

Social Justice and Role of State in the Constitution of India: The Trajectory of Social Welfare

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I. Introduction:

The Constitution is a fundamental politico-legal document according to which the government of a country functions. It lays down the basic structure of political system of a country under which its people are governed. It is the basic law, which defines and delimits the main organs of government and their jurisdiction as well as the basic rights of citizens. Constitution thus is superior to all other laws of the country and no law can be enacted which is not in conformity with the Constitution. As government looks after law and order in a society, it does so by making laws and maintaining order. But the government cannot make laws and administer a country to its own likes and dislikes. The government has to function in conformity with the basic law of land. The constitution contains those laws, which act as source according to which the rules and regulations of governing a country are framed.

The Constitution of India has been hailed as a masterpiece that was ever drafted by any constitutional convention. It has been framed keeping in mind the need to protect the unity, integrity and sovereignty of India. The Indian Constitution is not merely a mechanical arrangement of power and institutions for governance, but has been attempted to set a goal, provide a vision and direction in national building a new social order, which is not only democratic but also equal and just. The Constitution has appropriately and more than adequately helped India in achieving the significant progress in various areas of national life such as industry, agriculture, irrigation, education, social welfare, science and technology and the like. The spirit of the Constitution still holds good, reflecting the foresight, statesmanship and patriotism of our founding fathers for a democratic secular republic of India with equal respect for all faiths. At the same time there are equal numbers of problems as well.

The recent global economic crisis has raised several debates on state and market, respective roles assigned to the state and market. Present economic crisis exposed negative aspects of free market economy. There is a growing realisation that some kind of state intervention is necessary. Therefore state must control and regulate, for the sustainable development though the historical trajectory of state is that, all the time, common ownership has led to corruption and destroyed the very purpose of state intervention in social life. At this juncture it is worthwhile to go back to the constitution making and find out the role of state

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and development trajectory as envisaged by the framers of Constitution. The Indian Constitution is not merely a mechanical arrangement of institutions and laws for governance. It's varied clauses attempt to set a goal, provide a vision and direction for socio-economic development.

II. Constitution and Role of State:

The first preliminary session of the Constituent Assembly opened on 9th December 1946, the members of the constituent met at a most critical point of time of Indian life. They were to make a historic decision for the future of India. The prospects of future of Indian democracy found a testing time, the fundamental question before the members was, what type of Constitution India should adopt? What are the alternatives available and which would suit Indian conditions? The objectives of the Constitution should therefore consider with the provisions of the basic means of livelihood to the people and securing social and economic development. The major task before the Constituent Assembly was to emphasis social revolution concentrating social reconstruction. Jawahar Lal Nehru said, which was fully in tune with the occasion of Constitution making, he said; "Freedom and power bring responsibility..... It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us; but as long as tears and sufferings, so long our work will not be over"².

Social revolution implies the real transition to democratisation. Social revolution is an urgent priority for the oppressive social practices and institutions have to be translated into new values of egalitarianism, humanism, and democracy. However, social revolution remains to be achieved notwithstanding political revolution. Hence, the political revolution should not only aim at social revolution but also act as a conducive means for achieving social revolution. A constitution, which reflects the ideals of social revolution, acquires tremendous importance and priority. According to Granville Austin, "the constituent assembly task was to draft a constitution that would serve the ultimate goal of social revolution, of national renaissance. But this was a task for more complicated than the simple drafting of fundamental rights or moral precepts of a preamble. What form of political institutions would foster or at least permit a social revolution? Moreover, any thought of social betterment for the nation would be mere romantic nonsense if the requisite conditions did not exist in the country"³. Another task before the members of Constituent Assembly consisted in economic reconstruction of India. In other words, it is referred as economic revolution. The economic revolution implies the transformation of rural economy of India into scientific and planned development of agriculture and industry. It also presupposes building up of an

2 Constituent Assembly Debates. Vol. I: 56-57.

3 Austin , Granville, (1966), *Indian Constitution Cornerstone of a Nation*, Oxford University Press, New Delhi, p.27.

economic system which would promote the welfare of the people, wipe out inequalities, fulfilment of basic needs of life and ensuring good quality of life.

