

Social Justice: Constitutional Prescriptions and Political Priorities

Dr. K. R. Aithal¹

I. Prologue:

The preamble to the Constitution promises not only liberty, equality and fraternity but also justice social, economic and political. This promise was sought to be fulfilled through specific provisions in part III and IV of the Constitution which guarantee individuals certain fundamental rights operating as limitations on the powers of the state and governments, and also through part IV containing Directive principles of State Policy aimed at securing socio-economic justice by imposing specific obligations on the state and successive governments.

Even after the lapse of more than six decades of establishment of constitutional democracy, growing poverty, illiteracy and unemployment on the one hand, and rise in epidemics, instances of starvation deaths and recurrence of drought and famines on the other, made the governmental attempt to secure social justice increasingly suspect. It appears that the developmental process in the name of social justice conferred certain welfare benefits on some individuals and groups on a selective basis and the really impoverished could not receive those benefits as the highly politicized development bureaucracy allowed the benefits to be cornered by politically dominant groups particularly politically influential castes².

The studies establish that the policies and programmes relating to socio-economic justice formulated and implemented by the planning process through development bureaucracy headed by politicians in fact promoted the cause of the rich while political process created and maintained only hope of future development in the minds of the millions of poor Indians³. Further since 1980s, global economic liberalization, opening up of markets and reestablishment of neo-liberal and capitalistic mode of production and distribution created growing disparity in the distribution of income and assets, the direct link between socio-economic class and access to quality health care and education, and the decline in participation of average citizens in public affairs indicate that social justice is receding, both as an objective of governments and as a feature of societies⁴.

It appears that concept of social justice has become an integral part of

1 Professor of Law, Department of Studies in Law, Karnatak University, Dharwad -580 001, Karnataka.

2 M.N.Srinivas, *Caste in India and other Essays*, (Bombay: Media Promoters, 1978), 21-25.

3 Francin R. Francale, *India's Political Economy 1947-1977* (Princeton: Princeton University Press, 1978), 238.

4 *Social Justice in Open World*, (New York: United Nations, 2006), 40.

political rhetoric than living reality under the constitutional scheme of governance. The founding fathers of the Constitution to prevent degeneration of the concept of social justice through misinterpretation and application by the political process enacted several provisions in part III and IV of the Constitution. It is often said that in recent times, political compulsions made some of those provisions redundant and inoperative. Hence, an attempt is made in this paper to analyse and evaluate the concept of social justice as a moral concept based on constitutional prescriptions and to show that it is being mutilated and misapplied to promote political ends by a few elite. Even though the title of the paper appears to be too general only some important issues are deliberated leaving many others. Accordingly, the part I of the paper concentrates on discussion of the concept of social justice as evolved in the east and the west and its relation to economic and political justice. The part II is concerned with the analysis of key constitutional provisions relating to social justice. The part III makes an attempt to identify the aspects of political culture that have a bearing on the application of social justice as reflected in some specific statutes policy documents and judicial decisions.

II. Part-I: Concept of Social Justice

The concept of justice has fascinated philosophers and thinkers ever since Plato formalized the argument that an ideal state would rest on four virtues wisdom, courage, moderation and justice⁵. The phrase social justice is often used to distinguish the concept of justice as applied by the state from an ideal society based on consensus on certain moral values.

1. *Development of the concept of social justice in the west:* The origin of the idea of justice is traced to early Greek Philosophers and Plato quoting Socrates ascribes four meanings or definitions to the concept of justice. They are (i) telling truth and rendering up to what we have received; (ii) rendering to each his due; (iii) complying with the law and (iv) minding ones own business both in external relations with others and in the internal ordering of the soul⁶. These definitions indicate that justice is a social concept excepting when it refers to internal ordering of soul. Plato also argued that justice is found in the state. It was Aristotle who distinguished distributive justice from corrective justice and put forward the view that in a society benefits and burdens should be distributed to individuals on the basis of their relative claims. This idea became the basis for examining different conceptions of justice in the west⁷. Thus idea of distributing benefits and burdens according to needs, desert or moral virtue and the like, emerged and until recently the subject matter of distribution was individual rights,

5 *Id.* at p.15.

6 Otto A. Bird, *The Idea of Justice*, (New York: Fredrick Pragers, 19657), 10.

7 M.D.A.Freeman, *Lloyd's Introduction to Jurisprudence* (London: Sweet and Maxwell, 2001), 523.

liberties or freedom.

