

Economic Justice is a Boon to Distributive Justice: An Indian Perspective

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I. Introduction:

The Indian Constitution in several places provides for economic justice and equality of opportunity. The founders of the post colonial state crafted a constitution that envisioned a Government that would wield the majority of the economic power. They also provided mechanisms to help ensure that all the castes and classes in the country would have an opportunity to participate in the economy. Now that this economic power will be transferred to the private sector, is there any justification whether based on constitutional grounds or judicial arguments to insist that the private corporations also provide opportunities to all castes and classes of India? The present paper responds to the question as to whether by way of constitutional or judicial arguments a case can be made for the application of some sort of equality of opportunity requirement for the impending Indian Capitalist revolution and governmental approach to achieve the constitutional goal of economic justice.

II. Conceptual Perspective:

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 sufferings of the poor, weak, dalits tribals and deprived sections of the society and so elevate them to the level of equality to live a 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., from handicaps, penury, to ward off distress and to make their life livable, for greater good of the society at large².

The aim of social justice³ 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 the society in all facets of human activity. The concept of social justice enables equality to flavour and enliven the practical content of life.

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2 Air India Statutory Corpn v. United Labour Union, AIR 1997 SC. 645.

3 Ibid

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.

III. Distributive Justice in Societal Perspective:

Social justice relates to those rights which an individual shares in common with the society, since these rights flow from the society being its essential organ. Thus, it embraces a variety of rights including 'human rights', differentiating between the claims of the community in general, and those of individual. Rights of the community ranks above individual rights and individuals in turn have a share in the benefit of what ultimately belongs to the community. As such, social control in the interest of society can be justified when it controls the 'right of equality, for instance the appropriation of private property becomes an incident of social justice and the right to property tends to be weakness of all social rights, apart from perpetuating social inequality and economic exploitation⁴. Social backwardness is on the ultimate analysis the result of poverty to a large extent⁵. Economic backwardness is the result of many social evils. Slavery was thus, an institution of antiquity common to all people⁶. The economic backwardness needs to be eliminated and the status of the individual elevated by the 'equitable distribution of available resources' and to usher in a 'socialistic pattern of society'. As **Laski** puts it, 'unless socialism exists, democracy cannot exist', which idea probably made **Dr. Ambedkar** to consider that 'Social Justice is the balancing wheel between freedom, political and economic justice making the survival of democracy possible'.

The concept of social justice takes within its sweep the objective of removing all inequalities, and affording equal opportunities to all citizens in social affairs, as well as economic activities⁷, needing 'massive effort to lift the people from the lowly condition to a higher level'. State action to make people, who are really unequal in their wealth, education and social environment equal in specified areas has to be developed through concrete devices, plans, designs, schemes and in many other ways, for example, the Courts virtually enforced Directive Principles through the doors of fundamental rights, by the dynamic instrument of interpretative power, laying down new doctrines and norms, not visualized by the Founding Fathers of the Constitution. Economic production and distribution thereof entered the verdict of the Court, in the determination of the reasonableness of the restrictive laws in public interest imposed on trade and business⁸.

