

Constitution and Social Change

Sanchari Biswas¹

Abstract

The paper deals with the dominance of egalitarianism skilfully maintained by our Constitution of India in its decorous functioning of Parliament, Executive and Judiciary. However, the study reveals as to how arduous the thought of achieving social improvements is, in a country where barbaric crimes are indispensable. The paper contains elaborate discussions on few among the multitudinous achieved social orders which involve breaking down of hierarchies and transcending everyday consciousness by the equalization of equals under Article 14,15,16 of the Constitution, importance of faith being antithetical to orthodoxy established through the Sabarimala verdict, historical dominance of the systematic reduction of gender biasness when women chose their right to vote, application of exemplary legislations like "Child Labour Prohibition and Regulation Act 1986, Factories Act, 1948" etc, introduction of 3-tier government system in being autonomous in its sphere of functioning as local self governments in rural and urban areas, instances of cleansing obscenity through visible activity on the Unnao Rape Case, abolishing triple talaq, decriminalizing Section 377 IPC, revolutionizing the Judicial system by introduction of PIL .The study basically suggests the grandeur in the criteria of amicable settlement as social change through Constitution congealing as a single oeuvre with the three wings of the Government.

Keywords: Social Change, Constitution

I. Introduction

‘Social change’ as a concept is as arduous, as easy the thought of achieving it,sounds especially in a country like India where transcending everyday consciousness, breaking down hierarchies is its everyday ritual and blatantly pointing out barbaric crimes at the same time is indispensable. Dominance of egalitarianism is skillfully maintained through the Constitution of India

¹3Yrs LL.B Student, Indian Institute of Legal Studies, Dagapur

congealing as a single oeuvre with the decorous functioning of Parliament, Executive and Judiciary.

II. Equality and Rationality

“Equalization of unequals” wouldn’t have been possible if not for the fundamental rights guaranteed under Article 14, 15 and 16 of the Constitution. Article 14 exaggerates the possibility that no one is above law and therefore it is applied to all and not limited to citizens only. Professor Dicey said, “With us every official, from PM to collector of taxes is under the same responsibility for every act done without any legal justification like any other citizen”. ‘Equalization of unequals’ finds expression when the principle of equality is vindicated according to the similar circumstances people are exposed to, which further corroborates the privileges conferred and liabilities imposed. Article 14 administers classification as a defence of necessity but doesn’t permit class legislation. Dr. Jennings rightly said “equality before the law means that among equals law should be equal, like should be treated alike”.²

Article 15 is the extension of the same emphasizing State to not discriminate between citizens based on their religion, race, caste, and sex, place of birth, with regard to access of public places- shops, restaurants, hotels and places of public entertainment. However, in the cycle of violence commonly prevalent in India, special provisions for women and children shouldn’t be treated as exceptions to Article 15(1) but as emphatic statements of equality as the requirement of it is very necessary in a strong patriarchal culture like ours. Equality covers in its ambit upliftment of lower sections of the society which is why reservation of seats in schools and colleges of socially and educationally backward classes wouldn’t create discomfiture in the principle the article stands for and therefore vindicates Article 15(4) and 15(5).³ Social change was meticulously owned with exemplary legislations like SC & ST Prevention of Atrocities Act, 1989 which involves penalty for discrimination against SC or ST, Hindu Succession Act, 1956 where women’s limited owner’s status took a considerable turn regarding rights and powers in property, legislations banning determination of foetus are few such instances, but even then, increasing rape culture, deteriorating women

²REDDY VEERA GADE, “THE CONSTITUTIONAL LAW OF INDIA”, 44, SUJATA LAW SERIES

³ ibid

sex ratio exist, which shows the deficiency in the social change pointing towards us that we have failed our history after decades of independence and wronged the struggles of our Constitution makers.

Besides the socio-political reality of incompetent authorities, it is our own brotherhood to still practice inhumane, shameful acts of discrimination, exploitation, rape and torture exhibiting the vicious sphere of society. The same society asserts that “Barbaric crimes should attract barbaric models of punishment” and that the very thought of punishment should deter the culprit from continuing the offence but having mentioned that, intellectual ignorance of the very statement is welcomed as deterrent or fear wouldn’t end such a crime, for instance death penalties couldn’t stop murders. Fairness needs to have a timed connotation as rightly mentioned in the ‘Book of Justice’ by Amartya Sen. Severity of punishment wouldn’t reduce brutalities, surety of getting punishment would be the real deterrent. Systemic correction in our society will bring justice and improve social change.

