic justice to all without any discrimination and to establish economic democracy. In order to achieve this goal or objective the constitution provides for continuing facilities to help the working sections of the society to come forward and raise their standard to the level of the general body of the citizen of India. Justice, liberty, equality and fraternity are the basic pillars of the constitution and justice requires that the backward class should be elevated to the level of equality with the advanced classes to make liberty real for them. In the constitution the scheduled castes and the scheduled tribes are identified as the backward classes. The Anglo Indians have also been given some special rights in the constitution. By the constitutional amendment act of 1990 the government of India has declared reservation for those who have embraced Buddhism. The constitution enshrines various provisions for the protection of the interest of the minorities. Article 13 prohibits discrimination against any citizen on grounds of race, religion, caste and gender etc, but constitutions' special provisions made by the state for the advancement of socially, educationally and economically backward classes i.e., the scheduled castes and scheduled tribes. In other words special facilities conferred on scheduled castes and scheduled tribes cannot be turned down by the courts as being discriminatory of the right to equality. In Mondal case, the Supreme court upheld 27 percent reservation in services for backward classes, directed the exclusion of the advanced sections or the creamy layer among the backwards from the reservation quota and stressed that the reservation should not exceed per unit. The constitution had to be amended to allow Tamil Nadu to continue with the 69 per cent reservation quota.

The right to education is a constitutional (fundamental) right and is ascended to the status of fundamental rights similar to the right to life as provided by Article 21 A of the India constitution. The right of children to free and compulsory education act, and is an act to provide for free and compulsory education to all children in the age group of six to fourteen years. The right to free and compulsory education came into force on and from April, 2010. According to the act, every child in the age group of 6-14 year will be provided 8 years of elementary education in an appropriate classroom in the school of his/her neighbourhood.

According to the act, any cost that prevents a child from accessing school will be borne by the state which shall have the responsibility of enrolling the child as well as his/her completion of 8 years of schooling. No child shall be denied admission for want of documents or shall be turned away if the admission cycle in the school is over and child shall be compelled to face an admission test. Section 21 along with section 13(2) of RTE prohibits away of these screening procedures and calls for random procedures to be used for admitting a child to school. This prohibition is to apply to all schools, private or even Navodaya schools. The act restricts schools to claim special category status because it is in the screening procedures of the elementary level. Moreover if the number of children applying to a school exceeds the available seats, an open lottery system shall be used to fill the seats. This applies to all categories of schools.

Children with disabilities will also be educated at par from same schools. Section (10) of the act makes it the duty of the parents to secure that their children to schools, with out prescribing any punishment. Special provisions are laid for children not admitted to or who have not completed elementary education; a child not admitted into elementary education will be entitled to the completion of elementary education even after formative years. However, the implementation of the act will be and as one of the promises to ensure education to all the children between the age group of 6 and 14, would ??? education a whopping 22 come children, out of which nearly 11??? are out of school. For child labour and street children, the government would have to ensure that they are not completed to work and it would have to provide schools for them, ???

with residential facilities to provide them with an appropriate environment to enable them to continue their education.

On the basis of the act, no school, governmental or private, can detain, fail or expell any child of the elementary stage. An April 6, 2010, the Delhi high court passed a order against St. Xavier's School Delhi, which had to take back all the children they had declared failed and expelled from the school. The act also prescribes and stipulates standards for all the schools and school that does not fulfill these standards within 3 years will not be allowed to function. The national commission for protection of child rights (NCPCR) has been mandated to meaitor implementation of this right. The state ??? for protection of child rights (SCPCR) shall set up child helpline, accessibility SMS, helpline and letter for receiving and registering complaints. NCPCR seeks to link and network with civil society organisations for monitoring, appointing state commissions for the entrancement of the act, networking with other organisations like human rights. Work and Minorities, to set up helpline and set up a separate division for inferring the rights to education.

## **CHAPTER XI**

### **Directive Principles and Fundamental Rights – The Two Complementary Principles of Justice**

#### **11.1 Aims and Spirit of Directive Principles**

Part IV of the Constitution of India deals with the Directive Principles of State Policy which have been enunciated in the Articles 36-51. This part is based on the principle of social justice to achieve which the State is seen striving mainly since the dominance of coalition politics in the Indian political system, in order to firmly establish egalitarianism in the society. The Directive Principles constitute a significant part of the Constitution. It is very significant because the existence of fundamental rights will become weak if the Directive Principles are deleted from the Constitution. They tell about the aims that the State should strive to achieve. They contain the aims and objectives of India as a welfare state. They are expressive of the philosophy of a modern democratic society. It is not at all an exaggeration to say that Indian democracy draws its sustenance from the Directive Principles. The study and analysis of the principles demonstrates that democracy will be reduced to a state of meaninglessness if the Directive Principles are always ignored and overlooked by the State.

Democracy is the ideal of India and it is the main spirit of the Constitution of India. If democracy is presumed to be a living entity, social justice is definitely its soul because democracy is meaningless and absurd without social justice which our state seeks to ensure to all its citizens. Directive Principles of State Policy have been consciously incorporated in the Constitution of India to translate democracy into a reality through justifying social justice as a basic right for all Indians. They have another very important significance in the polity of India that the Fundamental Rights enunciated in our Constitution have been guarded and reinforced by the Directive Principles.

Directive Principles are the explicit desires and aspirations of the Constitution makers to give India a perfect shape of a "social service state" because one of

the primary aims of such a state is to provide social protection and ensure social justice to people. Since the dawn of Independence of India in 1947 the Government has been giving top priority to the question of social justice, social security, social and economic equality as the basic aim and objective of the State. The principles of compensatory justice has been derived from the spirit of Directive Principles of State Policy in order to achieve social justice for the backward classes who have been deprived of the facilities and opportunities which are supposed to be enjoyed by those of the upper classes in our society. The importance of Directive Principles cannot be diluted from no standpoint. They are the epitome of all human philosophies—socialism, liberalism, humanism and what not. The Directive Principles of State Policy are a unique blend of socialistic, liberal, democratic and Gandhian principles.

Dr. Pylee is of the view that the Directive Principles of State Policy provide one of the novel and striking features of modern constitutional government. They are not the paraphrase of the Irish Principles of Directive Principles of Social Policy but the reflections of the democratic ideals and aspirations of the western educated intellectual movement of the nationalist struggle to develop and establish an egalitarian society in India. They contain the mission and vision of New India which should strive to secure equality and justice to all Indians who had been long denied of rights, freedom and democracy.