The notion of social justice is relatively new and it is not found in the writings of philosophers like Plato, Aristotle, Rousseau, Kant and others, who did not consider justice or the redress of injustice from a social perspective. Social justice generally refers to the overall fairness of a society in its divisions and distribution of rewards and burdens. The concept first surfaced in western thought and political language in the wake of industrial revolution and the parallel development of the socialist and communist doctrines. It emerged out of protest against capitalist exploitation of labour and as a measure to improve human conditions. Following European revolutions of 18th and 19th centuries social justice became a rallying cry for progressive thinkers and political activists⁸. Social justice derives its authority from the codes of morality prevailing in each culture. It has also its roots in the vast cultural heritage of India.

2. Social Justice and its origin in India: The ancient Hindu political philosophy has pointed out that the functions of the government were not supposed to end with maintenance of peace and order, but government must be an instrument of diffusion of culture⁹. Further it was also said that king has to support helpless, and aged people, the blind, the crippled, lunatics, widows, orphans, those suffering from disease and calamities, pregnant women by giving them medicine, lodging, food and clothing to their requirements¹⁰.

In fourth century B.C., one can find in *Kautilya's Arthashastra*, a specific injunction to the effect that the king shall provide the orphan, the dying, the infirm, the afflicted and helpless with maintenance; he shall also provide subsistence to helpless mothers and also to the children they gave birth to¹¹. *Rajanithi prakasha*, prescribed that people of all *varnas*, should approach the king if they cannot maintain themselves and it is the duty of the king to help them with means of livelihood with a condition that the beneficiaries apply their skill and craft for the benefit of the king¹².

The ancient Hindu system identified state and government with the king and it was said that according to *Rajadharm*, which is said to be the root of all *Dharmas*, happiness of kings lies in the happiness of the subjects¹³. Such

8 *Supra* n.3 at 45.

9 P.V.Kane, *History of Dharmashastra*, (Pune: Bhandarkar Oriental Research Institute, 1966), 56.

10 *Ibid* at 58.

11 R.Shama Sastry, *Kautilya's Arthashastra* (Mysore: Mysore Printing and Publishing House, 1967), 47.

12 *Supra* n.8 at 59.

13 Kautilya proclaimed: "in the happiness of the subjects lies the happiness of the king, in this welfare lies his welfare; the good of the king does not consist in what is pleasing to himself but what is pleasing to the subjects constitutes his good", *supra* n.10 at 19.

identification of the king with the government made realization of social justice ideals to depend upon the will of kings and many rulers did not adhere to these ideals¹⁴. Throughout medieval and early modern history influence of ancient Hindu philosophy was visible and welfare depended on the individual personality of kings, and their moral convictions¹⁵. It has been claimed that welfare of the people as a policy of the rulers received a set back during medieval period as the Muslim rulers, with a notable exception of Akbar the Great, were more concerned with religious propagation and empire building¹⁶.

3. Nature of the concept of social Justice: It is common for the politicians and thinkers to criticize or appreciate particular social arrangements and political or policy decisions from the standpoint of social justice. But the demands of social justice are not always clear. Does social justice condemn all forms of inequality, or it guarantee equal opportunity or it is concerned with welfare of the poor or is it a method to remedy a historical injustice by violating the rights of individuals in the present or any of this type. The nature of social justice and its application to particular social problems continue to be important concerns for the general public as well as for specialists.

The application of social justice requires geographical, sociological, political and cultural framework within which relations between individuals and groups can be understood, assessed, and characterized as just or unjust. But through the centuries prophets, philosophers and other intellectual have repeatedly attempted to identify common ground that would allow all human beings in their own and in successive generations to agree on definitions of right and wrong, good and bad, just and unjust.

It is a matter of common knowledge that so far no society is able to achieve desired level of justice and the cry “we want justice” continue to dominate social life. It is the tendency of the strategically placed, the powerful to exploit the weaker and less favorable and the inability of any society to achieve equality or continuance of inequality are matters of concern for social justice¹⁷.

(i) Social Justice as Distributive Justice: The term social justice is often described as distributive justice and issues relating to the distributive and redistributive effects of social and economic policies are the central concern of the concept of social justice. However, sometimes such policies have been separately addressed as economic, social and cultural rights.

The concept came to lime light in the late 20th century when John Rawls’s *A Theory of Justice* was published in 1971, while formulating two principles of

14 *Supra* n.8 at 6.

15 *Id* at 242.

