

Distributive Justice—A Legal Study

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“The rules of Distributive justice cannot be the rules of conduct towards equal, but must be the rules of the conduct of superior towards their subordinate”.

— F. A. Hayek

I. Introduction:

Distributive justice concerns what some consider to be socially just with respect to the allocation of goods in a society. Thus, a community in which incidental inequalities in outcome do not arise would be considered a society guided by the principles of distributive justice. Allocation of goods takes into thought the total amount of goods to be handed out, the process on how they in the civilization are going to dispense, and the pattern of division. Civilizations have a narrow amount of resources and capital.

The problem arises on how the goods should be divided. The common answer to this question is that every individual receives a fair share. Often contrasted with just process, which is concerned with just processes such as in the administration of law, distributive justice concentrates on just outcomes and consequences.

A prominent contemporary theorist of distributive justice is the philosopher **John Rawls**, although this subject matter has now received wide treatment across philosophy and the social sciences.² He believed that currently the poor have more than their current share of burden while the rich people have the lions share of benefit.

Distributive justice considers the distribution of goods among members of society at a specific time, and on that basis, determines whether the state of affairs is subjectively acceptable.

For example, someone who evaluates a situation by looking at the standard of living, absolute wealth, wealth disparity, or any other such utilitarian standard, is thinking in terms of distributive justice. Distributive justice could be considered a means that addresses the burdens and benefits to some norm of equality to members. The definition of distributive justice has stayed constant, compared to other concepts in macro marketing and social economics.

1 LL. B, LL. M (Pune).

2 (see James Konow, 2003).

II. History of Distributive Justice:

The question relating to the allocation of the resource goes back at least 2 million years. To go again over on the glaring inequalities of different types but important is on the bases of caste and sex that prevalent in the society until the pre-independence days, despite the continuous efforts of the state, reforms and missionaries to eradicate them no balance in all respect could be achieved,

Chousalkar (1986), very systematically described evolution of Indian context of Dharma. Based on his studies studies of the Vedas and Mahabharata compared. Both Nehru and Gandhi stood for economic justice during the struggle for freedom. Their words are “The possession of the in ordinate wealth by individual should be held as a crime against Indian humanity³”.

After the independence when the constitution is blessed in India, the preamble and Directive principal of State Policy laid down the rules and provision for both equality and social justice with more emphasis on the special care and protection and right to weaker class. As a result, a number of reformative laws have been enacted in post independence era. This reflects that they do not carry any stigma against the beneficiaries⁴.

III. Distributive Justice in India:

Both the constitution and other legislation owes their obligation to Indian social policy of growth with the social justice most prominently with the distributive justice. It believes that woman’s and harijans along with tribal and other backward classes constitute the weaker class of the society they remain subjugated and the exploited section and lived like semi human species for a centuries together⁵.

The various constitutional laws are enacted to eradicate the discrimination which is very deep rooted in Indian society.

The preamble itself strives for achieving the socio, economical and political justice. Mainly the concept of distributive justice reflects in directive principal of state policy. These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the Directive Principles given in the Constitution of Ireland and also by the principles of Gandhism; and relate to social justice, economic welfare, foreign policy, legal and administrative matters.

Directive Principles are classified under the following categories: Gandhian, economic and socialistic, political and administrative,

3 Janak Pandey, Psychology in Indian Revisit Development, Sage Publication. New Delhi 2004

4 K.B.Gobind, Laws and Social Justice in Indian Society, Daya books, New Delhi.

5 C.N. Sharma, sociology of Indian society, S. Chand Publication, Delhi 2004

justice and legal, environmental, protection of monuments and peace and security⁶.

Article 36 to 51 in Part IV of the Constitution of India contain the Directive Principles of State Policy. The aim of these Directive Principles is establishment of a “Welfare State” which is envisaged in the preamble to the Constitution. If the U.N. Convention of Right to Development is an inalienable Human Right, the Directive Principles which also aim at development of the State, thereby stand elevated to the level of Human Rights. The Supreme Court in Unnikrishnan’s case⁷ went to the extent of observing that the Directive Principles constitute “Conscience of the Constitution”.