4 Rousseau, "Social Control" Book I Ch. IV.

5 Balaji v. State of Mysore, AIR 1973 SC 469.

6 H.F. Jolowicz, "Historical Introduction to the Study of Roman Law" (1932), p. 105.

7 P.B. Gajendragadkar, "Law, Liberty and Social Justice", P.P 77-79.

8 S.K. Awasthi "Law Relating to Protection of Human Rights" oriented pub. company, 2001. p. 489.

Thus, social justice found a new device in 'distributive justice', in promoting the rule of 'equality' and in the removal of 'economic inequalities', 'rectifying the injustice resulting from dealing or transaction between unequals in society'. The role of law, as an instrument of social justice has to adopt itself to serve equally as an instrument of 'distributive justice' in 'achieving a fair division of wealth among the members of the society. Legislative control has been exercised over unfair agreements in nullifying them, and thus, leading to protection of weaker section against injustice, and all forms of exploitation, such as debt relief⁹, imposing ceiling on land-holdings, forbidding transactions and restoration of lands to those deprived by unconscious bargaining, and by reopening cases of transfers. Such measures to a great extent made weaker sections to reap the benefits conferred by social and economic justice. Social order in formed by economic justice motivates the law in the direction of responding effectively and to rise to the need of transformation such as adoption of nationalised schemes and 'fair and equitable distribution of goods' and of agricultural income. The welfare component in social and economic justice, paves the way for promoting the welfare of different segments of society, such as protecting the aged in the matter of pension and gratuity¹⁰ equal pay for equal work¹¹, and even suggesting for uniform Civil Code¹². Particular mention requires to be made, regarding the obligation of State to keep the environment unpolluted and to protect lives of the citizens against environmental hazards¹³.

IV. Economic Justice a facet of Distributive Justice:

Likewise, the social and political justice pledged by the Preamble of the Constitution to be secured to all citizens, will remain a myth unless first economic justice is guaranteed to all. The liberty of thought and expression also, will remain on paper in the face of economic deprivations. A remunerative occupation is a means not only of economic upliftment but also of instilling in the individual self-assurance, self-esteem and self-worthiness. It also accords him a status and dignity as an independent and useful member of the society. It enables him to participate in the affairs of the society without dependence on, or domination by, others, and on an equal plane depending upon the nature, security and remuneration of the occupation. Employment is an important, and by far the dominant remunerative occupation, and when it is with the Government, semi-Government or Government controlled organisation, it has an added edge¹⁴. It is coupled with

9 Prathumma v. State of Kerala, AIR 1978 SC 771.

10 D.S. Nakara v. Union of India, AIR 1983 SC 130.

11 Randhir Singh v. Union of India, AIR 1982 SC 879.

12 Jordan Deingdeh v. S.S Chopra, AIR 1985 SC 935.

13 P. Sheshadri, "Social Justice and Media : Problems and Perspectives a Critical Evaluation", AIR 1996 (Jour) p. 52.

14 Supra note, 7, p.490.

power and prestige of varying degrees and nature, depending upon the establishment and the post. The employment under the State, by itself, may many times help achieve the triple goal of social, economic and political justice¹⁵.

V. Constitutional Perspective:

The constitutional mandate pertaining to economic justice can be walk through the Preamble to the Constitution, Fundamental Rights and the Directive Principles is all that is necessary to bring the point home. The Preamble provides that¹⁶

“The People of India having solemnly resolved.... to secure to all its citizens:

JUSTICE, social, economic and political;.....
EQUALITY of status and of opportunity”.

Several of the Articles in Part III (Fundamental Rights) and Part IV (Directive Principles) reinforce these ideas giving them life substance. Worthy of particular mention in this regard would be Article 15 clause (4), Article 16 clauses (1), (4) and (4A), Article 21, Article 38 clauses (1) and (2), Article 39 clauses (a), (b) and (c), Article 41 Article 43-A, Article 46 and Article 47. They all speak in some way towards providing equality of opportunity or economic betterment of the entire populace¹⁷.

VI. Right to Livelihood and Opportunity of Employment in Public and Private Corporation:

Once the Court is willing to consider powerful private corporations as the State under Article 12, it is still necessary for it to deem that the fundamental right of equality of opportunity be specifically applied. In *M.C. Metha* case the Apex Court does not seem to suggest that even if a private corporation is deemed to be State, all fundamental rights of Part III of the Constitution should be applied to it. The Court asserts: “that it is not correct to say that in India once a corporation is deemed to be ‘authority’, it would be subject to constitutional limitation of fundamental rights in the performance of all its functions and that the appellation of ‘authority’ would stick to such corporation, irrespective of the functional context¹⁸”.

While it is immediately logical that one would consider the fundamental rights asserting opportunity for ordinary citizens in the economy to be dominant player of the economy, the Courts have already established the necessary

15 *Indra Sawhney v. Union of India*, AIR 1993 SC 477. p. 639.