16 V.D.Mahajan, *History of Medieval India* (New Delhi: S.Chand and Co.1997), 284 -289.

17 Tolcot Parsons, *Essays in Social Theory*, (1964) 323-335.

justice Rawls defended social justice as distributive justice¹⁸. It appears that the Rawls theory assigns primacy to liberty over well being and therefore, it seems, the theory was in tune with western liberal tradition as opposed to welfare tradition. However, it has been pointed out that his deference principle can provide justification for welfare policies programmes providing for fair distribution in respect of least favoured by recognition of their personal claims¹⁹. It has been also emphasized that social justice requires recognition of necessity of protecting and promoting individuals just needs, individual just desert and dignity²⁰.

(ii) Social Justice and Economic Justice: Economic justice, defined as the existence of opportunities for meaningful work and employment and the dispensation of fair rewards for the productive activities of individuals, will be treated as an aspect of justice²¹. The tradition of distinguishing them and ignoring the importance of economic justice is often accepted on the ground that economic benefits and burdens cannot be distributed equally. Accordingly, Fredrick Hayek said.

“There can be no test by which we can discover what is socially unjust because there is no subject by which such an injustice can be committed and there are no rules of individual conduct the observance of which in the market order would secure to individuals or groups the position which as such as distinguished from the procedure by which it is determined, would appear just to us. Social justice does not belong to the category of error, but to that of non-sense, like the term ‘a moral stone²²’.

But the rise in inequality in the distribution of income has affected large number of people and households in the recent past necessitates viewing economic justice as an element of social justice and the distributive and redistributive aspects of justice need not be separated as antagonistic.

(iii) Critical Elements of Social Justice: The International Forum for Social Development has identified three critical domains of equality and equity underlying

18 Two principles are (1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for all. (2) Social and economic equalities are to be arranged so that are both (a) to the greatest benefit of the least advantaged and attached to office and positions open to all under conditions of fair equality of opportunity.

19 Frank I. Michelman, “Constitutional Welfare Rights and A *Theory of Justice*” in Norman Daniels, *Reading Rawls*, (Oxford: Basil Black well, 1975), 331.

20 James F. Doyle, “Personal claims, Human Rights and Social Justice”, in E.H.Pollack (ed.), *Human Rights*, (Cambridge, Cambridge University Press, 1991), 48.

21 *Supra* n.3 at 42.

22 Fredrick Heyak, *Law Legislation and Liberty*, vol.3, “Mirage of Social Justice” (Chicago: University of Chicago Press, 1973), 61-67

the concept of social justice, namely, equality of rights, equality of opportunities and equity in living conditions for all individuals and households. Equality of rights, primarily implies elimination of all forms of discrimination and equal distribution of the most fundamental freedoms such as right to life, liberty and pursuit of happiness²³.

Equality of opportunity requires stable social, economic, cultural and political conditions that enable all individuals to fulfill their potential and contribute to the economy and society. This form of equality was interpreted to mean that societies and governments refrain from discrimination and allow individuals to freely pursue their aspirations and develop and apply their talents within the moral and legal limits imposed by respect for the freedom of others²⁴. This interpretation was linked to the emergence of *laissez-faire* doctrines and political liberalism²⁵. However, it is often said that equality of opportunities should be linked to deliberate action, in particular, the application of public policies, to correct and off set many ‘unnatural’ inequalities that separate individuals from different socio-cultural backgrounds and milieus²⁶.

Equity in living conditions for all individuals and household in general understood to reflect a carefully determined ‘acceptable’ range of inequalities in income, wealth and other aspects of life in society with the presumption of what is just or fair or equitable at a given time in a particular community, or in the world as a whole if universal norms are applied. This shift from equality to equity arose from the fact that equality in living conditions has never been achieved and cannot be achieved in future²⁷.

The English Commission on Social Justice laid down following principles, namely,

- “(1) The foundations of a free society is the equal worth all citizens.
- (2) All citizens are entitled, as a right of citizenship, to be able to meet their basic needs for income, food, shelter, education and health.
- (3) Self respect and personal autonomy are inherent in the idea of equal worth, but their fulfillment depends upon the widest possible access to opportunities and life chances.
- (4) Inequalities are not necessarily unjust but those which are should be reduced and, where possible, eliminated²⁸”.

Ultimately, social justice has to address six important areas of inequality in the distribution of goods, opportunities and rights. Accordingly, the International Forum for Social Development identified the following six areas in the descending

23 *Supra* n.3 at 31.