The Directive Principles are broad directives to the State in accordance with which the legislative and executive powers of the State are to be exercised. The Directives are articulated in the Constitution in order to evolve a society characterized by humanism, tolerance and unity. They are fundamental in the governance of the country. According to Dr. Pylee, they enshrine the fundamentals for the realization that the State of India represents. They epitomize the noble political philosophy to which the State is committed. The philosophy is social justice and social security. They show the path to the achievements of the noble ideals – justice social, economic equality and political equality as proclaimed in the Preamble to the Constitution.

Though the Directive Principles of State Policy are non-justiciable and are said to be subordinate to the Fundamental Rights in the Constitution of India, they are meant to strengthen the Fundamental Rights. Prof. T.K. Shah deprecates the Directive Principles as "pious wishes" or a mere window dress up for the social revolution of India, but we cannot agree to this view because the Directive Principles constitute a set of instructions upon the state to transform a laissez faire society into a welfare state, a socialistic pattern of society and eventually into a socialist state.

Before we go into the linkage between the Directive Principles and Fundamental Rights we may again refer to the book, **Justice Krishna Iyer on Fundamental Rights and Directive Principles** by Shailja Chander to show how Justice Iyer demonstrated and established the relationship between the two. Chander referred to the headline "Position up to 1973 when Justice Iyer was elevated to Supreme Court". Chander wrote soon after the commencement of the Constitution that an undue emphasis was laid on the unenforceability of Directive Principles without taking into consideration their fundamental feature and the constitutional duty imposed upon the state to implement them. It gave rise to the belief that Directive Principles were mere pious aspirations of little legal force and had to conform to and run subsidiary to Fundamental Rights.

Conflicts between Directive Principles and Fundamental Rights may arise owing to various reasons. Clause (2) of Article 13 stipulates:

"The state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause, shall to the extent of contravention, be void".

B.N. Rau had suggested, the following amendment

(1) at the beginning of col 9(2), now article 13(2), insert the words "subject to the provision of Cl (10) (which emphasized the fundamental nature of Directive Principles.

The first important case after the commencement of the Constitution was **State of Madras vs. Champakam Dorairaj** of, a Brahmin, made an application to the High Court of Madras under Article 226 of the Constitution as she was denied a seat in the Medical College. This case is quite important as it set the tenor of Directive Principles i.e, the justiciability or non-justiciability aspects. Also the first Constitutional Amendment Act was largely influenced by the judgement of the case. Moreover the 25<sup>th</sup> Constitutional Amendment, a gap of some two decades since the Champakam Dorairajan case was also a sequel of it.

## **11.2 Directive Principles and Fundamental Rights Basically**

### **Inalienable**

The Directive Principles of State Policy may be looked upon as a sister part of the Fundamental Rights in the sense that they aim at making Fundamental Rights a reality extending democracy in the social and economic sphere. The Directives instruct the State to play a positive and active role in ensuring justice to people in all respects. The State transforms policies and formulates laws keeping in view the principles stated in the Directive Principles. In this respect, the State follows the spirit, philosophy and instruction of Directive Principles. The Directive Principles help the State to plan, formulate and introduce welfare programmes to establish social and economic democracy in India and to protect people's right, freedom and dignity against infringement. They constitute a comprehensive blue print of social goals – they are the positive blue print of social protection and justice.

Though Fundamental Rights and Directive Principles of State Policy combine to form the conscience of the Constitution, they are outwardly distinguished from each other. While Fundamental Rights contribute to limitations upon the State action, the Directive Principles are in the nature of instruments of instruction to the government to do certain things and to achieve certain ends to their actions. This means that Fundamental Rights constitute a set of negative injunctions to the government. The State is restrained from doing certain things. Directive Principles, the other hand, are set of positive directions upon the State to take initiative to transform India into a social and economic democracy.

### **11.3 Fundamental Rights Constitutionally Contrasted with Directive Principles**

While Fundamental Rights are enforceable by the courts under Art. 32 (1) of the Constitution provides for the right to move the Supreme Court by appropriate proceedings of enforcement of the fundamental rights. The courts are bound to declare any law void if it is inconsistent with the Fundamental Rights; but the Directive Principles are not enforceable by the courts as stated in Article. 37 , and the Courts cannot declare as void any law which is otherwise valid, on the ground that it contravenes any of the 'Directives'. Hence, in the case of any conflict between Parts III and IV of the Constitution , there is no doubt that the former will prevail in the courts.

For the first time , there arose a conflict between Directive Principles and Fundamental Rights and the matter was brought before the Supreme Court in 1951 through a writ petition . The court admitted it and the case was known Champakam Dorairajan vs. State of Madras. The Supreme Court opined that "Directive Principles of State Policy have to conform to and run subsidiary to the chapter on Fundamental Rights" ( but it is not all to quote the judgement of this landmark case. This case along with Indira Sawhney case , Bishakha vs State of Rajasthan case be put together to guess the domain of social justice in the crucible of Directive Principles). In 1951 , the status of Directive Principles were ignored. Thus the Directives were positive in nature while the Fundamental Rights are negative or prohibitive.

But the 25<sup>th</sup> Amendment of the Constitution introduced Article 31C to effectuate certain directive principles. Amending to this Article , "Notwithstanding anything contained in Article 13 , no law giving effect to policy of the state towards securing the principles specified in clause (b) or (c) of Article 39 , shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31 provided that where such law is made by legislatures of a state the provisions of this Article shall not apply thereto unless such law having been reserved for the consideration of the President has received his assent'. The Supreme Court

opined that Directive Principles should be subsidiary to Fundamental Rights because in a state wedded to socialism, laws directed to give effect to land reform were found to conflict with Fundamental Rights.

The 25<sup>th</sup> Amendment Act provided that no law giving effect to such policy e.g., the policy of the State towards running the Principles specified in clause (b) or clause (c) of Article 39 shall be in question in any court on the ground that it does not give effect to such policy" ( Constitutional law of India , 1980 Naba Bharat Publications , Calcutta). Even before Keshavananda Bharati case in which the said portion was struck down as unconstitutional the Supreme Court upheld the validity of many laws with reference to the Directives.