The Preamble of the Constitution reveals the philosophical foundations of the Constitution. In the Kesavananda Bharati case (1973) Justice Sikri, held, “It seems to me that the Preamble of our Constitution extreme importance on the Constitution should be read and interpret it in the light of the grand and noble vision expressed in the preamble⁴”. The Preamble contains the basic principles and the basic underlying principles of Constitution, stated mostly in moral terms that indicated the desired direction of political system. The type of the government that the Constitution provides for is defined in terms of sovereign democratic republic. The terms socialist and secular, were added in 1976. It is to be noted that Indian type of socialism is different from western type of socialist, which involves the nationalization of means of production. Therefore the Indian Constitution does not abolish private property altogether but seek to be put it under restrains, so that it may be used for public benefit, Instead of, the total nationalization of all property and industries. India has followed a concept of Mixed Economy, which aims that offering of equal opportunities to all and the abolition of vested interests. Planned economy, foreign trade under the control of the state, elimination of Princes, Zamindars without compensation and redistribution of land to peasants are some of the measures taken for state led development trajectory.

The ideas of justice, liberty, equality and fraternity, prescribed the objectives of the Indian political system. These terms formed the points of extensive debate in the constituent assembly. Different aspects of justice, social, economic and political were discussed. The framers of the Constitution wanted to eliminate the socio-economic inequalities through the instrument of Constitution. The achievement of ideals of welfare state and putting an end to the discrimination based on caste, community, race and religion was emphasized. Political justice was to be elaborated in terms of different aspects of liberty. Special provisions are made to protect the interests of SCs, STs and other weaker section of the society. Different provisions of Directive Principles of State Policy aim at establishing social and economic Democracy. Dr. B. R Ambedkar gave much importance to the Directive Principles. When the members of assembly was doubtful of these non-justiciable principles, by replying Ambedkar said, “In enacting this part of the Constitution the assembly is giving certain directions to the future legislative and the future executive to show in what manner they are to exercise the legislative and executive power they will have. Surely, it is not the intention to introduce in this part these principles as pious declarations. It is the intention of the assembly that in future both the legislative and executive should not merely pay lip service to these principles, but they should be made the basis of all legislative and executive actions that they may be taken here after in the matter of the

4 AIR 1973 SC 1461

governance of the country⁵". The ideal of economic democracy clearly spelt out in clause (b) and (c) of article 39 of the Indian Constitution under Directive Principles of State Policy. Nehru gave most importance to the Directive principles, when government faced courts decisions against the implementation of directive principles, Nehru government moved First Amendment Bill, in that context, Nehru said; "the Constitution lays down certain Directive Principles of state policy, and after long discussion we agreed to them and they pointed out the way we have got to travel. The Constitution also lays down certain Fundamental Rights both are important. The Directive Principles of State Policy represent a dynamic move towards a certain objectives. The Fundamental Rights represent something static, to preserve certain rights which exist, both again are right⁶". These are the prime socio-economic and philosophical foundations of Indian Constitution, has been framed in the light of several experiences.

Granville Austin observed that the Indian Constitution is first and foremost social document with unique balance, in his words, "the Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of social revolution by establishing the conditions necessary for its achievement yet despite the permeation of the entire Constitution by the aim of national renaissance, the core of the commitment to the social revolution lies in Part III and In Part IV in the Fundamental Rights and Directive Principles of State Policy. These are the conscience of the Constitution⁷". Thus the Constitution of India was set out by the founding fathers as road map, which a clear destination, and the instrumentalities and process to reach the destination were also provided. The Constitution represents a consensual framework for economic development and social transformation.

Economic development involving freedom from hunger, disease and ignorance is yet to be achieved by major segment of Indian population. This can be ensured through the implementation of Directive Principles of State Policy. The term social legislation is used by legislators, academicians, lawyers, and others very frequently. The term used, to name the collection of social norms created on initiative of a competent legislative agency. Those norms are generally directed towards the fulfilment of desired social goals in a society. The social legislation also enables action to prevent social ill health and to preserve and promote social well being. In a democratic state the policy plays an important role in people's lives. In a welfare state it plays a dynamic role in establishing socio-economic justice and equality. The conception of social justice and welfare state is based on the principle of common good. The interference by the state with the liberty of individual is justified on the basis that welfare of the people is

5 Constituent Assembly Debates. Vol. VII: 382.

6 Lok Sabha Debates, 16th May 1951.

7 Austin , Granville, (1966), *Indian Constitution Cornerstone of a Nation*, Oxford University Press, New Delhi, p.50.

supreme importance. Social policy has to remove firstly the social disability of individuals through a more vigorous enforcement of existing constitutional provisions.

The emergence of the concept of Democratic Socialism in political philosophy, legislation and policy is being treated as an important instrument of social and economic change. The object of the legislative process is to study the implications of the latter part of Article 37 of the Constitution which says the principles laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The social and economic measures adopted in India during the last fifty years clearly indicate that the government tried to implement the role of state contained in the Directive Principles of State Policy for the welfare of the common people of country. As a first attempt the government of India was inspired to set up a Planning Commission to give effect to policy contained in article 39 so as to promote the welfare of the people and secure social economic justice to them. The main function of the Planning Commission was to proceed with the planning in the country on the lines suggested by the Directive Principles with a view to achieve desired social objectives.

