

Social Justice: A Prime Agenda (With Special Reference to Indian Constitution)

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I. Introduction:

The concept of justice is an idea. It cannot be completely comprehended. It is multi dimensional concept and its realization is quite impossible because it is a virtue. According to Manu: “where justice wounded by injustice, approaches and the judges donot extract the dart, they are also wounded by the dart of justice²”.

II. Jurisprudencial Approach:

The concept of justice in Hindu jurisprudence is all pervading and it is not examined and analysed in isolation to the Society. Therefore, ancient Indian think-ers including writers on dharmashastra and arthashastra emphasise on social justice and overall welfare of the society. The credit goes to the thinkers of ancient India that the conception of social welfare and secularism which are considered the product of the modern age, were clearly mentioned by Indian thinkers. They considered that social welfare and social justice must not be limited to segments of the society. But there must be social progress of the whole society and progress meant the ascendance on a higher plane. Swami Vivekananda described this aspect in a very clear way:

“The solution is not by bringing down the higher but by raising the lower upto the level of the higher. And that, is the line of work that is found in all our books in spite of what you may hear from some people whose knowledge of their own scriptures and whose capacity to understand the mighty plans of the ancients are only zero³”.

Dr. S.D. Sharma who supported this view as explained it as —

“This approach of Swami Vivekananda is progressive in nature and also practicable, and reasonable, because in factual world there is undoubtedly inequality, which calls for action to bring the lower to a higher level. Basis of varna and asrama is psycho-physiological according to the gunatarya (sattva, rajas and tamas) which are inherent in different proportion in the members of different varnas. A change can be effected into these gunas (qualities). Otherwise how Visvamitra would have become a Brahmana? Manu recognized that by effort there may be a change in the caste, and therefore, varna is not necessarily by birth. It is

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2 Manu, viii, 123 Swami Vivekananda, ‘Caste, Culture and Socialism’ (1947) pp. 6-7

3 Swami Vivekananda, ‘Caste, Culture and Socialism’ (1947) pp. 6-7

in conformity with the principle of evolution. This recognition with precedents of change in varna in the code of Manu is sufficient for those who sneer at Manu that varna is an inflexible institution.

The underlying principle of social life of Manu is, therefore, the ultimate welfare of the individual and the society, which can be attained gradually through the various stages of life and discipline, therefore, the idea of social justice in Manusmriti is realized through the varna and Asrama techniques. The complete social philosophy of Hindu is expressed in these two words varna and asrama. The whole of Hindu law may be said to be based on the vamasramadharm⁴".

Hence, how one can examine the concept of justice without reference to the concept of varnasrama.

In fact, the varna and asrama system was based on the wider ideology of social justice and social welfare because in order to provide justice to the society as a whole it was necessary to organize a society on some sound and rational principle. And that rational principle was the principle of varna and asrama. In ancient times the Hindu law was governed by the dharma. However, there are different opinions of some modern Hindu law jurists like J.D.M. Derrett, Tagore Law Professor of the Calcutta University for 1953. Who is of the opinion that the king was entitled to make law⁵. The views of Derrett cannot be accepted correct because the concept of justice in Hindu law is inherent in the varnasramadharm. And the king was ordained to uphold the varnasramadharm. Now in modern India the varna asrama system having been abandoned, the State can regulate the rights and duties of the Hindus and perhaps no one would object to it.

III. Modern Approach:

In the modern context justice can have only one meaning, and that is creation of a social order in which every human gets a decent life. Justice can have no other meaning than providing every man and woman in society food. Water and other necessities. employment with a reasonable income, medical care for his/her family, good education to the children, opportunities for further development of the personality and skill of the individual, housing, recreation and rest, old age and sickness benefits etc. Hence 'justice' does not mean what is done in the law courts, justice is providing for the basic economic, social and cultural needs of the people.

Pandit Nehru said, "The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and sufferings, so long our work will not be over".

Building egalitarian society was the pronounced concept of those who

4 Dr. S.D. Sharma, 'Administration of Justice in Ancient India' (1st ed.) 1988, p.58

5 AIR 1953 Journal Section, p.52

fought for freedom. The great framers of the constitution strongly and rightly felt that the necessary provisions must be made in the constitution to enable the people to receive high priority for basic necessities of life. With this end in view, the Constitution was designed to bring happiness to the largest people. Part IV of the Constitution reflects this high ideal envisaging a society in which opportunities have been given for the pursuit of happiness without any discrimination of caste or sex or religion etc., and there is equal opportunity to everyone and there is no concentration of power or wealth in the hands of few to the detriment of many. These assurances are to be turned into reality. The Constitution also provides fundamental rights to the people which include basic human rights.