"But when legislation is passed to implement Directive Principles which are alleged to be in conflict with Fundamental Rights, the court attempts to validate the law by the application of the reasonableness of the public interest. The case namely State of Bombay vs. Balsara<sup>61</sup> is an illustration in point . In Quarashi vs. State of Bihar it was alleged that the prohibition of cow slaughtering contained in Article 48 contravened inter alia provisions of Articles 25 and 26 of the Constitution of India . But in that case the Supreme Court decided in favour of the validity of the legislation . In the case of Jugalkishore vs. Labour Commissioner of Bihar shop and establishment Act, 1953 , was challenged on the ground that that it was in conflict with Article 19 (1) (g) of the Constitution . But the Supreme Court upheld the validity of the law in the light of the provisions of Articles 41, 43 and 46 which provide for reasonable restriction in general interest of the public (D.D. Basu's Constitutional law of India). In 1967 , the Supreme Court in Golaknath case held that it is the duty of Parliament to enforce the Directive Principles without diluting Fundamental Rights. As a result of invalidation of some progressive laws like Bank nationalization , Privy Purses Abolition , Parliament passed the 25<sup>th</sup> Constitution Amendment Act in 1971 which amended an Article 31( c) . An Act for the enforcement for Directive Principles shall not be invalid on the ground that it

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<sup>61</sup> Bombay Prohibition Act (XXV of 1949)—constitutional validity – applicability of act to foreign liquors – to medicinal and toilet preparations containing alcohol – validity of ss 2(24) (a) 12, 13, 23, 24 39, 40(1) (b) etc.

violates Fundamental Rights as stated in Articles 14, 19, and 31. The effective implementation of Directive Principles of State Policy is a key to achievement of social goals -- to ensure equality, to secure rights and to prohibit discrimination and deprivation.

#### **11.4 Implementation of Directive Principles and Achievement of Social Goals**

Though the government cannot be forced to implement Directive Principles, we cannot deny that the realization of the social goals relies on the effective implementation of the Directives. The effective implementation of Directive Principles of State policy is a key to the achievement of social goals – to ensure equality, to secure rights, to uphold human dignity and to prohibit discrimination and deprivation. India is committed to Socialism and Directive Principles constitute the basis of social welfare and social justice. Their systematic implementation is expected to give India a shape to a social welfare state. Keeping in mind the necessity of implementation of Directive Principles for securing justice to people, the state should not strictly adhere to the principle of inviolability of Fundamental Rights. It should attach top priority to the establishment of egalitarian society. In this respect, Parliament may compromise, to a certain extent on Fundamental Rights to enact certain Directive Principles and implement them in the greater interest of people and the nation.

“The 42<sup>nd</sup> Constitution Amendment offered another change by declaring that no law giving effect to any or all Directive Principles of State Policy shall be invalid on the ground that it violates Fundamental Rights...”. This amendment attempted to give primacy to the Directive Principles as against Fundamental rights, but the Supreme Court in *Minerva Mills* case (1980) has upheld the supremacy of Fundamental Rights over Directive Principles. In this respect the Chief Justice argued that “Our Constitution is built on a balance between parts III and IV and to give absolute primacy to the one over the other is to disturb the harmony between the two...”. This observation of the Supreme Court defends and validates the interrelationship between Fundamental Rights and

Directive Principles of State Policy which is of great necessity for India to uphold equality , democracy and justice.

Directive Principles constitute the goals and aspirations of the state of India to ensure full justice and security to people. They are immensely valuable addition to the constitution of India of India as its integral part. According to Shri Durga Das Basu, the inclusion of Directive Principles in the Constitution has been vindicated by national consensus and the working of the Constitution since 1950.

The Directive Principles lay emphasis on the goals of Indian policy to establish a welfare state , which has been declared by the framers of the Constitution in the Preamble.. They constantly remind the state of India of its positive duty to ensure social and economic justice to its citizens and to protect dignity of the Individuals . They are expressive of indispensability of a new social order based on social justice and social protection in order to constitutionally guarantee individual rights and freedom. They help us to rightly understand the meaning and significance of Fundamental Rights. Fundamental Rights guided by Directive principles of State policy , will definitely enable the State of India to establish a classless , casteless and exploitation and discrimination free society based on the principles of political liberty , economic equality and social justice and social protection . It cannot be gainsaid that Fundamental Rights cannot alone render justice to people nor are they be able to bring about social revolution in India in a constitutional manner . Social revolution in India depends mainly on state's sincerity to the implementation of Directive Principles. Implementation of Directives stands for the protection of people's rights and dignity , dispensation of justice, of economic equality, guarantee of social protection and realization of our national goals.

Directive principle of State Policy is not less important than fundamental rights as far as the Constitution framers cherished the desire and aspirations for a true democratic state based on socialistic ideas. Fundamental Rights guarantee the Indian Citizens Right to equality which contain equality before law , abolition of discrimination on grounds of class , creed, sex, and religion , equality in public employment , abolition of untouchability and abolition of titles. They guarantee

rights to freedom which include six freedom with certain restrictions upon them. They protect rights against exploitation which prohibit traffic in human beings and child labour. They grant to the people of India right to freedom of religion and give India a secular character. They protect cultural and education rights that include the right to protection of language, script and culture granted to the minority, who are able to give the right to establish, run and administer educational institutions of their own. They grant Indians right to constitutional remedies and this right provides for enforcement fundamental rights through the judicial process. Directive Principles are not in conflict with the fundamental rights rather they have strengthened fundamental rights and broadened the scope of fundamental rights also. It may be said that the Fundamental Rights and Directive Principles of State Policy are mutually controlled. They are directives upon the states to secure welfare of the people which is explicit in the fundamental rights. They constitute the voice of the people demanding India to become a state where justice, equality and freedom for all will prevail. This is the spirit and principle of the Fundamental Rights.

### **11.5 Legal Importance and Implication of Directive Principles**

Though the courts do not enforce the Directives, they are not completely devoid of any legal importance. In a number of cases the Supreme Court has upheld the validity of many laws made on the principles of the Directives, though it is often found that such laws were violative of the Fundamental Rights; and so the legality of such legislation was challenged and the laws were interpreted as invasion of the Fundamental Rights. In *Keshavananda Bharati* case, the Supreme Court upheld the validity of the enactment so as to implement Directive Principles. The Court declared that Parliament can amend the Constitution to override or abrogate any Fundamental Right in order to enable the State to implement the Directives, so long as the "basic features" of the Constitution are not violated. The basic implication of the court's interpretation of the Constitution consists in its view that the State needs to be permitted to overlap any of the Fundamental Rights so that it may ensure the implementation of the Directive Principles. The Court is part of the State as defined in Article 36 r/w. Article 12 of the Constitution and implementation of the Directive Principles

to secure justice to all may be thought to be the court's indirect responsibility. The Court should interpret the Constitution with the aim to implement the Directives to harmonise the social objective underlying the Directives with the individual rights.

"After Keshavananda Bharati case , certain broad propositions are laid down by the Supreme Court and it was recognized that there is no disharmony between Directive Principles and the Fundamental Rights . Both are supplementary to each other in aiming at the same goal of bringing about social revolution and the establishment of welfare state.