16 Carlos A Austin, “ Need for A Constitutional Requirement of Equal Opportunity in Employment in Private Corporation: An Indian Perspectives.”. DLR, Vol. XIX, 1997 p. 51.,

17 For detail pl. See Constitution of India.

18 AIR 1987. SC. 1086, P. 1097.

connections. First, one should note that what was at stake in the *M.C. Mehta* case was the most critical of the fundamental rights, namely, the right to life. The Article in question was Article 21, which states that “No person shall be deprived of this life or personal liberty except according to procedure established by law”. But the Supreme Court has found that the right to life and the right to livelihood are inextricably tied. And in the technologically advanced and service oriented global economy of the twenty-first century, which India plans to join, the right to livelihood will not be found in the Government employment. Therefore, it will be necessary for the seeds of opportunity for all citizens to be grounded in the important industrial sectors of the future.

In a significant case, *Olga Tellis v. Bombay Municipal Corporation*¹⁹, the Supreme Court established that the right to life must include the right to livelihood. The Court claimed that if it did not, one could not sustain oneself and the loss of life would soon be followed by the loss of livelihood. More recently, the Supreme Court in *Narendra Kumar Chandla v. State of Haryana and others*²⁰ decided this matter. An employee of the State Electricity Board, being paid on the pay scale between Rs. 1400-2300, had an operation whereby his right arm was removed. The court found that “Article 21 protects the right to livelihood as an integral facet of right to life²¹”.

Article 21 is not, however, an absolute bar to removal of livelihood. Livelihood and hence life can be removed if done by “procedure established by law.” The *Olga Tellis* case establishes the meaning of the phrase “procedure established by law” as follows: “[i]t is far too settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Art. 21 must be fair, just and reasonable²²”.

VII. Economic Justice after Privatization and Liberalization:

In the context of the appalling present economic conditions in the country the relevant question is: how many Indian citizens will have the requisite skills and ability to be employed after these privatization and liberalization efforts and in the futuristic service oriented and technological 21st century global economy? Surely, not those below the poverty line. That cuts out about 310 million people of more than the entire population of the United States. The literacy rate of the nation is 64%²³. Capitalists seek to have the most efficient workforce. Generally speaking, that will not include the illiterate. As a result it is necessary to deduct

19 (1985) 3 SCC 545; AIR 1986 SC 180.

20 AIR 1995 SC 519.

21 Id. at 520.

22 Supra Note. 18 at 196. In support of the proposition see *EP Royappa v. State of Tamil Nadu*, (1994) 2 SCR 348; (AIR 1994 SC 555); *Maneka Gandhi v. Union of India*, (1978) 2 SCR 621; (AIR 1978 SC 597).

23 Supra note 15. p. 50.

another 13% or 115 million. So far 425 million people will likely to have little hope for about two generations in participating in this economic liberalization. Now to assess how many people can actually participate in a liberalized economy would be difficult. But if 425 million have no opportunity, logic would dictate that the number of those who probably will, is a very small proportion of the populace. But for the purpose of the argument, excluding 425 million people from the economy is sufficient²⁴.

VIII. Economic Justice and Equality of Opportunities:

How then should the Court affirmatively structure an equality of opportunity requirement in India under the conditions of poverty that exist and in view of its new capitalist leanings? The founders faced with the problem under a socialist type of economy turned to a Reservation system which would be more efficient and more reasonable to apply with modifications if necessary, than to create a system a new²⁵.

The Reservation system was developed due to the gross injustice heaped upon the former “untouchables” in the nation. They were primarily deemed so because of the unclean occupation in which they engaged. As a result, they have been politically, socially, educationally, and economically ostracized for many generations. The Constitution sought to address the matter by two primary methods. First, in Article 17 the practice of untouchability was to be abolished. This riddance of untouchability is widely acknowledged as applicable to private as well as public persons²⁶. And secondly, the Reservation system was established for the newly termed Schedule Tribes (ST’s) and Schedule Castes (SC’s). In order to address the lack of political power, the system provided that certain seats in the Lok Sabha (the Lower House) and the State legislatures should be reserved for those persons who are members of the ST’s and/or SC’s²⁷. The Constitution provides for the social and educational needs of the ST’s and SC’s in several Articles, including Articles 15 and 46²⁸. Economic redress was primarily addressed in Articles 16, 46 and 335²⁹. In the governmental economic sphere, a certain percentage of jobs are predetermined or reserved for members of the SC’s and ST’s.

