

## Concept of Social Justice: A Critical Analysis of Indian Perspective

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*Justice is the constant and perpetual will to render to everyone that to which he is entitled.*

— ULPIAN

*Social Justice is not a blind concept or an irrational dogma. It seeks to do justice to all the citizens of the state.*

— P.B. Gajendragadkar

### I. Introduction:

The very existence of society depends upon the communities forming it and the harmony amongst communities. The society existing in our country is diverse and plural. If we look at the developmental process of society we find that it is the family which comes first at the level of social organization after that the community and gradually the society. When we talk about society at macro level we have the society as told above, looking calm and organized and well placed. But when deal with the nature of society at micro level, we find different segment having their own interest and a vast disparities between those segments. These segments can be named as different castes based on religion or different religion themselves. Historically and mythologically it has been prevailing in our society since ages.

The differences and conflicts between privileged and oppressed class is very common phenomenon when the instrument named “State” was used to be ‘*Laissez faire*’, conflicts were more evident and privileged used to enjoy the major chunk. Now there has been a radical change in concept of State, i.e. welfare State. Now the state not only provides security from external aggression but it also endeavour to minimize or remove the disparities or differences between different groups.

The State as it exist today realizes the fact that the problem of disparity and oppression of have-not’s which concern an overwhelmingly large number, could not be successfully met unless it wisely uses its mighty weapon of law and attempts to restore balance by the way of justice.

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## II. Concept of Social Justice:

The concept of social justice grasp although many have a vague notion of what it is and even this varies in content and meaning with each person, confusion prevails in its real import.

The transition observed in the concept of social justice in the history of mankind has been traced to identify the emergence of positive conceptions and newer dimensions of social justice from a traditional and outdated *laissez faire* approach of the society. The slow subtle and yet perceptible changes seen in the content and extent of the concepts like liberty, equality justice have substantially affected the concepts of social justice. These noble ideas have been continuously experiencing a dynamic. The meaning and value of these basis idea held a few centuries ago are potently different from the present day notion.

Admittedly during the last few hundred years “religion” played an important role to shape the just and unjust social, political and economical values of the day. It was Karl Marx who gave a new twist to the economic relations between labour and capital and has rightly been termed as the emancipator of human society from economic exploitation. He was responsible for the synthesis of the concept of economic justice as a vital part of social Justice.

When during the Second World War Britain was engaged in the battle of survival, its intellectuals and thinkers were making desperate efforts to seek solution to the ideological conflict which had been sparked of the war. **Lord Beveridge** was asked to head a committee to seek answer for the various socio-economic problems. In an effort to find the much needed answers the “Beveridge Report” evolved the concept of a welfare state which has a tremendous historical significance<sup>3</sup>.

In its crusade to seek the ideas of welfare democracies biggest ally is law and thus the role of law is integrated with the object of democracies in its obligation vis-à-vis the citizens of the state<sup>4</sup>. The concept and spirit of social justice have infused newer dimensions in the man’s quest for a richer and more meaningful existence on this planet. The concept of social justice is revolutionary and dynamic one which gives sustenance to the rule of law. It also endeavors to bring in through the help of law, a social structure by removing causes of social and economic tension. At the same time it ensures the freedom for the individual personality to grow and develop.

The concept of social justice is primarily based on the idea that all men are equal in society. Acceptance of the idea of welfare puts the claims of social justice on a higher plane and thus has to be achieved by regulation of individual liberty and rights. Social justice as the name itself indicates must and should seek justice in all its social aspect.

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3 Lord Beveridge – “Beveridge Report”.

4 Gajendragadkar, P.B. – Law, Liberty and Social Justice.

The concept of social justice is thus a revolutionary concept which gives meaning and significance to the democratic way of life and makes the rule of law dynamic. It is a concept of social justice which creates in the minds of the masses of this country a sense of participation in the glory of India's political freedom. Social justice to all the citizens of the state Indian political thinkers has coined the doctrine of "Samanvaya" (harmonious synthesis) to balance between the rival claims of social justice and of individual liberty and freedom. Social justice must be achieved by adopting necessary and reasonable measures with courage, wisdom, foresight, sense of balance, and fair play to all the interests concerned. In short it is what the concept of social justice is.

### **III. Social Justice and Constitution of India:**

Social justice is the ideological signature of our Constitution and we are directly concerned with social justice spelt out by our Constitution. So whatever may be its wider or narrower connotations we have to understand the concept as envisioned by our Constitution.

According to **Granville Austin** Indian Constitution is the first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of social justice or attempt to foster this revolution by establishing the conditions necessary for its achievement. The core of the commitment to the social justice and social revolution lies in parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution<sup>5</sup>.