To resolve the position of Directive principal of state policy with the Fundamental rights under constitution of India, various cases are now evidence to prove by the courts that, “Directive Principles as even pointed out in some of the Judgments of this Court, have to be read into the Fundamental Rights as a matter of interpretation⁸”.

Article 46 obliges state to promote the education and economic interest of weaker class specially SC’s and ST’s and protect them from social injustice and exploitation.

Out of art.46 Supreme Court has developed the concept of distributive justice-

The court emphasis that constitution not only permits but directs the state to administer the distributive justice. they have explains the concept of distributive justice in the following manner⁹-

“the distributive justice comprehends more than achieving the lesson of inequalities by differential taxation, distribution of property owned by one to many who don’t have none. All the laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the society or there may be the legislative control of unfair agreements”.

Further in **“Ahmadabad Municipal corp. vs nawab Khan Gulab Khan, AIR 1977 SC 152, 163; (1997)11 SCC121”**

Court observed that, “Art. 38, 39, & 46 mandate the state to provide socio, economic justice to minimise the inequalities in the income and in opportunity and status. It positively charges the state to distribute its largess to weaker section of society envisages in art.46 to make socio-economic justice a reality and fruitful so as to make the life worth living with a dignity and equality of status with

6 www.En.wikipedia.org.

7 AIR 1993 SC 2178

8 RANDHIR SINGH vs. UNION OF INDIA (1992 (1) SCC 618)

9 Pathumma vs State of Kerala AIR 1978 2 SCC 1

improved excellence”.

The distributive justice proves for balancing the social justice is clear from the following contexts.

Article 39 requires that state requires to directs its policy towards securing.

- a) All citizens, irrespective of sex, equally having right to adequate means of livelihood,
- b) The ownership and control of material resources equally distributed,
- c) Operation of economic system does not results into concentration of wealth and means of production to common detriment,
- d) There is equal work for both men and women,
- e) Health and strength of the workers, men and women, children’s are not forced to enter avocation unsuited to their age,
- f) The children’s are given an opportunity to develop healthy conditions and freedom of dignity.

1) LIVELIHOOD OF WEAKER CLASS:

In common parlance the weaker class, refers to the group of people having some status while the class denotes to any person or object which is comparatively less strong in strength. In every society the certain group of the individuals has more benefits, rights and opportunities than other in respect to food, education, employment etc¹⁰.

For that our constitution provides the reservation policy in education and public employment and tries to equip the weaker by granting it as a fundamental right under art 15 and 16 of constitution of India.

**Even article 39 (b) (c) provides the distributive economic system. The aim of socialism is the distribution of the material resource in a way to subserve the common good socialism means a distributive justice as idea ingrained in article 39(b)
In “LINGAPPA POCHANNA vs. STATE OF MAHARASHTRA”¹¹**

While dealing with Maharashtra Restoration of Lands to Scheduled Tribes Act, the Court held that the said Act is an illustration of distributive Justice and observed that the Courts should as far as possible uphold the Legislation enacted by the State to ensure “distributive Justice” i.e., laws which seek to remove inequalities and also attempt to achieve a fair division of wealth amongst members of the society.

¹⁰ K.B.Gobind, Laws and Social Justice in Indian Society, Daya books, New Delhi.

¹¹ AIR 1985 SC 389

2) WOMAN:

Woman's represents and forms the weaker class in contemporary India even though their condition is better than their past. They are yet to secure the quality of the status with men but still suffer from various disabilities as they considered as oppressed and exploited class by social reformer in 19th century. Keeping this view the social, economic, political, and cultural status of woman they have been reckoned and accorded the status of weaker class. They had been subject to much restriction like custom of sati, dowry, denial of access to education and job outside home. So many steps have been taken against woman in war the laws enacted are –

Abolition of Sati Act, Child Marriage Restrain Act, Dowry Prohibition Act, Women's Right of Succession Act, Equal Remuneration Act. were virtually needed to equipped the woman with the legal right to secure appropriate place in home and society.