24 *Id.* at32.

25 *Supra* n.21 at 70.

26 *Supra* n.3 at 32.

27 *Ibid.*

28 Quoted from Jonathan Woolf “Social Justice”, p.174.

order, namely, inequality in the distribution of income, inequality in the distribution of assets, inequality in the distribution of opportunities for work and remunerated employment, inequalities in the distribution of a access to knowledge, inequalities in the distribution of health services, social security and the provision of a safe environment and inequalities in the distribution of opportunities for civil and political participation.

The central ideas underlying the concept social justice appears to be, (i) historical inequalities have to be corrected, (ii) the redistribution of wealth, power and status of individuals to promote social goal and (iii) it is the duty of the State to ensure fair equality of life for its citizens.

III. Part II- Indian Constitution and Social Justice:

The Constitution of Indian attempts to guarantee all forms of equality and has made affirmative action to combat social and group inequality for attaining social justice a conspicuous feature²⁹. It has been claimed that Indian approach to protective discrimination through reservation policy tended to deflect equilibrium while judicial approach has been towards maintenance of social integrity, fair balance and just claims of society for excellence and efficiency³⁰. This policy also resulted in accommodation of apparently conflicting and seemingly incompatible principles in the Constitution which Granville Austin describes as one of India's original contribution to the Constitution making and said.

“..... the ability to reconcile, to harmonize and to make work without changing their content, apparently incompatible concepts Indians can accommodate such apparently conflicting principles by seeing them at different levels of value, or if you will in compartments not water tight; but sufficiently separate so that a concept can operate freely within its own sphere and not conflict with another operating in a separate sphere³¹”.

29 Article 14- "Equality before the law: -"The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India". Article 15 while prohibiting discrimination on grounds only of religion, race, caste, sex or place of birth provides for affirmative action or positive discrimination in favour of women, children and socially and educationally backward class of citizens. Article-16 guarantees equality of opportunity in respect of public employment and also provides for reservations as the basic form of affirmative action. Article-48 Imposes specific obligation on the state to promote education and economic interests of Scheduled castes, Scheduled tribes and other weaker sections. Article 335 insists that the state shall consider the claims of the members of the scheduled castes and the scheduled tribes to services and posts subject to maintenance of efficiency of administration.

30 Upendra Baxi, "preface" to Anirudh Prasad, *Reservation Policy and Practice in India*, (New Delhi: Deep and Deep, 1991), p.xix.

31 Granville Austin, *The Indian Constitution: A corner Stone of a Nation*, (Oxford: Oxford University Press, 1966), 317-318.

1. Social Justice as Preferential Treatment: The central notion underlying India's concept of social justice appears to lie in earmarking opportunities in favour of backward classes of citizens subject to certain conditions and the same is termed affirmative action or reservation policy³². British rule and modernization created new opportunities for living and monopolization of them by the higher caste groups created tension between different caste groups and universalisation of education created a new awareness in the lower caste groups, who were hitherto subject to exploitation, to make a claim to modern benefits. The framers of the Constitution, while providing for affirmative action and reservation in public employment for backward classes, intended to supplement the guarantee of the formal equality with a system of preferential treatment to correct social inequality accumulated due to historical reasons.

The policy of protective discrimination, compensatory discrimination or affirmative action under Article 15(4) and 16(4) introduces into the system conflict between several competing interests like the claims of backward classes to preferential treatment, rights of candidates competing on the basis of general merit, societal claim for administrative efficiency, professional excellence and better academic standards. The benefits and costs of reservation policy as the sole means of salvation have also given rise to debate on issues like incubation *versus* over protection, integration *versus* alienation mobilization *versus* enervation, stimulation *versus* sedation, self liquidation *versus* self perpetuation, secularism *versus* communalism, and development *versus* stagnation³³. Further, a perception that reservation is only a means to an end, and that fairness of means is the *sine quo non* of social justice has a far reaching policy thrust³⁴.

In a good number of cases, the judiciary has attempted to ensure that the protective discriminations are strictly confined to the constitutionally permissible objectives and methods, and such scheme seeks to strike a balance between conflicting interests. It appears that the judicial approach to reservations was based on three views. First is that reservations are exceptions to the general rule of equality and it is based on traditional principles of interpretation and communitarian considerations of merit and efficiency³⁵. Second is that reservations under Article 15(4) and 16(4) is not an exception to the principle of formal equality and as an aspect of substantive equality it is not subordinate to formal equality³⁶.