To fulfil the constitutional mandate, more particularly directives outlined in the Article 39 the legislatures in India took upon itself the responsibility of enacting legislations relating to land reforms. The important steps in this connection are to break up the concentration of wealth in a few hands and provide socio-economic justice to the people. After the independence, land reform policy has undergone a radical change and has acquired a new context and direction. The policy recommendations made by successive five year plans and executive decisions reflect totally a new outlook on agrarian relations. In a sense, they are indicative of the aspirations of the people for the basic institutional and structural changes. Thus, the general objectives of agrarian policy in India are in the first place to remove barriers to increase food production. As arise from the agrarian structure inherited from the past and all elements of the exploitation of social injustice within the system are to be eliminated to ensure equality of status and opportunity to all sections of population. Since independence earnest attempts have been made by government at the union and the state levels to translate the social justice into action. To achieve social justice and to establish welfare state series of legislative and executive actions are initiated, Zamindari System abolished, and land ceiling acts were passed. To prevent the concentration of wealth major industries have been nationalised. To control the concentration of wealth in a few hands Monopolies Restrictive Trade Practices Act (MRTPA), Wealth Act, Income Tax Act and Estate Duty Acts were passed. To protect the educational and economic interests of the people belonging to the weaker sections Reservations have been provided in employment, education and legislatures. India has recorded significant achievements along many dimensions of human developments since independence. The constitution aimed at a social revolution

that would transform the society.

III. Emerging Challenges:

However, when faced with the reality of the gap between aspirations and achievements, it remains to carry forward the task of bringing about social, economic and educational equality fortified by the mandates of Indian constitution. A little past midnight hour of 15th August, 1947 Jawaharlal Nehru in his historic speech said that, “Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. A moment comes, which comes but rarely in history when we step out from old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity⁸”. Independent India, reservoir of natural resources, was facing illiteracy, poverty and desperate unemployment, poverty. Inevitably, this legacy of feudal and, colonial afflictions became a wide spread of problem to overcome. No other way but egalitarian and humanitarian restructuring of the society and state activism to eradicate and to promote distributive justice. For this task the founding fathers of the Constitution gave certain Directive Principles to the policy makers, and the Preamble to the Constitution, a basic postulate of nation’s founding faith, articulates the vision of the nation as a social justice state with a dynamic, democratic, egalitarian order. Directive Principles of State Policy, even though they were not mandatory or justifiable in court of law for the state to follow. But they were fundamental in the governance of the country. Article 38 directed that

“(1) the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institution of the nation life.

(2) The state shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations⁹”.

Article 39(b) and(c) deserves mention, the state shall emphasise the article, in particular, direct its policy towards securing

(b) That the ownership and control of material resources of the community are also distributed as best to subserve the common good;

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common

8 As quoted in Siva Rao, B. 1968. *The Framing of India’s Constitution, Vol-I*. New Delhi, Indian Institute of Public Administration. p.558.

9 Article 38 of the Constitution of India.

detriment¹⁰”.

Article 43 ensures living wage and decent conditions of work and articles 43(A) direct provision for participation of workers in management of public undertakings. Nehru expressed this idea, “we have to decide, for whose benefit industry must run?.....our economic programme must therefore, be based on a human outlook and must not sacrifice man to money. If industry cannot be without starving its workers then the industry must close down. If the workers on the land have not enough to eat then the intermediaries who deprive them of their full share must go. The labourer must be helped to organise itself for the day when it can control the industry on co-operative basis¹¹”. Such social transformation is no pious wish but adoption of dynamic measures as steps towards creation of socialist democratic pattern of society. A public sector occupying the commanding heights of national economy, planned development is an expert operation, which is needed to facilitate the massive socio-economic mutations. Nationalisation of industries and key services as a means towards the socialist goal is equally relevant and significant, measures to restrict the monopolies and concentration of wealth in a few hands are obligated by Article 39 of the Constitution. The key role of workers and the supreme importance of agrarian reform are integral to the new dynamics of constitutional order. The special incentives to co-operative and cottage industries and people oriented enterprises and services are part of the new era for India. Justice, social, economic and political is a phenomenon inscribed as a pledge in the Preamble of Constitution of India.