The foundation of the Constitutional arch and the philosophy, enshrined in the Constitution has been well summarized in the preamble<sup>6</sup>. The preamble to the Constitution is not merely a decorative preface but is a meaningful indicator reflecting the ideas of the people who have cherished a dream to be realized and interpreted in their daily lives through the Constitution. The language of the Preamble, the spirit and aspirations of the people is a clear indicator of the approach of the various other goals enshrined in the Constitution.

According to Gajendragadkar J.<sup>7</sup>

"It would, I think be fairly accurate to say that the basic philosophy of

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5 Austin, G., The Indian Constitution – Cornerstone of a Nation.

6 WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all this citizens: JUSTICE Social, Economic and Political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES CONSTITUTION.

7 Gajendragadkar P.B., The Constitution of India – Philosophy and basic postulates.

the Constitution is to be found in the preamble itself. India is one country and there is single citizenship. India is committed to the idea of welfare state and it has to establish socio-economic justice. India is committed to democracy and respect individual liberty; and India wants to give all its citizens equality of status and opportunity, thereby attempting to create a mighty brotherhood of Indian citizens, which would assist the Sovereign, Democratic, Republic reaching its proclaimed objectives. That, in substance is the message of preamble.

The word justice social, economic and political used in the preamble broadly reflects the aspirations of the people of India and at the same time it can be viewed as the controlling parameters of the Constitution as well. The primary objective of ensuring justice, social, economic and political as envisaged in the preamble has to be appreciated in a wider perspective. The word 'justice' used in the preamble to the Constitution has to be understood in a deeper and wider connotation. The word justice employed by the framers of the Constitution in the preamble refers to the whole philosophy by which our Constitution is guided.

The Constitution guarantees certain fundamental rights to individual which are not all negative in character but envisage positive state action. Among these rights, right to equality in its various facets, including the authorization of the state to take affirmative action for the benefit of backward classes, the scheduled castes and the scheduled tribes<sup>8</sup>. Abolition of untouchability<sup>9</sup>, prohibition of traffic in human beings<sup>10</sup>, and prohibition of employment of children in factories<sup>11</sup> are clearly further the concept of social justice.

The concept has been expressed with great vigour and clarity in the directive principle of state policy contained in part IV. The directives in no uncertain terms require the state, inter alia, to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political, should inform all the institutions of national life<sup>12</sup>, to reduce economic disparities; to make available material resources so as to subserve the common good; to operate the economic system in such a way that it does not result in the concentration of wealth and means of production to the common detriment; to protect health and strength of the workers and children of tender age against abuse,<sup>13</sup> to provide for legal assistance and aid<sup>14</sup>, to provide right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want<sup>15</sup>; to secure just and

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8 See Articles 14 to 16, particularly Articles 15(4) and 16(4)

9 Art. 17

10 Art. 23

11 Art. 24

12 Art. 38

13 Art. 39

14 Art. 39 A

15 Art. 41

humane condition of work and provision for maternity relief<sup>16</sup>; to provide for living wage and condition for work ensuring decent standard of life and full enjoyment of leisure and social and cultural opportunities<sup>17</sup>; to promote with special care the educational and economic interests of the weaker section of the people and their protection from social injustices and all forms of exploitations<sup>18</sup>; and to raise the level of nutrition and the standards of living and public health<sup>19</sup>. These principles can be enforced notwithstanding the general right to equality in article 14 and right to the six freedoms in article 19<sup>20</sup>.

The Constitution also ensures due representation of the weaker sections (scheduled castes and scheduled tribes) in Parliament and state legislatures through reservation of seats<sup>21</sup>. It also directs for their induction into state services<sup>22</sup> and provides special administrative safeguards to them<sup>23</sup>. A backward class commission to make recommendations for improving the conditions of the backward classes and a commission to report on the administration of scheduled areas has also been conceived<sup>24</sup>. Special provisions have also been made for such minorities as Anglo- Indians<sup>25</sup>.

All these provisions make it amply clear that our Constitution does not leave the individual at the mercy of *matsya nyaya* representative of a competitive model of society<sup>26</sup>. It assigns a prominent role and to imposes heavy responsibility upon the State to assure a dignified life to each individual irrespective of what he deserves on meritarian considerations. It envisages equal respect and concern for each individual in the society and if the attainment of that goal requires special attention to be paid to some, that ought to be done. The provisions requiring special attention are not an exception to the general scheme of the Constitution but are an integral part of it and may be called a basic structure in *Kesavananda Bharti v. State of Kerala*<sup>27</sup>. They in fact represent the central ideology that worked in the mind of the Constitution makers for eradicating our age old social injustices through an enlightened constitutional order.