During the freedom struggle the inner urge of the people to secure life of quality coupled with right to equality came to the front. Equality is a fundamental premise of a democracy being an important ingredient of modern system of social values. Quality, sustenance and success of democracy depend on political freedom, economic equality and social justice; political freedom shall be at peril and it may become meaningless without economic equality and social justice.

IV. Constitutional Approach:

The cherished goals of Indian Constitution are indicated in the preamble, which aspires for justice, Social, economic and political; Liberty of thought, expression, belief; freedom of worship; Equality of status and to promote fraternity assuring the dignity of the individual.

The Indian Constitution provides the following socio-economic rights :-

- Right to equality before the law and equal protection of the laws.
- Prohibition of discrimination by State on grounds of religion, race, caste, sex, place of birth. Affirmative action by the State is allowed for the emancipation of women, children, socially and educationally backwards classes of citizens, scheduled castes and scheduled tribes.
- Equality of opportunity in matters of public employment.
- Abolition of untouchability' and making any enforcement of a disability arising out of untouchability a punishable offence.
- Right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or union, to move freely throughout the territory of India to settle in any part of India, and to practice any profession, or to carry on any occupation, trade, or business subject to reasonable restrictions.
- No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Exploitation by way of traffic in human beings, beggar and other forms of forced labour are punishable in accordance with law.
- No child below the age of fourteen shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- All persons are equally entitled to freedom of conscience and free

profession, practice and propagation of religion, subject to public order, morality and health.

- Right of every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law.
- No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the promotion or maintenance of any particular religion or religious denomination.
- No person is required to attend religious instructions in educational institutions recognized by the State or receiving aid out of state funds. No religious instruction shall be provided in educational institutions wholly maintained out of State funds.
- Any section of the citizens having a distinct language, script or culture of its own has the right to conserve the same.
- All minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. In making any law providing for the compulsory acquisition of any property of such educational institution, the state shall ensure that the amount fixed by or determined under such law is such as would not restrict or abrogate the right guaranteed above.
- Any person can move the High Court or the Supreme Court for the enforcement of the above-mentioned rights.

Jai Prakash Narain's ideas of "total revolution" were nothing but complete socio-economic transformation of society so that all the Indians could lead a life of equality and brotherhood. Almost all written constitutions of democratic states guarantee the opportunity to the individual to develop his potentialities to the maximum of his capability.

Article 14 guarantees general right of equality but Article 15 provides the specific application of the general right of equality. This Article contains the guarantees to the citizens of India against discrimination. Article 15 also states that nothing in the said Article shall prevent the state from making special provisions for women and children. It also enables for making special provisions for backward classes for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

Mere removal of social distinctions of castes, religions and race is not enough. On the basis of economic security abiding peace not only in a particular country but all over the world is possible. For the many-sided development of human personality economic equality is a necessity. President Roosevelt of the United States, during the deliberations of framing the United Nations Charter asserted that – 'we have come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence.

Necessitous men are not free men. People who are out of a job are the stuff out of which dictators are made. In our day these economic truths have become accepted as self-evident'.

Pt. Nehru the first Prime Minister of our country after Independence said "there could be no real freedom without economic freedom" and that "to call a starving man free is but to mock him".

Article 16 speaks of equality of opportunity in the matter of appointment and employment. This article also empowers the state to make provision for reservation in favour of any backward class of citizens in appointments which, in its opinion is not adequately represented in the services under the State.

Article 17 has abolished untouchability, which is a landmark in the constitutional history of India, not merely because of abolition of untouchability but because it has endeavoured to change an age old evil social system.

Under Articles 330 and 332 of the Constitution seats are reserved for the Scheduled Castes and Scheduled Tribes in the Lok Sabha and State Vidhan Sabhas in proportion of their population.

In a developing country like India a social revolution means all round development of human personality and availability of socio-economic justice to the citizens. Social justice requires not only elimination of old social evils but also requires removal of all sorts of inequalities arising out of wealth and opportunity, race, caste, religion and title.

