

Equality and Social Justice in India

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ABSTRACT

The a truth concerning man's efforts to give reality to justice, independently of any question of absoluteness or universality of the ideal of justice in general. The promotion of social justice necessitates time it acquired legal connotation itself earlier stages as a moral concept but in course of time it acquired. The promotion of social justice necessitates distribution of income in favour of downtrodden and against profit earners. Social justice required that each member of the community merely by virtue of his membership, is entitled to have his essential needs of life provided by the other members as well as all advantages and opportunities, which are desirable and conducive to human well-being. Socio-economic justice stems from the concept of social morality coupled with abhorrence for economic exploitation. And the advancing society converts in course of time moral or ethical code into enforceable legal formulations.

The concept of social justice has its basis in the principal human need, a principle which is based on the notion of a minimum level of human need, applicable universally, below which a person would be regarded as poor in the absolute sense. But though the actual content of such need is objectively determinable according to scientific principles as regards food, clothing, health care, shelter, environment, education & other essentials basic to a common standard of living set universally, the philosophical justification of redistribution of resources, which is entailed, must rest as much on the fundamental principle of human dignity or self respect as on the equally important principle of freedom and equality. Perhaps the best way to describe the position would be to identify the great principle of human civilization because without it & without the element of mutual aid & cooperation necessarily involved in it, human being would be reduced

to a savage condition where they are, in Hobbes' terms, in a permanent state of war with each other bent upon mutual annihilation. Even so the principle itself, on which any conception of social justice must rest, is not existentially factual, but is defined teleologically. Indeed, concept of social justice varies with age and climate. To evolve an agreed formula as to what constitutes social justice is a very controversial field. Despite all this, an endeavour has to be made to specify the content and contours of social justice in the Indian context. Broad equality would be a cardinal component of social justice since it is known that society of unequals materialises upper class, vulgarises middle class & brutalises lower class. Equality of opportunity to all the citizens to develop their individual personalities & to participate in the pleasure and happiness of life is the goal of economic justice which forms a dominant theme of the social

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justice. Social justice as distinguished from economic justice has a special significance in the context of Indian society where in the social structure is based on castes & communities which create walls and barriers of exclusiveness & proceed on the basis of considerations of superiority and inferiority, culminating in a reprehensive form for the backward communities. The problem of social justice thus acquires an urgency & importance along with the problem of economic justice. Used in a comprehensive sense the term social justice includes economic justice, taking withing its sweep the objective of removing all inequalities & affording equal opportunities to all citizens in social affairs as well as economic activities. Social justice is evidently a relative concept with changing context dependent on time and circumstances, on people's culture, aspirations, perception conditioned by the past, present and future. The intentions of the community in working its way towards directed social change have, in good measure, been certified in the Constitution. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to frostier this revolution by establishing the conditions necessary for its achievement./ Yet dispite the permeation of the entire Constitution by the aim of national renascence, the core of the commitment to the social revolution lies in parts III and IV, in the Fundamental Rights and in the Directive principles of State policy. These are the conscience of the Constitution. B.R. Ambedkar terms the Directive principles as the substance of a socialistic state which is to be the basis of all legislative and executive action in the matter of the governance of the country. The Fundamental Rights are to foster the social

revolution by creating an egalitarian society & the Directives by making the Indian masses free in the positive sence, free from the passivity engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from fulfilling their best selves.

Ambedkar and Lohia ask for representation of the victims of social injustice on the Administrative Services: "The power to administer laws is not less important than the power to make laws. And the spirit of the legislators may easily be violated if not nullified by the machinations of the administrator. In a country like India where the public service is almost exclusively manned by people of the community where power is being abused for the aggrandisement of a class, the best antidote against it is to insist on a proper admixture of castes and creeds and including the depressed classes in the public services of the country. We should demand a certain percentage in the public services of the country. We should demand a certain percentage in the public services to be preserved for the Depressed Classes and there will be no difficulty in guaranteeing this safeguard to us by a clause in the Constitution." In retrospect, Ambadkar's words have proved to be prophetic. His contention is endorsed by Harold Laskin when he says that those who were denied the power to authority assume the subordinate position of obedience and those who enjoy the privileged position of authority struggle to maintain their power and prestige and tend to justify their retention by the most specious and fallacious kinds of arguments. Whenever men become only recepents of orders they lose their individuality and ability to realise their own good. This concept of of representative bureaucracy

is similar to the thought expressed above endorsed by the highest court of land in its nod to empowerment of the backward communities in the Mandalisation of the Public services. Confidence and contentment of the community in the administration cannot be secured unless the minorities and the weaker segments the real consumers of social justice- are represented in the executive, legislative and judicative branches. Articles 14 to 16] 46 and part XVI, among others, are relevant in this context. This is social justice as reflected in composition of administrative personnel directly and with its consequential effects on other dimensions indirectly.