Article 16(1) and 16(2) provide the general rule that the State shall provide equal opportunities to all citizens without discrimination on the basis of religion, race, caste, sex, descent, place of birth, residence in providing employment. However, Article 16(3), 16(4), 16(4A), 16(4B), 16(5) empowers State to make any law for providing reservations in the appointments or promotions on the basis of “socially & educationally backward class citizens”. This system is called “Reservation to Backward class citizens”⁴. Social development happened when amendments ensured reservations but in the Indian context it has never been treated as an affirmative action. Reservations were initiated to rectify historical injustices, to prove that people are not born impure, that there is nothing called superior or inferior. To bring those sections of the society in equal footing, reservation was used as a positive mechanism. Reservations shouldn’t be treated as a hindrance or an opportunity for economic security as in a population of 50crores; we are fighting for 0.25% government jobs involving reservations which is less than 12lac jobs. Instead of rectifying Government’s inability to conduct an environment which promotes job security by ourselves getting more involved in education, non-discrimination in workplace and governance, strict

⁴ Supra 1

enforcement of existing laws, strong community and forest rules, progressive taxation etc we compel ourselves to believe that reservations are meant to degrade the concept of equality, however even that has been replaced by landmark judgments in cases like Balaji vs State of Mysore⁵, Indra Sawney⁶ where reservation policies unjustified were struck down, creamy layer was excluded, class of citizens were not to be classified solely on the basis of economic criteria etc. Therefore, reservations continue to remain a matter of justice and equality which Constitution ensured.

III. Faith is Pure but Orthodoxy is Adulterated

With rationality being emphasized on the touchstone of Article 14, the famous Sabarimala verdict paved the way of egalitarianism proving that faith is pure whereas orthodoxy is adulterated which is why women of all age are at liberty now to access the deity which was earlier prohibited that rules based on biological characteristics cannot muster Constitution was well established with four judges stinging in the criticism of patriarchal mindset holding responsible for the prejudices against women claiming that men cannot dominate the views of worship. This signifies the confluence of law with the developing mindset of the society and initiating barring of age-old malpractices and customs to go with the general consciousness of the people with equality both on moral and legal grounds because clearly allowing women to access the deity after menopause stands illogical for a woman of 50 wouldn't be then fit to hike till the temple and the divine power wouldn't be content with wrongful restrictions of his worshippers. Therefore, social development's impact can be clearly traced here.

IV. Systematic Reduction of Gender Biasness

The very heart of democracy is defined when all citizens can actively participate in the management of public affairs. Systematic reduction of gender biasness happened in matter of politics when women recognized their right to vote which commenced after independence. That 'woman is power' is an Indian concept is very well established from the fact that the freedom of India movement itself was fought in the name of a woman—"Bharat Mata". However, while women are

⁵ 1963 AIR SC 649

⁶ AIR 1993 SC 477

treated as a concept of reverence while conducting Kanyapuja, Suhasinipuja, at the same time women are denied from the concept of respect as women after being idealized as deities. With Constitutional guarantees of equality(Article14), non-discrimination(Article 15(1)), equality of opportunity(Article 16), equal pay for equal work(Article 39(d)), renouncing practices derogatory to dignity of women(Article 51(A)(c)), special provisions (Article (15)(3)), maternity relief(Article 42), no doubt improvements initiated in the domestic sphere, but giving the significant gender the significance she deserves still lacks. Women's political action is still limited to support men's political aspirations, her participation at higher decision making levels is still limited. These limitations need to be expanded if democracy is to be consistent with its theory and intent.

V. Law and Ethics Resemblance in Legislations

Functional aspect of law is based on society and society is governed by morality and ethics of the community which degrades malpractices because of which age-old customs like bonded labor, sati stands struck down. Among the multitudinous social legislations and amendments, one such legislation that helped win the battle of eradicating social evil, is "Child Labour Prohibition and Regulation Act,1986" . Article 24, Article 21-A are all such instances to corroborate how education is the main combat force against poverty which is the root cause of child labour. Steady increase in the number of organizations that help decline child abuse, penalties for child exploitation, special provisions for children in Article 15 are all such measures to not exacerbate the growing imbalance and rather help rectify it.