It is a fact revealed from the Constitution that the Directive Principles cannot directly overstep the Fundamental Rights and so the courts cannot completely ignore the Directive Principles. The court should uphold as far as possible, legislation made by the State to ensure "distributive justice" and defend such laws as seek to check and remove inequalities, social injustices and exploitation and to defend government's attempt to achieve a fair division or distribution of wealth amongst members of the society. This attitude of the Court towards the State's initiative to implement Directive Principles through legislation is reflected in *Manchegowda vs State of Karnataka* , 1984 SC and *Lingappa Pochanna vs. State of Maharashtra* ,1985 SC<sup>62</sup>.

"In *Sameer vs. State* (1982 SC 66) the Supreme Court emphasized that it is the duty of the State under the Directive (Art. 41) not only to establish educational institution but also effectively secure right to education by admitting students to the seats available at such institution and State's action seem to conform to the standard of equality and rationality underlying Article 41"

"Similarly , the directives under art. 39(d) viz , equal pay for equal work for both men and women read together with equality clauses enshrined under Article 14 to 16 and was given effect to." "In *Randhir Singh vs. Union of India* (1982 , SC 879) the Supreme Court held that the principle of "equal pay for equal work" though not a fundamental right is certainly a constitutional goal, and therefore,

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<sup>62</sup> Showing the context in which Hyderabad tenancy and agricultural land act, 1950 appears

capable of enforcement<sup>63</sup> and also in *D S Nakara vs. Union of India* (1982, 1 SC, 305) the name was reaffirmed.

In recent cases , the Supreme Court has directed the government and administrative authorities to adopt positive measures to redress the grievances of the petitioners , that have been caused by the their failure to implement the Directives. The Courts have directed them to enforce the following directives:

- To ensure minimum wages for bonded and other workers or labourers who are being exploited;
- To form a joint committee of the central government and state governments to supervise , monitor and ensure that the poor and needy employees are not exploited by unscrupulous contractors infringing or violating Articles 38, 41, 42 43 of Directive Principles and other labour laws.
- To provide the benefit of Art. 39A to all undertrial prisoners.
- To lay down procedural safeguards in matters of adoption of Indian children by foreigners in accordance with Article 39 (f).

### **11.6 Value of Directive Principles in the Field of Social Justice**

Directive principles of State policy are of immense value as far as social justice to the people of India are concerned . They are said to constitute the philosophy of the Constitution of India. Fundamental Rights are described by Pandit Jawaharlal Nehru as “the conscience of the Constitution”. They are regarded as great charter of the of the Indian people. They have considerably helped to consolidate democratic ideals which Directive Principles seek to realize or translate into realities. The Karachi Session of the Indian national Congress (1931) which adopted an impressive document entitled *Fundamental Rights and Duties* , also dealt with provisions on labour , taxation and expenditure and economic and social programmes. These provisions form the basis of Part IV of the

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<sup>63</sup> Equal pay for equal work is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies by the enforcement of constitutional rights. Art. 39(d) of the constitution proclaims , as directive principles .

Constitution of India which is known as Directive Principles of State Policy. The Parliament of India has already passed several Acts on the Directives to bring about equality and social justice.

### **11.7 Directive Principles and Fundamental Rights Related**

As it has been discussed and elaborated in the preceding chapters, we can say that Fundamental Rights and Directive Principles are interrelated and complementary as far as the aims and spirit of the Constitution are concerned. Fundamental Rights guarantee rights to the people of India while Directive Principles seek to widen range and scope of the rights and to render economic, social and economic justice to them. What are required for Fundamental rights to guarantee to the people of India are stated or declared in Directive Principles of State Policy. Fundamental Rights in close associations with Directive Principles facilitate the process of government's effort to ensure equality to all, to secure social justice to all and to make India a truly welfare state.

#### **Summary**

The implementation of directive Principles of State Policy accords legal status to the Directives being enacted and implemented are directed towards social justice. They have greatly been successful in ensuring justice to the poor and weaker section of the Society and thus brought about great change in our social, economic and political life. The Directive Principles which have already been enacted and implemented are enforceable by and justiciable in the courts of law. The violation of such Directives by the State is an infringement of law. The spirit of the Fundamental Rights is almost identical with that of Directive Principles of State Policy. Both interpret each other. Both aim at guaranteeing people's rights, freedom and human dignity. Both contain the mission and vision of our pre independent national leaders to make India State of perfect democracy, where equality and freedom will govern our social and national life.

## **CHAPTER XII**

### **Conclusion**

#### **12.1 India and the Constitution**

India is one of the largest democratic countries in the world. Here democracy is key word of social , economic and political system . It has spread to the grass roots level of political system. It has emerged as the general mantra of the state as well as the people. The growing democratic consciousness of the people has led to the solidification of the foundation of Indian democracy. The Constitution that we have, is the guardian of democracy and our democratic rights. It has always guided, continues to guide and will continue to guide to future the state to march forward with firm democratic steps towards the achievement of the goals and ideals of the nation as declared in the Preamble to the Constitution and towards realization of the dictates of social welfare and social justice as enunciated in Directive Principles of State Policy under Part IV of the constitution of India . The constitution is the foundation of State's welfaristic policy and has always restrained of state or government from authoritarianism or deviation from democracy.

#### **12.2 Democracy and Justice in Indian Polity**

India believes in democratic socialism. The State is wedded to this political principle to ensure equality to all its citizens. The equality that it seeks to secure to all is not only political equality but social and economic equality. It emphasizes equality in all spheres of socio -political and socio economic justice. It strives to achieve the goals of equality of social status , equality of social opportunity , equality of wages between men and women, equality and justice and socialism. Through principle of compensatory discrimination, aims at a noble , human objective , to raise the socially, educationally , and economically backward and deprived classes i.e. the SCs / STs. to the mainstream of the nation through the provision of special facilities. Democracy in India cannot be justified if compensatory discrimination is not approved of for and granted to the

disadvantaged class in order to render social justice to them. Justice and democracy are interconnected in our polity which accords priority to social justices.

### **12.3 Democracy and Justice in British India**

Democracy and justice which India seeks to secure to its people were overridden in British India. The people of India were deprived of democratic rights and justice was denied to them. The British rule was one of colonialism and imperialism, and exploitation was its primary aim. The country was inhumanly exploited and the people were subjected to cruel treatment. Two centuries of British rule is historically branded as a dark period of exploitation and oppression for India though some welfare measure that the British Government had adopted were designed either to veil its injustices to the Indians or to consolidate its rule in India. Almost all our national leaders and social reformers were very much critical of this colonial rule and lambasted its disastrous consequences upon Indian social justice, political right, and economic equality. The natives of the country were pushed into a slavish state of life and were victims of equality, injustice, deprivation, discrimination and inhuman exploitation.