Whether the demands of distributive justice in a developing democratic country, involving a redistribution of property, wealth and power, are consistent with the principle of rationality and all that it involves is a question which deserves some treatment here. It has been assumed by some people that such demands are not so consistent when rationality is understood to include the factors of efficiency and consensus based collective choice. There appears to be some inconsistency between the two when rationality and efficiency aspects are taken into account in their narrow, meritocratic sense. This is in fact not so because in long, run, and in not too long a run, the redistribution is bound to lead to much wider and more productive effort than what a narrow rationalist principle would. The view that a more equitable distribution of wealth leads to a slowing down of the rate of economic growth has no theoretical or practical basis. Quite the contrary. AAs Professor Galbraith has shown in "The Affluent Society". Reform (a more equal distribution) is not something hat can be made to await on productive advance. It may be a

prerequisite to such advance "Economits are almost unanimous in their view that a more equitable distribution of assets and income far from producing uneconomic holdings of land and other resources has and will lead to a greater productivity in agriculture and industry. Studies of several developing countries, including India, have shown that redistribution has been accompanied by significant growth, sometimes growth at very high rates in comparison with what most other countries have achieved, and that in India it is not redistribution of assets and income but the paucity of surplus left to help the poor through social werlfare programmes and to increase investment, because of low rate of profit in public enterprises and huge subsidies in supporting prices paid to big farmers and wages and salary increases paid to white-collar workers, which explains why the country has had a poor growth in rate during the last few decades. A redical redistribution of resource as envisaged by the Directive Principles and the Preamble is thus firm by anchored.

The courts of law are under solemn responsibility to uphold state measures that translate into living law the promise of social justice. The court's progressive decisions on agrarian refor, industrial disputes, service cases have sustained the conscience of Constitution and imparted society's credibility to social justice. Assuming court's acceptance of the social justice as the guiding principle, the procedural social justice demands a radical rupture with the adversarial culture, a new focus working towards a judicial revolution promoting social justice in all its dimensions. The judiciary has also to be class neutral to balie any apprehension of its being elitist in nature. The judicial selection process must also reflect this desire. The focus

has to be on remedial revolution. The scope for play of popular alternatives for resolution of disputes at the level of the common man has got to be widened by activating agencies like those of Nyaya Adalat, Lok Adalat, Panchayat courts etc. Simplified procedures in the processing of grievances should be built-in to ensure movement of justice to the people who are otherwise immobile and forlorn. Affirmative action, judicial activism, cognizance of public interest-litigation, community-centred social action proceedings, discard of the conceptual narrowness of locus standi & of the pigeon-hole theories of evidence and obsolete exclusionary rules as well as of the restrictive rigidities of schemes of free legal services to the weaker sections and a host of other fossil characteristics which make equal justice under a low a tantalising prospect are but the small litigative areas of the judicial Circle. The disease of the judicial system is not "overload" and consequent collapse as apologists argue, but wrong track, wrong rules, wrong participants, and wrong destination away from the nations trust with social justice. In keeping with the force of the Article 39 A ensuring equal remedial justice, the thrust of the shift of the gravity of justice must be from traditional individualism of locus standi to the community orientation of public interest litigation. The latter has rightly become a major tool in the hands of the judiciary to oversee the implementation of social and labour welfare legislation like the "The Employment of Children Act", The equal remuneration Act, The contract labour Act, Inter-State Migrant Workmen Act etc. Free legal services should take an aggressively positive form. Mobile courts must visit the aggrieved. Social justice has kinetic dimension and court officials must go the those

who are hungry for justice. The law reformers have to keep in view that concept of social justice which means justice to the lowest in the ladder, a cobbler, a blacksmith, a footpath wala, a slumdweller, a rickshaw puller, a victim, is the need of the day and cannot be postponed. Research and teaching in law must be aimed at correct & proper understanding of hardship and injustice in our society. To the extent legislative processes and administrative agencies fail to bring society closer to socialist justice, judicial action must strengthen Indian democracy. The philosophy of judicial remedies for the people is heavily value-loaded because social justice itself has an accountability to common man. The judge, by statutory prescription, be more than an umpire but play the positive role of engineer in search of truth and compassion, collecting evidence on his own, directing investigation if needed and with powers to ensure that his writ of justice is complied with. Execution of orders and decrees must follow as a continuing process, not relegated to a fresh litigative chapter. The message conveyed is that the judicial justice to the common people's is organised along correct lines so that the Rule of Law breaks through to social justice particularly at the lower levels where law is more often called upon to arbitrate between conflicting class interests and where the socio-economic urges of the masses are effectively crushed. First, it requires the equalisation of the human condition for the good life and equality of opportunity for work and enjoyment. Secondly it needs the acceptance of the opportunity for work and enjoyment. Secondly it needs the acceptance of the principle of non-discrimination. However, equality may be departed from for sufficient reasons. The crucial determinant is the

sufficiency of the reason for making distinctions. All this points to the truth that justice, far from being adequately described in terms of equality, is more usually a settlement-whose terms vary with time and place-between equality and other values.

Conclusion :

The concept of social justice, believed to be of a revolutionary import, denotes a philosophy of life and sets a way in which all social life should behave. This gives substance to the rule of law and meaning and significance to the ideal of a welfare state. It is a device by which the relationship of society to the individual and of Government, to both, and the right of the minorities and the backward classes are clearly laid down, Conceived generically, social justice, as the name indicate, must conform to justice in all its social aspects. Neatly defined, social justice is a balance between social rights and social control.

There are three main elements in the concept of social justice, equality of opportunity for individuals and for the various social groups: just distribution of income and other benefits and social security of the handicapped people who are in different conditions. Social Security in old age commanded legal connotation. The promotion of social justice necessitates time it acquired legal connotation itself earlier stages as a moral concept but in course of time it acquired.

In recent past, the Indian judiciary has definitely shown a positive and expected shift towards a socio-economic oriented constitutional jurisprudence. This shift in constitutional interpretation has illumined decisions on conflicts of interests in agrarian, industrial and trade

relations by socially sensitised judges. Hopefully, the executive, legislature, press and public opinion play their supportive roles in operationalising the concept of social justice.

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