Conceptually, in applying the Reservation system to private corporation the system would work largely the same, but with some notable differences. A certain percentage of the positions would be held for SC’s and ST’s that meet certain constructive income requirements. The entry level positions would be

24 Ibid.

25 Supra note 15. p. 52.

26 Ibid p. 53.

27 Articles 330 and 332.

28 Constitution of India.

29 Ibid.

reserved based on minimum objective criteria. This minimum objective criteria would be similar to Article 335³⁰, requirement to maintain minimum efficiency in administration, despite reserving places. However, this minimum would not be relaxed even for a period to allow SC's and ST's to adjust as has been done with the State. Promotions would be earned in an open competitive field, therefore no positions beyond entry level would be reserved. This is again in contrast to application of the system to the State³¹.

Chief among the goals of private companies is to operate as efficiently and hence profitably as possible. Therefore, even the type of restraints imposed must be those that will allow them to maintain some level of efficiency and profitability. Companies must then be able to select the most efficient of the poorest SC's and ST's. But still this choice will be out of a largely uneducated lot. As a result, there should be some provision to allow corporations to not fulfill their quota, but with a financial penalty. The non compliance penalty would grow more onerous over the years to encourage compliance. Some may consider the situation of the destitute hopeless. However, with properly motivated capitalist and willing students, an equilibrium is possible³².

The proceeds from the financial penalty would go to the establishment of a fund to train and educate the SC's and ST's that meet the constructive income requirements. The training and education would have to be at a level where at the end thereof the participants would be employable. As the corporations would have a strong interest in seeking competent graduates, they should have a strong hand over those selected to participate and the curriculum employed. Under this kind of structure, the private sector would logically select those persons requiring the least amount of training. By contrast, the government will have an interest in seeing those requiring the most help also advance. One way to reconcile the divergence of interest is to ensure that community service, in the form of aiding their less fortunate brethren to advance, is a part of the training of the selected participants. The community service should also continue after graduation. On a periodic basis, a representative of the court would report on the progress of those who are in the training program and those not selected to participate.

In short, the dominant private corporation would have to employ now or pay to prepare the SC's and ST's for later employment³³.

IX: Conclusion:

India has for a very long time found its economy in a state of depression and all the successive government had strived hard to provide economic growth with justice. But unfortunately the constitutional mandate of economic justice is

30 Ibid.

31 Supra note 14.

32 Supra note 15, p. 56.

33 Ibid.

yet to achieve.

Dr. Ambedkar, the architect of the Indian Constitution has highlighted the then existing injustice and inequalities in our society in his speech delivered in the Constituent Assembly as follows³⁴:

[W]e must begin by acknowledging first that there is complete absence of two things in Indian Society. One of these is 'equality'. On the social plane, we have in India a society based on privilege of graded inequality, which means elevation for some and degradation of others. On the economic plane, we have a society in which there are some with immense wealth as against many who are living in utter poverty..... in politics, we have equality and in social and economic life, we have inequality. We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of the political democracy which this Assembly has so laboriously built up.

The above observation made by **Dr. Ambedkar** clearly shows that equality should be secured to all persons in socio-economic life through state's intervention. This can be achieved through the means of reservation of seats in educational institutions and public employment, which has been provided in the Constitution of India³⁵. The Constitution has also directed the state to secure adequate means of livelihood to all citizens and to promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the scheduled castes and scheduled tribes and they should be protected from social injustice and all forms of exploitations³⁶.

It is submitted that in achieving economic equality for the poorest of the citizenry which the founders intended and recent administrations have asserted as their goal must include some reasonable possibility of participation by most of the population in the nation's economy of the 21st century. This kind of global economy will be dominated not by the Government or statutory company, as in the past, but the private corporation would virtually become private Government. The current approach will not permit this inclusion, imposing some form of equality of opportunity requirement by expanding the nation of State within Article 12 combined with overall policy concerns will contribute to this noble aspiration.

34 II Ambedkars' writings and speeches.. pp. 184-187.

35 Articles. 15(4) and 16(4) Constitution of India.

36 Articles 39 and 46 Constitution of India.