### **12.4 Ideals and Aspirations of the Constitution Framers**

Keeping in mind the denial of justice to the people of India by the British imperialism for about two centuries our Constitution framers who were more or less attached to the freedom movement of India and had had direct experience of British misrule that resulted in horrible miseries of the helpless Indians. They cherished the noble, human ideals and aspirations reflected in the Preamble and Directive Principles of State Policy, in order to secure to them equality and justice and to establish the rule of law. The philosophy of the Constitution is a noble objective of the State to transform India into an egalitarian society and a better society on the basis of justice, liberty, equality and fraternity. The aim of our Constitution framers was building up an ideal democracy so that people are

protected against discrimination in any way and on any ground and ensured social , political , legal and economic justice.

Secularism was an important ideal of our Constitution founders and national leaders. It disapproves of racial, casteist and religious discrimination. Democracy and secularism are interrelated in India which is a multi religious country. Democracy is meaningless and is bound to lose its significance and value if democracy is dominated by communal forces and religious fundamentalism. It is a fact that India was partitioned on the communal or religious ground and partition led to the creation of Pakistan which was made an Islamic state. But India remains committed to secularism. The 42<sup>nd</sup> constitutional Amendment Act, 1976 led to the incorporation of the term secular in the preamble and the state's secularism has been reinforced by the constitutional recognition of right to freedom (Arts. 25 – 29) as one of the fundamental rights.

India maintains absolute neutrality and impartiality towards all religions. The constitution has been framed to secure each and every citizen the freedom to profess, practice and propagate his own religion. It is the Preamble, professes to secure to all its citizens liberty of belief, faith and worship . Faizan Mustafa , Vice Chancellor , NALSAR university of Law , Hyderabad , writes , "No one can deny that in the wake of country's partition in the name of religion and the unfortunate conversion of Jinnah's Pakistan into an Islamic State , India's decision to opt for secularism was indeed a historic and permanent one. In fact, if we are a world power today and Pakistan a failed state , the reason lies in our decision to opt for modernity.

Nehru led from the Front in India's adoption of secularism. He has explicitly stated, in his autobiography of how organized religion filled him with horror... almost always it stands for a blind belief and reaction , dogma and bigotry, superstition and exploitation. Nehru's strong views on religion did play a significant role in our choice of secular polity" (Glory Divine – God, Religion and Election, The Statesman, 14 April, 2014)

### **12.5 India's Dreams—Distant Realities**

Democracy in India has still remained nominal and theoretical ; The people of India enjoy only political democracy and social and economic democracy is far ahead of India to achieve , though the central government from time to time , has endeavored to adopt and introduced some welfare –oriented programmes and schemes towards social change and social development. The 20 –point programme launched by Mrs. Indira Gandhi is a classic example in this regard but it has been much criticized more as politically motivated than as development -and -justice oriented. After about seven decades of India's independence, poverty has not been eradicated, discrimination has not been stopped, the gaps between haves and have-nots have been narrowed, illiteracy has not been removed, communalism and fundamentalism have not been uprooted, social justice has not yet been fully ensured, legal justice is still a far cry from being ensured, violation of human rights has not been curbed, and children and women have not yet been fully protected against exploitation and violence.

The failure of the State to ensure justice to all its citizens is primarily due to large scale and all pervasive corruption at all levels of the Government. Corruption in politics and corruption in bureaucracy are perhaps the two main impediments to the realization of the dreams of our Constitution framers and then leaders of the nation. A huge amount of money allotted for development programmes and schemes is both misappropriated and siphoned off. Lack of proper supervision and work analysis leads to the poor quality of developmental works done. Politicizations of development programmes are not regularly reviewed. Bureaucrats who are entrusted with the execution and implementation of development programmes are often found indifferent to the proper implementation. They are interested more in their service career than in the promotion of national interests. Above all, the nexus between unscrupulous political leaders and bureaucrats has entailed corruption at all levels of the government. It is an unpleasant truth that corruption in politics as well as in bureaucracy impedes India's social democracy and development without which social justice remains an unrealized dream.

## **12.6 Role of Coalition Politics in Social Justice**

The end of the Congress dominance in Indian national as well as regional politics leads to the emergence of coalition politics in India. The dominance of coalition politics is responsible for coalition government at the centre and also at the provincial level. The parties forming pre -poll and post -poll alliance that have formed the government for the three consecutive terms (One NDA and Two UPA Governments , 1989 - 2014) have their respective election manifestos announcing their decisions and policies of national development and social welfare aiming collectively at social justice. The parties allied to the Central Government have adopted and launched many programmes following ministerial or cabinet decisions to promote economic justice , social justice and to protect basic rights of people and to provide safeguards to children , women, and the poor and the weaker sections of the society against social crime and violence. The successful implementations of the decisions on welfare programmes constitute the basis of social justice to the poor of India. If the State fails to ensure economic and social inequality , to protect people against exploitation and deprivation and violence , to promote health services to people , to promote liberty, to guarantee equal opportunities for education and employment , to create employment opportunities , and to provide special facilities to the weaker sections , then how we can claim that the state has ensured social justice to people. It can't be gainsaid that the fifteen years duration of dominance of coalition politics walked many miles ahead towards the implementation of Directive Principles of state policy with the sole aim to render social justice to Indians.

## **12.7 Implementation of Directive Principles During Coalition Politics**

Over the years , since the acceptance and introduction of the Constitution of India the Central Government and the state governments to have adopted several measures to implement a large number of Directive Principles as steps to secure social protection to all on a firm footing . The government has launched several programs to deal effectively with the problems of poverty, unemployment, disease and illiteracy. Steps have been taken to promote health

and sanitation and to ensure the supply of drinking water , and to provide for nutrition , housing , education for the poor and the weaker sections of the society financial assistance to attain self reliance in conformity with the Directive Principles . But the facilities provided to them are too inadequate to meet the necessity. Only a minimum amount of poverty has been alleviated . Health security is a big problem for India. The Government has not yet been able to ensure adequate medical facilities to all. Deaths of pregnant mothers are most worrying social problem. Still the poor patients die for lack of proper and adequate medical facilities. A considerable percentage of total population in our country are still illiterate making different welfare measures that governments initiate redundant and ineffective . Right to Information Act hailed by no other than US President cannot not find many takers as deeper illiteracy dented our society. A large number of people are deprived of legal justice for want of money, though there is provision for free legal aid service, but it is so inadequate and limited that the scope of the provision for legal aid services needs to be widened.