Such are the basic aspirations of the framers of the Constitution of India. The Nehru regime, in its constructive mixed economy policy, through the planning commission and legislative mission, did go a long way to make India self-reliant. Nehru Government gave priority to small scale industries, co-operative movement, macro and micro projects and commitment to the public sector, subsidies for agriculture, health and education. The concern for the Dalits and Tribals was constitutionally manifested and implemented. Indira Gandhi’s policies and programmes of nationalisation of banks, ceilings on lands, abolition of princes’ privy purses, independent economic and foreign policy relatively forward period. Then came the creeping disease of political corruption, short-term foreign loans and foreign investments, burdened the Indian during the later 1980s. The trajectory of Indian state is led to corruption and destroyed the very purpose of state intervention in social life. In 1991, P.V. Narashima Rao government came to power. In 1991 government opted to act contra constitutionally by surrendering India’s sovereignty to the multinational companies by joining in free market economy. Thus, governments nullified constitutional directives by offering Indian

¹⁰ Article 39 of the Constitution of India.

¹¹ As quoted in Massey, I.P., (ed) 1991. *Nehruvian Constitutional Vision*. New Delhi: Deep & Deep publications. p.59.

independence to foreign capital domination. The successive Deve Gowda, I.K. Gujral, Vajpayee and the present Prime Minister, Manmohan Singh, successfully diverted the constitutional scheme of economic development. Indeed, by abandoning the social justice ideals enshrined in the Preamble, commenced on a neo-colonial way of exploitation. And subverted principles of socio-economic development for which framers of the Constitution stood. Indian political executive deprived millions betrayed the commitment regarding the public sector and self reliance, and reversed the state obligation to wipe out poverty, to forbid concentration of wealth. So that the ownership and control of the material resources of the community are so distributed as to sub-serve the common people's good under article 39 of the Constitution.

A little past midnight on the eve of independence in 1947, Jawaharlal Nehru in his historic speech said that, "Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. A moment comes, which comes but rarely in history when we step out from old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity¹²". On the eve of golden jubilee celebrations of Indian Constitution, the BJP led National Democratic Alliance (NDA) government appointed a National Commission to Review the Working of the Constitution of India (NCRWC) under the chairmanship of Justice M N Venkatachalaiah, in the light of the past fifty years of experience, as to how the constitution can respond to the changing needs of the time in the best possible way¹³. The observations of MN Venkatachalaiah commission are extremely important. The report of NCRWC also noted the negative impact of market economy. It stated that; "market economy has its own negative impact on equality of distribution. It can produce unacceptable levels of economic inequality. The share of income and consumption of the poorest 20% of India is 9.2% while the richest quintals are 39.5%. This is perhaps the pattern in the modern market economies. In U.S.A (1994) poorest 20% of population had 1.5% share of income and consumption while the richest 20% had 45.2%. This reflects in a non-trivial sense, the anomalies and inequalities of the international economic order. Over the 30 years from 1960-1990, the affluent 20% of the world have enhanced their share of incomes and consumption to 86% while the poorest 20% have had their share reduced to 1%. Similarly, there has been only a marginal improvement in access to basic health care between 1992-1993 and 1998-1999¹⁴".

12 Siva Rao, B. 1968. *The Framing of India's Constitution, Vol-I*. New Delhi: Indian Institute of Public Administration, p.558.

13 Final Report submitted by National Commission to Review the Working of the Constitution is available at <http://lawmin.nic.in/ncrwc/finalreport.htm>

14 National Commission to Review the Working of the Constitution. Chapter-II Para-2.12.2 & 2.12.3

Further NCRWC stated that, “India’s fiscal deficit is among the highest in the world between 5-6% of GDP. The combined deficit of central and state governments, after declining from 9.2% in 1990-1991 to 6.8% in 1993-1994, rose to 8.5% in 1998-1999; bulk of social sector spending comes from state governments. However fiscal situation of most states is not good. Many face severe deficits. The pressure from the central government to reduce these deficits is even greater. This typically translates into state governments cutting down their spending on social sectors¹⁵”. The report of NCRWC says “The poor and other socially disadvantaged groups are worst affected by such cuts. The combined deficit of the states has also gone up from 3.2% to 3.6% between 1991-99. In 1998-99, the states budget deficit worsened below the level of 1990-91, and is likely to continue... Between 1993-94 and 1997-98, state GDP to 8.6%; in Bihar from 4% to 6.2%; in Orissa from 5.7% to 6.3%¹⁶”. The report of NCRWC observes, some pathetic truths, after 50 years of independence also manual scavenging is in practice. “Manual scavenging is a degrading practice. The commission recommends that the employment of manual scavengers and construction of dry latrines (prohibition) act, 1993, be strictly enforced to bring to an early end to this degrading practice, so offensive to human dignity without abridgement of the employment and income of existing safai karmacharis¹⁷”.