VI. Decorous Spheres of Functioning

After so many years of India being republic, 73rd and 74th Amendment Act 1992 added new parts to the functioning system of the government as "the Panchayats" and "the Municipalities" to broaden the assistance in governance specifically. As institutions of self government, apart from the basic provisions mentioned under Article 243 which promotes participation of women and backward classes, the Ministry nonetheless took action for deepening of decentralized governance in areas where Panchayats have not been constituted to foster efficiency, transparency and accountability of the local /traditional bodies/institutions. The extent of settlement in devolution of plans for economic

security, for accessing infrastructure, civic amenities, prioritizing activities gives a clear picture of the direction social change is heading towards.

VII. Constitutional Law in Cleansing Obscenity

Strong patriarchal culture and the price of masculinity is well established from the recent case which comes into forefront from the land of maximum Prime Ministers is the Unnao Rape Case, corroborating power and human dignity towards one quizzical form of egalitarianism.

“Rape is not only a crime against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will power that she rehabilitates herself in the society, which on coming to know of the rape, looks down upon her in derision and contempt. Rape is therefore the most hated crime. It is also a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, namely the right to life with human dignity contained in Article 21”⁷. Justice delayed isn’t denial of justice is vindicated after Supreme Court’s admonitions to impel visible activity on the Unnao Rape accosted the MP to be in prison. But with the molestation of the younger sister of the survivor, death of the father in prison, attack of the victim⁸ and her lawyer, gives the picture of the vitriolic threats violating the principles of dignity, liberty as mentioned under Article 21. The stereotypical angle of misuse of law at the behest of political powers is not something citizens of India should be accustomed towards. Giving the significant gender, the significance she deserves should be the ideology preached by all no matter to what stage of power, reputation one might reach.

The socio-political authority’s competence brings in a very immaculate conjecture to punish those who deserve to do acts without legal and moral justification which further made our Judiciary to acquiesce the requirement of a Central Bureau investigation regarding the case⁹ but what is astonishing is that where a political regime appears to be stifling justice, Supreme court has to

⁷Bodhisattwa Gautam v Subhra Chakraborty, <http://rshrc.nic.in/07%20Human%20Right21pdf>,(last visited on 6th August,2019)

⁸ibid

⁹Supra 2

order change of venue which transferred the Unnao Rape inquiry from Lucknow to Delhi. The MP's delay in writing to Assembly Speaker to disqualify him as a party MLA and the continuous good wishes disgorged towards him while the victim is striving hard to survive, shows that humanity has lost its purity but the visible efforts of the Judiciary to reach at the climax and conclusion of the case balances the grotesquely ugly behaviour with innocuous belief of edict.

As rightly quoted, “Women’s physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race”¹⁰. Where judgments like these build the pavement for more stringent protection of women under Article 42(women workers are given special maternity relief), Article 15(3), Article 14...at the same time survivors of rape still crave cancellation of licenses of medical practitioners who still conduct the humiliating “two-finger” test despite the court’s ban in 2003. As the scenario stands that humanity itself lacks behind in cleansing democracy of unwanted elements, Judiciary, Legislature should not be blamed by the same people for incompetence because clearly the scenario is different.

It is high time to believe now that consent and bodily autonomy are not alien concepts, normalization of harassment isn’t appropriate, rape trials shouldn’t be that bad an experience as the crime is, anonymity of these victims should be paramount and that is the least portrayal of dignity as humans, people can offer. It is easier to vindicate an unjust action by stressing on the limits of governance in this particular case of Unnao Rape, but the limits of callousness which led to abdication of responsibility by the government for a period of 788 days, is when the Supreme Court intervened. Lack of technical explanation for the injustice done towards the victim and the family after several deaths in the family and the recent accident of the victim and her lawyer, the helplessness also extends to the people who could be prime witnesses against the accused but the influence of the influential people is so high that wilfully these witnesses might choose to not apply their freedom of speech and expression under Article 19(1)(a). The massive faith in justice was restored after the first victory of the victim in her

¹⁰ Muller v Oregon, 52 L.Ed. 551

long quest of justice ensured after the suspension of the MLA¹¹ and the charges put against him overriding his flamboyant belief of not being under any charge. This is the blot which is so indelible that stained the entire reputation of the country which shall remain, overshadowing the hope of completion of this trial.