The central govt. has laid special emphasis on the implementation of such Directive Principles as are related to the development of education, creation employment , alleviation of poverty, prohibition of child labour, insurance against risky and hazardous jobs, protection of woman rights, participation of women in politics, preservation of ecology and environment development of animal husbandry, provisions of financial assistance to poor senior citizens and widows etc. The implementation of the Directives is indispensable for social justice.

The aim of India is to secure an egalitarian society and the implementation of the Directive Principles will lead to egalitarianism and the achievement of the goal of economic and social justice may be translated into reality. It is a fact that government seeks to secure social protection and justice , and it is evident from various decisions on welfare programmes which have already been launched. The programmes are based on and derived from the Directive Principles of State Policy. The implementation of Directive Principles began its journey long before the period of coalition politics. Abolition of Zamindari system , enactment of

Land Reforms Act, fixations of land ceilings , nationalization of banks and insurance and the abolition of Privy Purses have paved the way for socialistic pattern of Indian society and lay foundation for a truly welfare and socialistic state. The adoption of 'Green Revolution' programme , 20 point programmes , 'Garibi Hatao' programmes etc., during the primeministership of Indira Gandhi and many others for the eradication of rural poverty, Land reforms , spread of education, afforestation , development of slum areas, food for works are the measures adopted on the basis of Directive Principles, in order to shape India into a welfare state. In conformity with the Directive Principles, Rajiv Gandhi introduced programmes to improve financial conditions of poor farmers and workers with the aim to secure justice to them

The Government of India emphasizes the improvement of standard of living of rural population. It introduced Community Development Programme, Integrated Rural Development Programme, Swarnajyanti Sworojgar Yojna, Gram Swarojgar Yojna, National Rural Employment Programme, etc., to raise the standard of living , particularly of rural populations. The Central Government had launched in 1952 its Community Development Project. The CDP aims at providing better communication , better housing , improved sanitations, wider educations. By 1988 over 570 thousands villages and 404 millions of people were brought under the programmes. The Government has implemented the principle of decentralization of power. In 1993 the Parliament enacted the Panchayat Act making it compulsory for people's participation in local administration and development.

### **12.8 Conservation of Forests and Preservation of Wild Lives**

The principle of social justice is intimately associated with the necessity of conservation of forests and preservation of wild lives . India is a land of agriculture and the states need to adopt all maximum possible measures to develop agriculture. Development and agriculture stands for development of rural economy which is the basis of our rural economy. That is why our economy is called agrarian economy . The government should necessarily attach prime importance for the development of agri-based economy. Laws should be made to

provide financial or technical support to the farmers to boost agriculture. It is our national shame that every year a large number of farmers commit suicide to get relief from the shock of crop failure.

The government needs to adopt and launch more programmes to provide assistance to poor farmers and to protect them against exploitation, without such support to them justice can't be done to them.

In India development of agriculture is related to animal husbandry. As per Article 48 of the constitution, the state is directed to organize agriculture and animal husbandry on modern scientific issues. We need to protect the life of cows that gives us milk which is of great nutritious value. Article 48 of Directive Principles of State Policy directs the State to prohibit the slaughter of cow calves and other milch and draught cattle. The Indian National Food security Act, 2013 is one directed towards social welfare and social justice. It is a landmark step of the UPA II coalition Government towards social justice through the implementation of directive principles of security of livelihood ( Art. 39). But this Act carries a question mark of what the UPA Government seeks to achieve. The implementation of the Act will undoubtedly create a heavy financial burden on the weak economy of India. At present it is an uphill task for us to arrive at any conclusion of whether this Act is intended to achieve a political mileage or to achieve the goal of social justice. Cow dung is used to increase the fertility of soil and can be regarded almost as non renewable source of energy. Farmers' woes resulting from increasing financial burden because of sharp rise of agricultural inputs like fertilizers, insecticides etc can well be removed if the practice of organic manure is popularized and spread. The organic way of cultivation is cost effective than capital centric agricultural activities. It has been proved beyond doubt that that capital intensive farming practices, largely the offshoot of 'Green Revolution Technology', pushes the poor farmers into final end. So there is intense need to reorient our farming policies towards organic way of farming which is largely farmers' friendly and eco friendly; it is a sure way to save our farming community from great crisis.

Many wild lives have already become extinct. Wild animals are connected with ecological balance. Men are meant to love animals, not to kill them. A good many species of birds are no longer seen in our landscape. Birds play an important role to control pollution and to maintain ecological balance and are called bio indicators. Article 48A directs the State to improve ecology and environment. But we see in reality that cows are smuggled out affecting or damaging our agriculture and economy, wild animals are poached to smuggle their parts into other countries or to them at the international market at high prices, parts of wild animals are smuggled at a steep price, birds are shot for pleasure. India is land of wild lives which cannot be found anywhere in the world. Loss of bio diversity from the Indian landscape mean loss of wild lives or flora from our world altogether which has a direct adverse impact on our environment on our environment. There is a Supreme Court judgment, prohibiting cow slaughtering but government rarely takes a measures to prevent it for many open reasons politics in particular.

### **12.9 Judicial Activism and Social Justice**

Social justice in India has been greatly reinforced because of judicial activism. Judicial activism has emerged as a judicial protection of people's rights as well as a force to defend social justice. It is not a threat to the independence of the executive and the legislature but a instrument of justice to an individual or a group or a community that is a victim of social or executive injustice. Through Public Interest Litigation (PIL), the Supreme Court has invalidated many executive decisions and laws made by legislatures, not in conformity with the Preamble in continuation of Directive Principles of State Policy. The credit of recognizing of transgender as a third gender goes to judicial activism. The Supreme Court, April 15, 2014 acknowledged transgender as third gender and directed the government to provide and ensure job reservation and facilities to them as a positive steps to render social justice to them. The judiciary or legislature grow active only to render justice to those who are denied it by the executive and the legislatures. The executive or legislature has not thought of transgender about this social rehabilitation and welfare. It is due to judicial activism that they are recognized as a distinct class of human beings and entitled

to the status of social and economic backwardness with full human dignity and rights. Judicial activism should not be interpreted as the judicial encroachment upon the executive domain. Human rights which are related to democracy and to the concepts of a welfare state or an egalitarian society have been greatly protected against violation by the government itself or the agencies.