Now a days, nation facing hunger and starvation, the nature of this problem is ironic, is so acute that Supreme Court has been forced to take notice, shocked at the increasing number of starvation deaths amidst overflowing food grains in godowns of the government. The Supreme Court passed an order, that large stocks of food grains in Food Corporation of India (FCI) warehouses be released with immediate effect. This is an immoral neglect of the constitutional obligation, against the article 21 of the Constitution, which gives right to protection of life from deprivation. While moving the objectives resolution Nehru observe in constituent assembly that, “At present, the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless¹⁸”. He further said; “the Constitution will lead us to the real freedom that we have clamored and the real freedom in turn will bring food to starving people, clothing for them, housing for them and all manners of opportunities and progress¹⁹”. After fifty

15 National Commission to Review the Working of the Constitution. Chapter-XI Para-2.15.1

16 National Commission to Review the Working of the Constitution. Chapter-II Para-2.15.4

17 National Commission to Review the Working of the Constitution. Chapter-X para-10.5

18 Constituent Assembly Debates. vol-II: 99.

19 Constituent Assembly Debates. Vol.II: 322.

years working of constitution, NCRWC pointed out that, “Over 260 million people living below poverty line in India are chronically hungry. Hunger and poverty forces families to make trade offs. Trade offs between hunger and meeting other basic needs....Poorly-fed and malnourished pregnant women give birth to stunted and unhealthy babies who are prone to diseases.the Scheduled Castes, Scheduled Tribes and Backward Class are an easy prey of poverty, hunger and women of these categories are its worst victims²⁰”.

With liberalisation of economy Multi-National Corporations capturing markets, spreading environmental pollution and de facto colonised the country. World Bank loans and controls, with inevitable dependency syndrome and devaluation of the Indian rupee, imports ruined local industries and agriculture, the report of NCRWC observed that, “agriculture and other traditional producing class face certain adverse effects of sudden and unprepared exposure to the regime of WTO, Intellectual Property Rights (IPR) etc....²¹” The World Trade Organisation treaties have bound India hand and foot and fettered national trade freedom, forced to make multinational friendly but nationally offensively legislations and part with sovereignty, making a mockery of the pledges in the preamble and directive principles of state policy. “Maladministration has paralysed the creative energies of the people and has pushed people and day to day living more and more into extra-legal system. Owing to opportunistic and self-seeking politics and politicians, and an increasing scenario of politician, criminal and bureaucratic nexus, the political climate of the country has been polluted, bringing in its wake enormous corruption... There is a pervasive degeneration of values²²”. The report of NCRWC noted that, “The bulk of the SC families remain agricultural wage labourers as in the past many centuries. The bulk of STs continues to remain in remote areas and is being progressively deprived of their lands converting many of them into agricultural labourers. The bulk of backward classes pertaining to economic categories like traditional artisans, fisher-flock and like are being deprived of their traditional occupations while being denied access to relevant technology and modern occupations, there by pushing them into the unorganised labour force. All these categories continue to be the victims in varying forms and degrees, of all round deprivations, discriminations and disabilities, in all spheres-economic, educational, social in case of SCs and existing to the extreme of untouchability and in case of STs to the extreme of isolation²³”.

20 National Commission to Review the Working of the Constitution. 2001; A Consultation paper on Socio-Economic Change under Constitution. New Delhi. p.101.

21 National Commission to Review the Working of the Constitution. Chapter-X para-10.7.7

22 National Commission to Review the Working of the Constitution. Chapter-XI para-2.10.2

23 National Commission to Review the Working of the Constitution. Chapter-X Para-10.2.5

IV. Conclusion:

The Constitution of India indeed makes a strong commitment to promoting well being of citizens. The text of the Constitution created a noble mix of Fundamental Rights and a set of Directives enjoining upon the state, the obligation to promote and secure social and economic justice. But how it has actually been worked and how the constitutional values are translated into action and how its pledge to the poor and deprived is an altogether different story. The post independence governments in 1950s, to bring the means of production into public sector followed Nationalisation policy. Today, to bring the means of production into private sector, governments are following the policy of Disinvestment. Today less import duties and more foreign goods ruining native entrepreneurs and farmers. More disinvestments and de-nationalisation, liquidation of public sector, Foreign Direct Investment (FDI) derailing role of state and Indian economy, making the mockery of pledges in the Preamble and Directive Principles of State Policy. The Constitution, its 'Sovereign Socialist Democratic' organs, socio economic justice are nullified.