Article 39(d) taken care of “equal pay for equal work”.
In “RANDHIR SINGH vs. UNION OF INDIA (1992 (1) SCC 618)”

In this case, the Supreme Court once again dealing with Article 39(d) of the Constitution emphasized the importance of Directive Principles of State Policy by declaring that “equal pay for equal work” is not a mere demagogic slogan but it is a constitutional goal capable of attaining through Constitutional remedies. And has the status of fundamental right. “Directive Principles as even pointed out in some of the Judgments of this Court, have to be read into the Fundamental Rights as a matter of interpretation”.

Again, the provision of the maintenance to Muslims during the iddat period etc. comes under the purview of social justice.

3) HARIJANS :

The term harijans widely use for the SC's since many years. Art.341(i) provides a list of sub-caste which falls under SC's. These are the group of people traditionally regarded as the untouchables.

Dalit status has often been historically associated with occupations regarded as ritually impure, such as any involving leatherwork, butchering, or removal of rubbish, animal carcasses, and waste. Engaging in these activities was considered to be polluting to the individual, and this pollution was considered contagious.

As a result, Dalits were commonly segregated, and banned from full participation in Hindu social life.

For example, they could not enter a temple nor a school, and were required to stay outside the village

Steps to be taken for dalits are-

- a) Opportunities of jobs and educations.

- b) Improved education, health and employment.
- c) special mission for empowering SC's and ST's and OBC.

In “DELHI DEVELOPMENT HORTICULTURE EMPLOYEES UNION v. DELHI ADMINISTRATION (AIR 1992 SC 789)”.

Referring to Article 41 of the Constitution which deals with right to work, to education and to public assistance, the Supreme Court gave reasons why this important right has been placed in Part IV and not in Part III of the Constitution.

The Court observed thus:

“The country has so far not found it feasible to incorporate the right to livelihood as a Fundamental Right in the Constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life. Advisedly, therefore, it has been placed in the Chapter of Directive Principles.

Article 41 which enjoins upon the State to make effective provision for securing the same ‘within the limits of its economic capacity and development’.

4) CHILDRENS:

In the civilised society the welfare of the children is of priority because the welfare of entire nation is depends on them.¹² Art. 39(e) prohibits the tender age of children from being abused. in the pursuance of the art.39 (e)&(f) the government of india has evolved a national policy for the welfare of the children.

The policy declares “The nations children are a supremely important asset”

Reading Art.15(3), 24, 39(e)(f) the supreme court while dealing with the case¹³ relating to adoption of child by foreign national and abused by him, court said that the constitutional provision reflects the greatest anxiety in safeguarding the welfare of children”.

In case of “**Mohini Jain VS State of Karnataka**¹⁴” courtsaid that the state is under the constitutional mandate to provide the educational institution at all leels for the benefit of the citizens and then restricted the right to education upto the age of 14 years.

IV. Conclusion:

In the light of above view, the justice is a action in accordance with the requirement of some laws. Whether these rules be grounded in human consenses or socital norms, they are supposed to ensure that all members of the society

12 M.P.Jain, the Indian constitution, wadhwa publication Nagpur 2009

13 Laxmikant Pandey vs Union of India AIR 1984 SC 469

14 AIR 1992 SC1858

receive fair treatment. Issues regarding social justice arise in different spheres and play a vital role in causing and addressing conflicts.

Proponents of distributive justice link it to the concepts of human rights, human dignity, and the common good. The concept of distributive justice entails what civilization is said to owe its individual members in a proportion-

- 1) Resources that are available to the society. This includes financial and market considerations.
- 2) Everyone in society will receive equitable access to basic health care needs.

Distributive justice theory argues that societies have a duty to individuals in need and that all individuals have duties to help others in need. Many governments are known for dealing with issues of Distributive justice, especially countries with ethnic tensions and geographically distinctive minorities. Post-apartheid South Africa is an example of a country that deals with issues of re-allocating resources with respect to the distributive justice framework.