### **12.10 Environment Pollution and its Hostility to Social Justice**

Growing plunder of environment is the basic cause of pollution. Pollution is a threat to life and at the same time it is hostile to social justice. Natural resources are plundered bringing about imbalance in the environment. Air is growingly polluted because of spreading of industrialization and excessive increase in the number of motorized vehicles. In addition to it, air pollution is the direct consequence of large scale deforestation. Global warming has emerged as a horrible menace to the existence of mankind in the world. In Delhi one out of every ten school students suffer from the problem of suffocation because of massive air pollution. This has not only increased temperature but also caused the fall of ground water table. Consequently plantation has been badly affected and irrigation has been hampered. Water is increasingly contaminated in various ways. Various survey reports reveal that water contamination causes and spread many life killing diseases and the only prevention lies in the control of water contamination.. There is Ganga Action Plan to contain the pollution of the Ganga water. There are laws to protect the environment but what lacks in this regard is Government's sincerity of the control of pollution. People need be made conscious about the disastrous impact of environment pollution. Article 51 A (9) makes it the duty of every citizen to protect and improve the natural environment and to have compassion for living creatures. Pollution has created a number of problems related to traditional livelihood of the poor and the tribal communities. Deforestation often leads to their displacement to their which causes the problem of their rehabilitation. They are often deprived of compensation against displacement. Forest is destroyed and depleted on the plea of urbanization and industrialization. Time has come for the Government of India to review the situation to secure social justice to the poor and to control pollution to render justice to life.

### **SUGGESTIONS FOR MEASURES TO ENSURE SOCIAL SECURITY AND JUSTICE .**

India is a thickly populated state beset with ever growing social, political and economic problems. There is no royal road to their solution. Population explosion and political corruption are the major impediment to the progress and development of India. Population explosion give rise to the problem of land shrinkage , food scarcity , shortage of shelter , unemployment , health problem and all pervasive problem of environment pollution . Corruption which is rooted in the government as well as in the society is central to social, political and economic problem. Mere implementation of the Directive Principles cannot be the only way of the solution of the country's problems. Formulation of laws cannot alone render justice to people. The government should review the existing situation of India in the broader perspective and need to come out with the following plan of action to develop the country socially , politically and educationally in order to ensure social justice to all.

- To control population of explosion
- To curb corruption
- To bridle bureaucracy in order to direct it to national services
- To rationalize five year plan
- To stop misappropriation of funds
- To boost rural economy through the modernization of the process of agriculture
- To provide financial assistance to the poor to fight successfully poverty
- To provide special facilities only to those who deserves it on the basis of caste or community
- To systematize the implementation of the programmes of poverty alleviation , eradication of illiteracy , prohibition of social evils, prevention of exploitation, protection of rights and liberty
- To raise qualitative standard of education
- To universalize education
- To ban cow slaughter and to improve animal husbandry
- To provide for free higher education
- To introduce the principle of filling govt. posts on the basis of eligibility and not on any extraneous consideration
- To provide financial support for child care and education
- To strengthen people's national consciousness
- To acquaint people with their compulsory duty to the state

The thesis traces, describes and discusses in detail various social security oriented programmes, already launched and some of them partially

implemented, which essentially needs to be reviewed in order to give a broader perspective to the policy of social justice adopted by different dominant party-led coalition governments over the long period of coalition politics in India. It contains and deals with the historical background of formulation of the Directive Principles of State Policy and its addition to the Constitution of India. It also demonstrates with ample illustrations from authentic sources how the governments from time to time initiated schemes and programmes to implement many of the Articles of the Directive Principles of State Policy and introduced lots of programmes primarily intended for social justice to the disadvantaged classes in consonance with the spirit and general trend of coalition politics in India. The words 'justice' and 'security' which form the foundation of the governments' welfare policy since the dominance of coalition politics in Indian political system, are hard to explain without the proper fulfillment and attainment of goals and targets of the programmes associated with social security and justice. The thesis made an attempt to highlight the steps and measures directed towards social justice, which have been amply illustrated, discussed, explicated and evaluated as far as the aims of social justice are concerned. It is a matter of apparent satisfaction that the coalition governments were convinced of the essentiality for the protection of social rights not only of people but also the rights of animals and those of the plant world with the exclusive target to conserve and de-pollute our environment. Our sustainable growth and development depends upon the environment because the livelihood of a large section of people especially belonging to the category of below the poverty line have been extremely affected by the ongoing process of de-forestation and the mindless activities of a sizable number of urban people causing environmental pollution. The thesis explored and validated that poverty, shelterlessness of the have-nots, ignorance and illiteracy responsible for various social evils, various issues of social and economic disparities and deprivations, bureaucratic red-tapism, indifference, etc., stand in the way of social security and justice. But what is satisfying and optimistic is that coalition politics in India has been successful, to a certain extent, in making the mass people, i.e., people of all ranks and classes, conscious of their rights as human beings and of prevailing social and economic evils of which they have been victims. The existing situation connected with the question of security and justice will definitely be changed if the government continues to adopt and implement more and more social welfare schemes and programmes as Narendra Modi-led NDA (Coalition) government has recently announced and launched three important social programmes directed towards social security to the people of India.

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"We never said Ayodhya is not on our agenda. But as far as priority is concerned, the issues like price rise, corruption, bad governance top it," BJP vice president Mukhtar Abbas Naqvi told media persons, ahead of the party's National Executive meeting.

"We are honest as far as our ideological commitment (on temple issue) is concerned. But, in Goa we would be discussing the political issues," the leader said responding to a question.