Stern legislations and its impact couldn't overshadow generic discussions regarding crime against women because it has always been a common phenomenon with no acknowledgement to commute it irrespective of the stern legislations being established in order to eradicate the common injustices. Where legislation like removing "Triple Talak" was accepted with exuberance, at the same time considerably for two years treating the Unnao Rape case with careless flippancy. With charges framed against the BJP MLA including Sections 363(kidnapping), 376(1)(rape), 366(abducting a woman or compelling to marry), 120-B(criminal conspiracy), 109(abetment) of Indian Penal Code,1860¹² and sections 3& 4 of Pocso Act in one hand and on the other hand an advertisement in occasion of Independence Day featuring jailed MLA with Prime Minister¹³ of India to glorify the importance of the day, deliberately shows the difficulty to either shield the accused till proven guilty or to cleanse the obscenity that sprung up lately in relation to the MLA.

However, the struggles of the Constitution makers didn't go in vain as when fundamental rights are guaranteed to citizens and non-citizens in matter of Article 21, stern action for the infringement of the same is well anticipated, as the grundnorm made after so many repercussions in the past wasn't just established to make justice indelible for the sake of powerful individuals with wrongful intentions and reputation.

Asserting on the loopholes India currently possesses are the absence of gender-neutral laws. Probably because other countries have more equal society than us, it isn't arduous for them to imbibe the same but in our country, acceptance of unequal relationship of man and woman in a patriarchal society is paramount which needs to be modified. Gender neutrality can help keep "human beings"

¹¹ ibid

¹²The Statesman Ed, Press Trust of India , "Court frames charges against MLA Sengar"-, 14th August,2019

¹³ The Telegraph Ed, "I-Day Perch with VIPs for rape accused MLA", 18th August

and not “man and woman” on equal footing which will further initiate laws for men assaulted sexually. Society has developed which is why Section 498-A of IPC which was a shield for women in illicit relationships and where only the male partner could be accused is no more an offence, the Unnao accused has been now charged with Section 5(c) and 6 of the POCSO Act which increased his sentence, enough women protection laws are getting established eradicating the age-old malpractices etc. What lacks is “Equality” as human beings of a country which is a fundamental right, an epitome of dignity and liberty everyone deserves which in Unnao case is progressing but a speedy recognition is required because any further delay will not vindicate the egalitarianism Article 21 or our Constitution as a whole depicts.

VIII. Limits of Judicial Hands in Bringing Social Reform and Change

Article 25 and 26 of the Constitution starts with limitations first and then articulates the rights for the very reason that a citizen is a citizen first and then Hindu, Muslim, Christian, Sikh, Parsi thereafter. With the Upper House passing the triple talak bill and Prime Minister stating “archaic and medieval practice” to be confined to the dustbin of history corrected the historic wrongs that were continued towards Muslim women. Starting from the Shayara Bano case to the innumerable injustices, the majority opinion of the bench regulating, invalidated the concept but minority still condemned the interference in personal laws. But as Judiciary and Legislature are important limbs of the state trying to protect the rights of the individuals, the social injustice towards Muslim women had to be scrapped off which marked history in the development of social sphere and the democracy we are part of.

However, there are instances where the main pillars of Judiciary are adroitly in their own state of discomfiture and that needs to be eradicated if social change is to remain consistent. For instance, the unprecedented step of holding a press conference by the four judges of the Supreme Court against the Chief Justice of India in 2017 shows how ‘justice and corruption’, ‘power and languor’, ‘truth and perjury’ can become synonymous to each other. From the former Chief Justice of India being called as the “master of the roaster” on deciding the allocation of cases... to the Chief Justice’s opinion of not being obliged to provide reasons for his allocation of cases to different benches (with partiality or

impartiality being unanswered) arguments regarding irresponsibilities build. On the other hand, open televised hearings and public interviews of judges for the very same do not promote independent and fair administration of justice.