32 There is enormous amount of literature on this subject which include lot of reports of Backward Class Commissions appointed by the Union and the State Governments and Judicial decisions from *Champakam Dorai Rajan v. State of Madras* (1951) AIR SC 226 to *M.Nagaraj v. State of Karnataka*, 2008 1 SCC 248.

33 Marc Galanter, *Competing Equalities, Law and Backward Classes in India*, (Delhi: Oxford University Press, 1984), 8083.

34 Anirudha Prasad, *Reservation Policy and Practice in India*, (New Delhi: Deep and Deep, 1990), 392-393..

35 *M.R.Balaji v. State of Mysore*, AIR 1963 SC 649.

36 *State of Kerala v. N.M. Thomas*, AIR 1976 SC 490.

This view was however, modified to mean, reservations whether exception or no exception should be in equilibrium with the general frame of equality³⁷. The third view is that Article 15(4) and 16(4) are only enabling provisions, and do not by themselves confer any fundamental right³⁸.

The Supreme Court for the purpose of balancing conflicting interest involved laid down certain principles. Firstly, under 'exception approach' the Court said that reservations should not be excessive and should be reasonable. This happens to be the justification for the rule that reservations shall not exceed 50% of the posts or opportunities³⁹. However, *N.M.Thomas*⁴⁰, created uncertainty in the operation of the 50 percent rule. But *Indra Sawhney*⁴¹ restored the rule. But the political process attempted to negate the rule through constitutional amendment and this establishes the political subversion of judicial policy. Constitutional amendments were introduced to provide reservations in excess of 50% in respect of filling back log vacancies⁴². The political process contrary to judicial dicta in *Indra Sawhney* provided for reservations in promotions also by ignoring the principle incorporated under Art.335 of the Constitution.

2. Identification of Backward Classes: The important issue under affirmative action is the identification of beneficiaries and the constitutional standards are "socially and educationally backward" and "not adequately represented in the services under the State". Since the commencement of the Constitution, it appears that, reservations are made in favour of backward castes and scheduled castes and tribes. The central and state governments by appointing backward class commission and committees have identified certain castes as backward classes inspite of the fact that the Supreme Court has consistently opposed the some on the ground that such identification was prohibited under Art.15 (1) 16(2) and 29(2) of the Constitution⁴³.

Accordingly, the Court said that for the purpose of identification of backward classes a neutral criterion, which must apply to citizens of every community, and benefiting the needy could be appropriate. But the Supreme Court also accepted caste based reservations in some cases and in this regard Wanchoo C.J. Observed:

"If the reservation in question had been only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15(1). But it would not be forgotten that a caste is

37 *Indra Sawhney v. Union of India*, AIR 1993 SC 917.

38 *C.A.Rajendra v. Union of India*, AIR 1968 SC 507.

39 M.R.Balaji, *supra* n.34 and *AIIMS Students Union v. AIIMS* (2002) 1 SCC 428 at 461.

40 *Supra* n.35 at 512.

41 *Supra* n.36 at 928.

42 Article 16(4B) *The Constitution (Eighty First Amendment) Act*, 2000.

43 *Supra* n.34, 36 & 37.

also class of citizens and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste on the ground that it is socially and educationally backward class of citizens within the meaning of Article 15 (4)⁴⁴.

Now it is common for the states to provide reservations in favour of classes identified on the basis of caste despite the opposition from the judiciary. The backward classes, whatever the yardsticks taken into consideration for identifying social and educational backwardness invariably consist of list of castes⁴⁵.

3. Other Welfare Policies and Programmes: It is pointed out that apart from affirmative action several welfare programmes under Directive Principles of State Policy identifies beneficiaries on the basis of caste and communities. For example, in Karnataka, subsidized housing programmes often provides for reservations in favour of backward classes⁴⁶. The welfare benefits are often distributed even on the lines of caste and religion such as providing pension to Muslim widows and in old age pension schemes preference is often accorded to backward castes.

It is often said that the means and method of distribution of welfare benefits and affirmative action programmes being built on executive policy is conditioned by political factors and therefore there is the need to look at the political expediency that is at the centre of the controversies relating to social justice.