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16 Art. 42

17 Art. 43

18 Art. 46

19 Art. 47

20 Art. 31 C

21 Art. 330 and 332

22 Art. 335

23 Art. 164 and 338

24 Art. 339 and 340

25 Art. 331, 333, 336 and 337

26 Jurisprudential foundations of affirmative action: some aspects of equality and social justice by M. P. Singh Delhi Law Review 1983-1984 p-56

27 AIR 1973 SC 1461

#### **IV. Social Justice and Supreme Court of India:**

The Supreme Court of India is conscious that the Constitution makers “adopted the democratic ideal which assures to the citizens the dignity of the individual and other cherished human values as means to the full evolution and expression of his personality<sup>28</sup>” and the Constitution “is intended to be a social document in which the relationship of society to the individual and of the Government to both and the rights of the backward classes, scheduled castes and scheduled tribes are clearly laid down. This social document is headed by a Preamble which epitomizes the principles on which the Government is intended to function”<sup>29</sup>.

The Supreme Court in *Muir Mills Ltd. v. Sutt Mill Mazdoor Union*<sup>30</sup> realized the difficulty of defining the phrase ‘Social justice’ and refused to lay down any rigid-definition when it is said that “Social Justice is a very vague and indeterminate expression and no clear cut definition can be laid down which will cover all situations”, but it added that “concept of social justice does not emanate from the fanciful notions of any adjudicator<sup>31</sup> nor the phrase means that, “reason and fairness must always yield to the convenience of a party-convenience of the employee at the cost of the employer... in an adjudication proceedings<sup>32</sup>”. The Supreme Court, however, regarded the concept of social justice “as living concept of revolutionary import, it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state<sup>33</sup>”.

Thus, “the judiciary was to be an arm of the social revolution upholding the equality, that Indians had longed for during colonial days, but not had gained not simply because the regime was colonial and perforce repressive, but largely because the British had feared that social change would endanger their rule<sup>34</sup>”, but with the dawn of independence the judiciary has to discharge the function assigned to it in the Constitution. In particular, the Supreme Court, has to guard and guide in administration of justice and come up to the expectations of the people.

The delicate task of administering social justice by balancing individual’s rights and the needs of society in imposing social control, falls on the shoulders of judiciary in general, and the Supreme Court in particular.

Referring to the aspect of social justice Subba Rao, C. J.<sup>35</sup> as he then was, had observed.

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28 Per Patanjali Shastri, J. in *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

29 Per Hidayatullah, J. in *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

30 Per Bhagwati, J. 1955. S.C.A. 321.

31 Ibid.

32 Per Das, S.K. J. in *Panjab National Bank V. Sri Ram Kanwar*, 1951 S.C.A. 598.

33 Per Gajendragadkar, J. in *State of Mysore*, AIR 1958 SC 926.

34 Austin, Granville, *Supra* at Note 6.

35 *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

“The rule of law under the Constitution has a glorious content. It embodies the modern concept of law evolved over the centuries....It enjoins to bring about a social order in which justice, social, economic and political shall inform all the institutions of national life. It directs it to work for an egalitarian society where there is plenty, where there is equal opportunity for all, to education, to work, to livelihood, and where there is social justice ... It, therefore, preserves the natural rights against the State encroachment, and constitution the higher judiciary of the State as the sentinel of said rights and the balancing wheel of the right subject to social control. In short, the Fundamental Rights, subject to social control, have been incorporated in the rule of law.... By this process of scrutiny, the Court maintains the validity of only such laws as keep a just balance between freedom and social control... The standard is an elastic one; it varies with time, space and condition.... (it)... serves the needs of the people without unduly infringing their rights. It recognizes the social reality<sup>36</sup>”.

The Supreme Court has firmly ruled in *Balbir Kaur v. Steel Authority of India*<sup>37</sup> that “the concept of social justice is a yardstick to the justice administration system or the legal justice and it would be an obligation for the courts to apply the law depending upon the situation in a manner whichever is beneficial for the society”. In another case it was held that “Social justice is a device to ensure life to be meaningful and livable with human dignity. State has to provide facilities to reach minimum standard of health, economic security and civilized living to the workman. Social justice is a means to ensure life to be meaningful and livable<sup>38</sup>”. Supreme Court of India has delivered many judgments<sup>39</sup> to strengthen the concept of Social Justice. So we can say that the Supreme Court has always stepped in to protect the interest of the Indian citizens through the objective enshrined in Constitution.

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36 Ibid pp. 1655 and 1656

37 AIR 2000 SC 226

38 Consumer Education & Research Centre v. Union of India, AIR 1995 SC 922

39 M.H. Hoscot v. State of Maharastra, AIR 1978 SC 1548, P. U.D.R. v. Union of India, 1982 SC 1473, Bandhua Mukti Morcha v. Union of India. AIR 1982 SC 849, State of Kerala V. N.M. Thomas AIR 1976 SC 490, Indira Sawhney v. Union of India, AIR 1993 SC 497 Neerja Chaudhary v. State of M.P. 1983(3) SCC 243.