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ADNAN FAROOQUI

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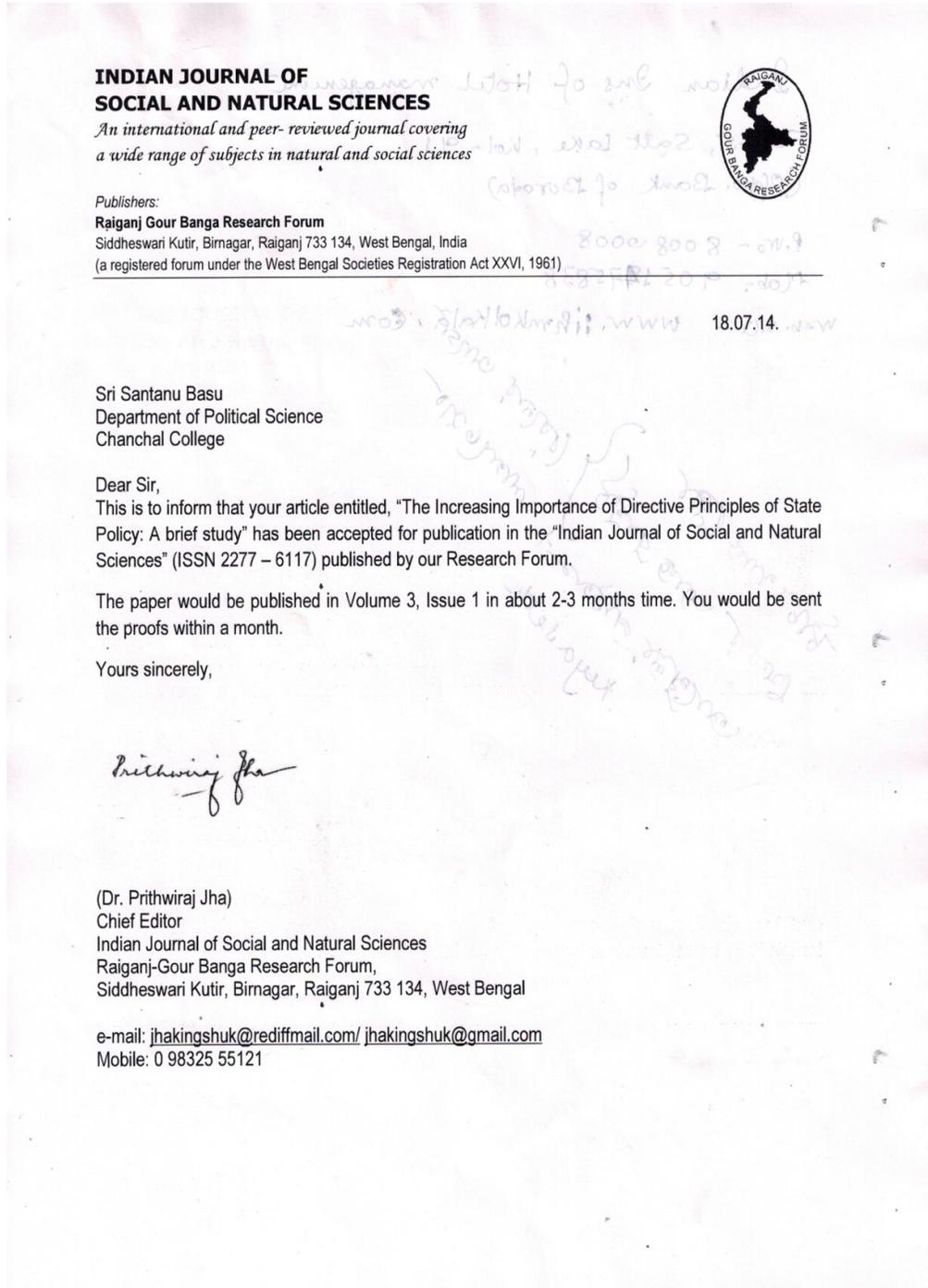
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## Specimen of Publication Preceeding to Submission of Ph.D Dissertation



## Index

<b>A</b>	<b>Page No.</b>
Ambedkar, B, R	8,10,13
Ahmed , Safed, Dr,	8
Arthashastra	9
Art.14.	27
<b>B</b>	
Basu. D,D	5
Besant, Annie,	6
Bill of rights,	6
Bank nationalization ,	57
<b>C</b>	
Champakam Dorairajan vs. State of Madras 1951,	46
Charan , Singh,	56
Compensatory Discrimination ,	i
Common Minimum Programme,	59
Constitution of India ,	ii
Constitutional Amendment Act 44 <sup>th</sup> ,	22
Constitution Amendment Act, 42 <sup>nd</sup> , 1976	39
Constitution Amendment Act,73rd, 74th	18
Constitution Amendment act , 104 <sup>th</sup> .	
Contrast between Directive Principles of State Policy and Fundamental Rights	46

---

Conscience of the Constitution	25
Coalition politics,	iii, iv, vii, vii, xxvi, 57
Cpi led coalition 1954,	iv
Child labour,	v
Citizens	ix
Commonwealth of India bill 1925,	10
<b>D</b>	
Directive principles of state policy,	iii, vi, vii, 11, 15, 40, 41, 43
Desai Morarji ,	iv
Dharmasashtra of the state,	9
<b>E</b>	
Egalitarianism,	ii
Equality and justice	ii
Equal pay for equal work	ii
Economic justice	ix
Environmental Movements and Social Justice	38
<b>F</b>	
Fundamental Rights	8,9
<b>G</b>	
Gajendra, Gadkar, JJ	27
Golaknath vs. state of Punjab	32
Govt. of India	v
Govt. of India Act 1935	9

**H**

Human Rights Act, 1993, 41

**I**

Indira Gandhi, iii

Indira Gandhi National and Old Age Pension scheme v

Indian polity ix

Iyer , Krishna, V,R, jj 5,10

Indira Sawney vs. Union of India, 36

**J**

Jennings 10

Judicial activism , vi

Justice distributive 10

**K**

Khan bahadur Hafiz, 10

Karachi session, 21, 26

K, Subba, Rao, CJ, 32

**L**

*Legislations against bonded labourers , child labourers , police atrocities like illegal detention, torture in police lock-ups and custodial death, crimes against weaker sections of society, cruelties and violence against women, including dowry and deaths , women trafficking , anti-people laws and violation of Forest Acts and oppression and exploitation of the tribal communities ,* 41

---

Liberty, ix

**M**

Mahatma Gandhi National

**R**

Rural Employment Guarantee Scheme in 1987 vi

Mandal II, 36

Mandal Commission, 59

Motilal Nehru Committee Draft Constitution, 21

**N**

National Policy on children

Resolution vi

NDA, 59

National Commission for Women Act, 41

Nehru ,J, Pandit, viii

Nehru committee, 6

Nath, Narendra , Raja , 7

non-justiciable Rights, 11

**P**

Preamble , ii, 15, 18

Parliament iv, 20

Point programme, v

Political democracy , viii, iv ,v, vi

Politics of reservation, 37

Protection of Civil Rights Acts , 1955, 51

**R**

Regional parties,	iv
Regionalism,	v
Radhakrishnan, S,	11
Rao, Shiva, B,	7
Round Table conference,	7
Rajdharma,	11
Rau , B.N.	11
Right to work,	11

**S**

Sapru Committee	9
Swarnajyonti Gram Swarojgar yojna,	v
Swarnajayanti swarojgar yozna,	v, 50
Sardar Patel,	21
Suredranath Khoshla Vs Dalip Singh,	23, 36
Sajjan Singh vs. State of Rajasthan 1965	27
Sarvasiksha aviyan,	v
Social welfare measures	vii
Social justice	ix, 29, 31, 30
Subsidy to Haj	59
Singh, V.P.	59

**T**

The Gurupadaswamy committee report	v
Tripathi, P,K	13
The SC/ST (Prevention of Atrocities) Act, 1989	51

The Employment of Manual Scavengers and 51-52  
Construction of Dry Latrines (Prohibition) Act ,  
1993,

**U**

Untouchability 20

UPA Coalition government (2004 – 2009) 56

Welfare state vi, ix, 14, 18, 19