Part IV comprising of Directive Principles of State Policy is another important part of the Constitution. Though these principles are not enforceable by any Court, they are nevertheless fundamental in the governance for realizing the goals set in the Constitution. Their implementation is necessary to justify the socio-economic rights provided to the people. Austin aptly stated that both "fundamental Rights" and Directive principles constitute conscience of the Constitution. Directive principles have set the goals and indicated the directions which all the three organs namely, executive, legislature and judiciary must meaningfully try to reach and follow. Socio-economic justice provides sustenance to the rule of law. The concept of socio-economic justice embodied in the form of directive principles in Part IV of the Constitution is the most dynamic, flexible and revolutionary concept aimed at removing inequalities among all the citizens.

Indian Constitution reflects the socio-economic philosophy of a true welfare state. It seeks to entrench social and economic rights of the people, which is evident from justiciable fundamental Rights and non-justiciable Directive Principles of State Policy.

V. Judicial Approach:

In India, judiciary has been making endeavour and embarking on innovative methods to make the constitutional guarantee of socio-economic rights meaningful keeping in mind the socio-economic philosophy of a true welfare state, which is enshrined in the constitution.

In *State of Kerala v. N.M. Thomas*⁶, the Court held that both Fundamental Rights and Directive Principles were complementary, “neither part being superior to the other”.

Earlier directive principles were considered as “pious wishes” but in course of time, these directive principles assumed deeper dimensions and greater significance as is evident from the various decisions of the Supreme Court. Fundamental Rights and directive principles are complementary and supplementary to each other and there is no conflict between them. Merely because directive principles are non-enforceable, their status is not inferior.

Article 39 specifically requires the State to ensure for its people adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labour. Article 39(b) and (c) together with other provisions of the Constitution contain the main objectives, namely, the building of a welfare society and an equalitarian social order in the Indian Union. When the Constitution-makers envisaged development in social, economic and political fields, they did not desire that it should be a society where a citizen will not have the dignity of the individual.

In *Air India Statutory Corporation v. United Labour Union*⁷, a three Judges of the Court has explained the concept of social justice in Art. 38 as follows:

“The concept of ‘social justice’ consists of diverse principles essential for the orderly growth and development of personality of every citizen. “Social justice” is then an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the suffering of the poor, weak, dalits, tribals and deprived sections of the society and so elevate them to the level of equality to live life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc., form handicaps, penury, to ward off distress and to make their life livable, for greater good of the society at large. The aim of social justice is to attain substantial degree of social, economic and political equality which is the legitimate expectation and constitutional goal. In a developing society like ours. Where there is vast gap of inequality in status and of opportunity law is a catalyst, rubicon to the poor etc. to reach the ladder of social justice. The Constitution, therefore, mandates the State to accord justice to all members of rthe society in all facets of human activity. The concept of social justice enables equality to flavour and enliven the practical

6 AIR 1976 SC 490

7 AIR 1997 SC 645

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

In *State of Bihar v. Kameshwar Singh*⁸, the Supreme Court held that a law aimed at doing away with the concentration of big block of lands in hands of few individuals would subserve the directives contained in sub-clause (b) and (c) of article 39. The term 'material resources of the community' in clause (b) has been held to include such resources in the hands of the private persons and not only those which have already vested in the state⁹. Similarly there distribution has been interpreted widely to include nationalization of private enterprise and provision for service through the state. In *Hindustan Antibiotics Ltd. v. Workmen*¹⁰ the Supreme Court held that constitutional directive in Article 39 (b) would be disobeyed if the state attempts to make a distinction between the same class of labourers on the ground that some of them are employed by company financed by the state others by companies floated by private enterprise.

VI. Conclusion:

The constitutional makers enumerated a catena of economic measures in part IV of the constitution and made them obligatory on the part of the State in making law. Article 39 specifically requires the State to ensure for its people adequate means of livelihood, fair distribution of wealth, equal pay for equal work and protection of children and labour. Article 39(b) and (c) together with other provisions of the constitution contain the main objective, namely, the building of a welfare society and an equalitarian social order.

In some cases the Supreme Court asserted that fundamental rights and directive principles are complementary to each other but in few cases social justice is an objective of the State. The State has proved without super imposing the directive principles upon the fundamental rights, the target cannot be achieved.

Objective of Article 39 cannot be achieved by proper executive action and that properness also cannot be goaled without adopting the theories of maternalism, paternalism, socialism or collectivism and its commitment to the attainment of the objective of socio-economic revolution.

8 AIR 1952 SC 252

9 *Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.*, AIR 1983 SC 239

10 AIR 1967 SC 948