

Social Justice in Higher Judiciary of India

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The meaning and nature of social justice depends on the various constitutive elements of justice, i.e. economic, political and social. However, deeper analysis reveals that 'social' is broad enough to include economic and political - economic and political justice collapse into social justice. To explain further, the prevailing economic system of a country operates on the principles governing the means of production and systems of distribution. If these are just, the system can be said to conform to economic justice. But the system is itself a dimension of that particular society. In the same way, the political structure of a country is not a 'celestial entity' operating from above and beyond the society. It is also an aspect of that society. Thus, social justice is all pervasive and all comprehensive. It comprises both economic as well as political justice and both are integral to it.

Social justice has a chequered history and is the product of several revolutions, national and international, social and political. The existence of social justice in a given society indicates the prevalence of an advanced process of statecraft. Initially, as a doctrine of social philosophy, social justice entered statecraft gradually, to eventually capture the constitutional field. When political justice secured liberty, social justice secured equality, fraternity came in as a 'tertiary blend' of internationalism. Revolutions, including the Glorious Revolution of 1688, the American War of Independence in 1776 and French Revolution in 1789 as well as Russian Revolution of 1917, engineered and influenced society one way or the other and culminated in laying the foundations of modern social justice. India's freedom struggle, resulting in the adoption of a progressive Constitution in 1950, of which Dr. Ambedkar, was the chief architect, is one such monumental foundation.

Social justice has among others three ingredients : **Social Structure** the most important ingredient of these ingredients. It may be appreciated that the quality of social justice wholly dependent on the nature of the social structure it emanates from. Social justice reflects the common conscience and represents the community's ethos. In fact the community structure characterizes and even conditions the form and content of social justice. The absence or otherwise of social justice in Indian conditions can be felt from the social structure we have in our country, which is hierarchical and ubiquitous.

Morality is another ingredient of social justice. Social justice springs from the identity of principles working at the root of the cognitive, combative and

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emotive faculties. It is also based on reason and rationality generic of the same society. But, when public morality is based on wrong relationships or false philosophy and is otherwise segmented, the social justice derived from it is reduced to a mere formality and can be assumed to the rhetoric. A caste society like ours which is based on “ascending scale of reverence and descending order of contempt”, lacks moral or ethical standards. Claiming the existence of social justice in such a vertically and horizontally divided society would amount to a travesty of truth and an immorality of the worst order.

Equality happens to be the third ingredient. Instead of morality, one can attempt to base social justice on the principles of equality. Justice and equality are considered as the hallmark of an ideal society. In an ideal social justice system, all men are born free and equal, irrespective of religion, race, caste, region, creed or heredity. In its altered form and modern trend the concept of equality is described as existing in the spirit of uplifting the downtrodden, helping the frustrated, raising the suppressed and advancing the backward. To me, social justice is inherent in the ensuring of equality of opportunities to those whom such opportunities had so far been denied. But equality of opportunity can have meaning only when taking advantage of such opportunities is facilitated by the entire society, especially by those claiming a higher position for those lower to them, even at their (former's) cost. Till this is achieved, speaking of social justice would assume to be a cry in the wilderness, a mere rhetoric.

Let us examine to what extent concept of social justice, and even of justice, enshrined in the Indian Constitution has been meaningful to the BCs, SCs and the STs. The Indian Constitution, which is the fundamental law of the land, provides in detail for the establishment of social justice beginning from the Preamble through Parts III and IV. Political Justice is assured in Articles 14, 16, 20, 21, 22, 32, 50 and 51. Economic justice is promised in Articles 19, 38, 39 and 43 and Articles 15, 17 and 46 attempt to secure social justice. On the basis of these provisions, G. Austin goes to the extent of describing our Constitution as “first and foremost a social document”. No doubt, social justice in the Constitution is additionally demonstrated through the various rights, both fundamental as well as directional. We may call these social rights, which can also be observed in Part III of the Constitution. But to me social justice in India seems to be a big failure.