IV. Part-III:

The political process built on adult suffrage and 'first past the post' system of elections often gives premium to divisive tendencies in the society rather than encouraging values that promote national integration and social cohesion. The development in the area of protective discrimination and affirmative action puts a premium on what is prohibited by the Constitution. The extension of reservations beyond 50 percent, caste and community based identification of beneficiaries, reservations in promotions and according consequential seniority to those promoted through reservations clearly establish the role of political process. Firstly extension of reservation beyond 50 percent through constitutional amendment strictly speaking, is contrary to the basic values underlying the constitutional scheme. The 81st Amendment to the Constitution modifies the ruling in *Indra Sawhney* and enables the State to provide reservations exceeding

44 *Periakaruppan v. State of Tamil Nadu*, AIR 1971 SC 2303.

45 Mandal Commission and various Commission appointed by the Karnataka Government from time to time consists of list of caste only.

46 Bangalore Development Authority's site allotment is based on the reservation formula. Even subsidized loans often made according the same formula.

50 percent. Further through constitutional amendment in the State of T.N. reservations may exceed 50 percent and the same has been put in ninth schedule of the Constitution. Even though makers of the Constitution including Dr.B.R.Ambedkar intend the reservation to be exception to the rule of equality, the political process made it a general rule.

Secondly, as regards caste based reservations, the Karnataka Government since 1950 identified backward class through a list of castes. Despite the Supreme Court invalidating such identification in a number of cases⁴⁷, the current adhoc formula consists of the same. Despite Supreme Court's rejection of caste based reservations Tamil Nadu still has the same formula and the entire society is compartmentalized by the political process since independence.

Thirdly, even though the Supreme Court has held that reservations in promotions would adversely affect efficiency and morale of the administration, the political process moved in that direction and introduced amendments to the Constitution.

Fourthly, the 85th Amendment to protect consequential seniority of those promoted through reservations has in fact denied equality of opportunity in respect of promotions in public service but the Supreme Court in *M. Nagaraj v. State of Karnataka*⁴⁸, refused to invalidate the amendment. But the Court in some earlier cases made attempt to protect the interest of the general candidates⁴⁹.

Fifthly, judicial objection to extending benefits of reservations to affluent among backward classes has been consistently ignored by the political process. This has resulted in denial of benefits to the needy and more deserving amongst backward classes but the politically vocal members of the backward classes appears to be responsible for this state of affairs.

Lastly, it is often said that the affirmative action programmes are political motivated and the real reason for its continuance is not the welfare of the backward classes but the realization of political dividends out of it.

V. Epilogue:

The policies of affirmative action, protective discrimination or compensatory discrimination must promote social solidarity and national integration. It has been observed by Marc Galanter that India is able to do so⁵⁰. However, it is also observed that reservation is only a means to an end and gradually it should phased out once backward classes achieve certain level of

47 *M.R.Balagi v. State of Mysore*, AIR 1963 SC 649, *K.C.Vasanta Kumar v. State of Karnataka*, AIR 1985, SC 1489.

48 AIR 2008 SC 1321.

49 *Ajith Singh v. State of Punjab*, AIR 1996 SC 1189.

50 P.Ishwar Bhat, *Fundamental Rights*, (Kolkata: Eastern Law House, 2004), 247.

social and economic advancement⁵¹.

Extension of reservations in favour of more and more caste groups and implementation of the Mandal Commission Report by the Centre appear to increase caste consciousness and the consequent caste conflict. This created a vested interest in backwardness and cornering of benefits by a few elite deprived the most needy in these classes the benefits. Affirmative action policies are blamed for perpetrating caste system, accentuating caste consciousness, injecting caste into politics and generally impeding the development of a secular society in which communal affiliation is ignored in public life⁵².

The cumulative effect of these policies are that the lower castes and majority of untouchable feel that a lion share of the jobs, scholarship's seats reserved for backward classes are going to the members of the dominant castes and higher caste groups point to the discrimination systematically practiced against them, ignoring merit and individual worth in the name of affirmative action.

It is suggested that to promote the welfare of the weaker sections policies and programmes have to be devised in the direction of enhancing their capabilities to live as contemplated by Amartya Sen in his *Idea of Justice*⁵³. Capabilities approach concentrate on welfare through quality education and healthcare and not through affirmative action.

51 E.J.Prior, "Constitutional Fairness or Fraud on the Constitution? Compensatory discrimination in India" 26 *Case Western Reserve Journal of International Law* (1996) 68.

52 Marc Galanter, *Law and Society in Modern India*, (Bobby: Oxford University Press), 197.

53 Amartya Sen, *Idea of Justice*, (London: Allen Lane, Penguin Books,2009).