The exasperation of the decision-makers doesn't terminate right away. There are multitudinous instances where "justice seeking-giving authorities" are themselves indignant of the present state of vulnerability the Judiciary is heading towards. The cease-work initiated by the Calcutta High Court lawyers in the recent past after reiteration over the instant need of the desired number of judges, the request was ignored amicably directing again to the deliberate source of retribution the common people will have to face ultimately. But as a sequacious person tends to accept everything he reads, we the common people can accept everything but...Injustice. It might be arduous to descry the patriotism within but when it comes to anything that shakes the roots of our country, the general sentiment and tonality of voice and emotions is enough to break this very "confluence of egalitarianism and vulnerability".

Judiciary's role in yet again correcting a historic wrong comes with the most celebrated judgment whereby Section 377 IPC which criminalized same-sex intercourse was decriminalized. In 2001, the Naz Foundation India, an NGO committed to HIV/AIDS intervention and prevention, filed public interest litigation in the Delhi High Court challenging the constitutionality of Section 377. In 2009, the Court ruled that consensual sex between two adults of the same sex was legal. However, the ruling was challenged in the Supreme Court. In 2013, the Supreme Court reversed the Delhi High Court decision and held that section 377 was constitutional. Following widespread condemnation, the Court agreed to hear a curative petition and then referred the matter to a Constitution Bench of five judges. The petitioners argued that section 377 violates their right to privacy, right to dignity, equality, liberty and right to freedom of expression. In the interregnum, the Supreme Court issued a landmark ruling in the Puttaswamy case recognizing the right to privacy as a fundamental right. After it recognized the fundamental right to privacy in Puttaswamy, the court had little choice but to decriminalize homosexuality. And, in that sense, this decision was entirely predictable. However, the justifications presented for striking down section 377 are important both for India's rights jurisprudence in general and for claims currently being agitated by women and minorities in

other cases. Therefore, the court's ruling is of enormous significance, even beyond the rights of sexual minorities. Crafting innovative remedies for violations by adopting expansive readings of constitutional provisions has been yet again maintained to bring about the social transformation the study wants to exhibit and the country wants to live in.

"PIL is nothing but another form of constitutionalism which is concerned with substantialisation of social justice" said by Justice Bhagwati. In the exuberance of return to democracy and in an attempt to renovate its image, Supreme Court introduced PIL. Courts took up cases concerning public at large making it as the most significant tool to promote judicial revolution and social justice. PIL ensured alienating of sufferings caused by fellow human beings. People's union for Democratic Rights vs Union of India, M.C Mehta vs. Union of India ensured that apart from the aggrieved, anyone for public interest can utilize PIL. The splendid efforts of Justice P.N Bhagwati and Justice VR Krishna Iyer were very much instrumental in bringing about this revolution. When there is material to show that a PIL petition is nothing but a camouflage to foster personal disputes, the said petition is to be struck down. As an important administration of justice, PIL should not be 'Publicity Interest Litigation' or 'Private Interest Litigation'. If not properly regulated and abuse exonerated it becomes also a tool in futile hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or pokes ones into for a probe.

IX. Conclusion

It is easy to celebrate the achieved social orders but it is arduous to maintain and build and assist enforcement of the same. The painful reality takes the look of shabby gentility when in a land of diversities, moralities of the liberals and the conservatives turn antagonistic. Equality can only be ensured when acceptance of similar thought process by mutual consent will happen. The exploration of morality through the lens of political ideology giving rise to exclusionary form of identity politics needs to stop so that ethnic conflicts might not perturb the already achieved social order. Fundamental Rights should be utilized and given priority in a way that cases like death of journalists like Gauri Deshpande etc doesn't become an indisputable conjecture for raising voice through one's own

opinions. Women shouldn't be the prey of unwanted male attention for the natural physical orientation, twisting traditions to show normalization of harassment against women should stop. There are certain common approaches that can renew vigour and help the Government in enforcing the already established laws which include education, owning capitalism by making workers aware of their contributions otherwise profit is simply theft and exploitation if production is more than required and that can stop poor being poorer and grinding in poverty, The degree of control our govt has exerted over business and the culture of transparency and honesty was evident in the improved ranking system of our country in her ease of doing business. It is the appetite of these economists for future growth that can help implement more stringent policies to enhance the financial capacity.