The above leads us to examine the reasons for failure of Social justice in India. It must be remembered that social welfare and social justice cannot be equivalent, nor synonymous. Social welfare is a measure, social justice is an achievement. Social welfare is the means and social justice, the end. The prototype of a just state is one which strives to promote the welfare of the people by securing and protecting a social order in which justice- social, economic and political - shall inform all the institution of the national life. This is what the makers of the Constitution intended, when they provided for the rights of SCs, STs, OBCs and the Minorities, implying thereby establishment of a welfare state aiming to ensure social justice. But the way the constitution

has been implemented, rights negated, welfare trampled and institutions desecrated, establishment of social justice had remained a far cry. In a word, the situational reality is different from what is stated and intended in the Constitution.

In these circumstances, social justice is bound to remain an elusive privilege for outcastes and an opportunity for the upper castes to run their writ unchecked in the society. This seems to be the reality of social justice system in Indian state.

Let us now explore the remedy. To me the remedy is none other than collective social justice. To equalise the general and simultaneously to discriminate the specific, wherever needed, is the obligation of an enlightened society. Such an obligation is discharged through the agency of laws made by the State and a full implementation of these laws more importantly, the Constitution of India, both in letter and spirit. Strangely enough, due to the failure of the State both in terms of conception and practice of a social justice system. We have neither achieved social equality, nor positive discrimination in favour of the weaker sections of the society.

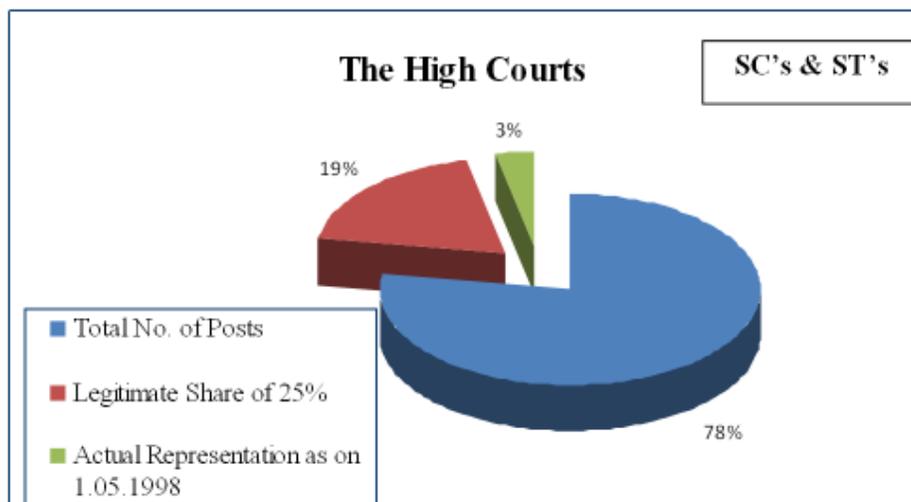
There are many theories of social justice, Briefly states, social justice can be restitutive (restoration of resource etc.), retributive (punishment for the oppressing communities), and penitential social justice (seeking apology as in Australia). The Indian Constitution stands for a discriminating social justice, which is a form of rectifying social justice, which is neither here nor there.

Therefore, for the time being, based on the teachings of Periyar, Phule and Ambedkar, I suggest, what I call the collective Social Justice system. It may be stated in this connection that social justice amounts to the juxtaposition of the station in life and status in the society. Accordingly, we intend a much larger role for social justice, than what is currently entrusted to it under the Indian system of jurisprudence and its legal system. It should amount to a new paradigm of collective reward for BCs, SCs and STs, since they have been victims of collective punishment. Ethnic dimension should form its moral base and make demands for legitimation on historical and archeological evidence. Of course, while group liberation may be its focus, not a divided interest in the shape of creamy layer and non-creamy layer. It must have a coherent ideology for acceptance as universally valid-and normal even for an integrated reconciliation. But the reconciliation should be based on certain eternal values and strive to achieve a balance and an equilibrium of civilizational dimension, since the wrong was also of apparently conflicting interests should be attempted and a balance should struck between the oppressing communities and the deprived sections of the society so that a new culture of justice would emerge in the country as a whole. We need to evolve a new and holistic philosophy of social justice system that would liberate both the oppressor and the oppressed.

The Status of SC, ST & OBC Judges in Higher Judicial

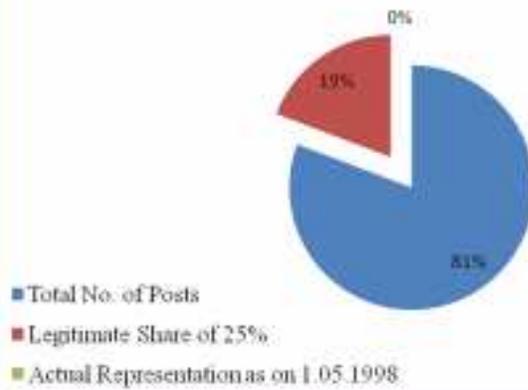
In the year 2000 the Parliamentary Committee on the welfare of Scheduled Castes and Scheduled Tribes presented a report to the Parliament pointing out the gross inadequacy in the representation of Scheduled Castes, Scheduled Tribes, in appointments to the High Courts and the Supreme Court. The Committee after referring to the serious injustice done to the Scheduled Castes, Scheduled Tribes and the Backward Classes in denying adequate representation gave the following comparative data to high-light the gross injustice in denying adequate representation to the Scheduled Castes, Scheduled Tribes and the Backward Classes.

Courts	Total No of Posts	The SCs and STs		The Backward Classes	
		Legitimate Share of 25%	Actual Representation As on 1.05.1998	Legitimate Share of 55%	Actual Representation As on 1.0.5.1998
The High Courts	481	120	20	264	35
The Supreme Court	21	5	0	11	Information refused



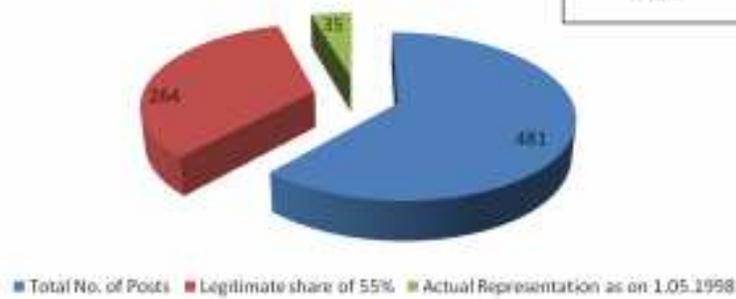
The Supreme Court

SC's & ST's

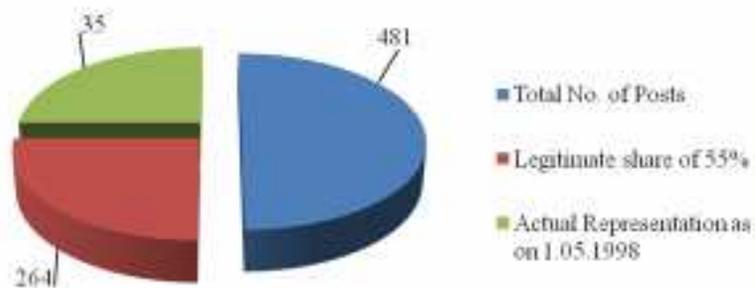


The High Courts

OBC



The Supreme Court



In Andhra Pradesh the status of SC, ST's and OBC Judges is very meager the below table is the best example in India.

Sl. No.	Names & Hon.Judges	Source of Rec.	Date of Birth	Date of Appointment	Date of Retirement	Social Status	Age at Elevation
1	Anil Ramesh Dave	Bar	19-11-1951	18-6-1997		Brahmin (F.C)	46
2	T. Meena Kumari	Bar	3-8-1951	7-1-7998	3-8-2013	Kapu (F.C)	47
3	B. Prakash Rao	Bar	25-5-1949	17-5-1999	25-5-2011	Brahmin (F.C)	50
4	D.S.R. Varma	Bar	5-9-1949	17-5-1999	50	Raju/Kshatriya (F.C)	50
5	Ghulam Mohammed	Bar	6-4-1950	17-5-1999	6-4-2012	Muslim	49
6	A. Gopala Reddy	Bar	20-12-1949	17-5-1999	20-12-2011	Reddy (FC)	50
7	V. Eshwaraiyah	Bar	10-3-1951	17-5-1999	10-3-2013	B.C. (Goud)	48
8	G.Raghuram	Bar	4-3-1951	17-5-1999	4-3-2013	Brahmin (F.C)	48
9	V.V.S. Rao	Bar	11-6-1950	17-5-1999	11-7-2012	Kapu (F.C)	49
10	C.Y.Somayajulu	Service	20-7-1946	17-5-1999	20-7-2008	Brahmin (F.C)	53
11	T.Ch.Surya Rao	Service	15-3-1946	17-5-1999	15-3-2008	Arava Kapu(F.C)	53
12	N.V.Ramana	Bar	27-8-1957	27-6-2000	20-7-2019	Kamma/Chowdary F.C)	43
13	P.S.Narayana	Bar	13-7-1948	25-6-2001	13-7-2010	Kamma/Chowdary F.C)	53
14	G. Rohini	Bar	14-4-1955	10-9-2001	14-4-2017	B.C. (Yadava)	46
15	T. Gopal Krishna	Bar	11-4-1949	10-9-2001	11-4-2011	B.C. (T.K)	52
16	L. Narasimha Reddy	Bar	1-8-1953	13-12-2001	1-8-2015	Reddy (F.C)	48
17	Dr.G. Yethi Rajulu	Service	1-7-1947	2-12-2002	1-7-2009	B.C. (Kalinga)	55
18	C.V Ramulu	Bar	20-2-1949	2-12-2002	20-2-2011	B.C. (MK)	53
19	R.Subhash Reddy	Bar	5-1-1957	2-12-2002	5-1-2019	Reddy (F.C)	45
20	K.C. Bhanu	Service	15-7-1957	2-12-2002	15-7-2015	SC	45
21	B. Seshashayana Reddy	Service	1-7-1951	2-12-2002	1-7-2013	Reddy (F.C)	51
22	G.Chandraiah	Bar	10-5-1954	26-5-2005	10-5-2016	SC	51
23	Ramesh Ranganathan	Bar	28-7-1958	26-5-2005	28-7-2020	Brahmin (F.C)	47
24	P. Swaroop Reddy	Service	10-1-1949	26-5-2005	10-1-2011	Reddy (F.C)	56
25	G. Bhavani Prasad	Service	9-4-1951	4-1-2006	9-4-2013	Kapu (F.C)	56
26	G.V. Seethapathi	Service	22-11-1950	24-5-2006	22-11-2012	Brahmin (F.C)	56
27	N. Ram Mohan Rao	Bar	14-8-1956	19-9-2006	14-8-2017	Brahmin (F.C)	50
28	C.V. Nagarjun Reddy	Bar	5-12-1956	11-9-2006	5-12-2018	Reddy (F.C)	50
29	R. Kantha Rao	Bar		8-8-2008		B.C.	
30	Vilas Viswanath Rao Afzar Purkar	Bar		8-8-2008		Reddy	
31	P.V. Sanjay Kumar Reddy						
32	Justice Surya Apparao	Addl. Jud	27-10-2010			OC	
33	Justice P. Durga Prasad	Addl. Jud	27-10-2010			Brahmin	
34	Justic P. Ravi Shankar	Addl. Jud	27-10-2010			Brahmi	
35	Justice K.G. Shakar	Addl. Jud	27-10-2010			OC	
36	Justice SRL Nageshwar Rao	Addl. Jud	27-10-2010			Brahmi	

S.No.	Caste	No. of Judges	Religion Wise Telangana
1	Brahmins	10	1
2	Reddy's	6	4
3	Kamma's	2	
4	Kashetriya's	1	
5	Kapu's	3	
6	B.C's	5	2
7	Muslim's	1	1
8	S.C's	2	1
9	S.T's	0	
10	OC	2	
	Total	33	

STANDING COUNSILS REGION WISE IN AP

TELANGANA		SEEMA ANDHRA	
Brahmi	1	Brahmi	9
Reddy	16	Reddy	6
Velama	1	Kamma	6
Vaishya	1	Vaishya	1
BC	6	BC	4
SC	3	SC	7
Minority	2	Minority	2
ST	1	ST	1
		Kapu	2
Total	31	Total	38

The Commission constituted to review the working of the Constitution of India, under the Chairmanship of Mr Justice M.N. Venkatachalaiah, has also referred to the gross inadequacy in representation and shown that out of 610 forces of High Court Judges only 20 are held by persons belonging to scheduled Castes and Scheduled Tribes.

Recently, the Parliamentary Committee on Personal, Public Grievances, Law and Justice popularly known as 'Dr. E. M. Sudarsana **Natchiappan Committee**' has also strongly recommended reservation in favour of the Scheduled Castes, Scheduled Tribes and Backward Classes in the Higher Judiciary and has urged the Government to consider this issue earnestly.

The above narration conclusively establishes the systematic efforts made to keep out the Scheduled Castes, Scheduled Tribes, Backward Classes and Women out of the posts of Judges in the High Courts and the Supreme Court. How long should this injustice continue? How should this injustice be set-right?

Need of Reservations in Higher Judiciary

One of the ways for establishing collective social justice and reservation in private sector can be strengthened through reservation of the backward classes in higher judiciary. Hence a word on reservation in private sector is heeded.

Adequate representation of the backward classes viz. the Backward Castes, the Scheduled Castes and Scheduled Tribes in all the organs of the State, including the Higher Judiciary (Supreme Court and High Courts) is a mandate of Indian Constitution. It necessarily and naturally flows from the basic features of democracy, equality and secularism. Such representation in the legislature is taken care of by Articles 330 and 332 read with Article 334. The adequate representation in the executive wing of the State is ensured by the command of Article 335 read with Articles 14 and 16 (especially clauses 4, 4A and 4B).

Such adequate representation in all other areas was implied in the Constitution and assured by the mandate under Articles 14 and 15, which require such reservation as a necessary ingredient of the principle of equality and which has found its resonance in the clauses 4 and 5 of Article 15. In addition our Constitution secures equality of status and opportunity as reflected in the Preamble. And Article 14 not only permits, but also requires classification on the basis of a rational nexus with a reasonable objective.

Moreover, the mandates of secularism (which includes pluralism diversity and adequate representation of different classes and groups) and democracy (which requires representative, participative and dialogical character of all the organs and institutions of the State) necessarily require a representative judiciary having adequate participation of un-represented backward classes. Since this adequate representation could not be attained even after 63 years of our independence, it is necessary to explicitly provide for such reservation and representation of the backward classes among the Judges of the Supreme Court and High Courts. Such provision should be made and implemented without brooking

any further delay. Such provision is also mandated by the Directive Principles of State Policy (Part IV) especially Articles 38, 39, 39A and 46. The same also is in tune with Part-IVA (Fundamental Duties) of the Constitution; the duty to cherish and follow the noble ideals and other such duties especially Article 51A (a) (b) (e) (f) G).

The proposed reservation, I am sure does not need any further Constitutional amendment. The provision for reservation in the higher judiciary has been already included in the Articles 14 and 15 of the Constitution. Most specifically Article 15(4) provides for special provisions for Backward Classes, which special provision necessarily includes representation of these groups in higher judiciary. Since the procedure for selection of and appointment of Judges has not been laid down explicitly unlike in the case of legislature and executive, the application of Articles 14 and 15(4) could not be provided explicitly. The fact that the implied procedure did not bring about the adequate representation of these classes, only shows the failure of the present implied procedure. Since the Constitution has to be read and interpreted harmoniously and holistically, an interpretation of Articles 124, 215 and 217 should have to be taken into consideration and provisions under Articles 14 and 15(4) and the basic features of democracy, equality and secularism, which necessarily include provision for adequate representation in higher judiciary.

It offends one's common sense as to why there should not be any reservation in a constitutional body of law interpreters, while such reservation is available in law-maker's (Parliament and State Legislatures) and law-implementer's body (executive) where all the three wings of our democracy are equal and important in the Constitutional architecture and flowing from it, in the national policy of the country.

To conclude, in my view, the concept of social justice have a meaning only when the corporate sector is brought under the purview of the Constitution and the higher judiciary had a representative character to usher in a new India.

Reference:

1. The Idea of Justice by Prof. Amartya Sen, Published Harward University Press, 2009
2. Justice as Fairness Edited Erinkelly - Harward University Press, 2001
3. A theory of justice by John Rawls, Harward University Press, 1971
4. The Law of constitution by AV Dicey, Oxford University Press, 1970
5. The Constitutional of India, by Dr. J.N. Pandey, Central Law Agency, Alahabad, 2008.
6. Social Justice in India, Authors : Purohit, B.R. & Joshi, Sandeep (Eds) Year 2004, (PP) 232

7. State of Social Justice in India Edited by Ranbhir Samandar Sage Publication, New Delhi.
8. Justice for the Poor Edited by: Ayesha Kadwan Dias, Gita Howwana Welch. Oxford University press – New Delhi