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SOCIAL JUSTICE BENCH

THE AUTHOR

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I. INTRODUCTION

India is a sovereign, socialist, democratic and republic country. It has its own constitution which has been adopted & enacted by the citizens of India on 26th January 1950. The makers of the constitution were very much aware of the social inequalities in the country. They comprehended the need of giving justice which would satisfy the thought process of freedom movement and to keep up the power, keeping up social inequalities is an unquestionable requirement. Jawahar Lal Nehru in his speech before the Constituent Assembly has said that

“First work of this assembly is to make India independent by a new constitution through which starving people will get complete meal and cloths, and each Indian will get best option that he can progress himself.”

As this thought has been totally reflected in the Indian constitution. The idea of social justice is specified under Indian constitution. The introduction of the constitution gives that to securing justice in the fields of economic, social & political. As a socialist country, Social Justice is at the heart of Indian politics. “Indian Constitution is to be considered, as the first and foremost, social document” said by G. Austin.

The provisions related to social justice are mentioned under Part III i.e. Fundamental Rights and Part IV i.e. Directive Principles of State Policy. Along with constitutional provisions for rendering the justice to the every citizen of the country Supreme Court has come up with a new concept of Social justice bench. A social Justice bench is a bench of judges which has been set up by the Chief Justice of India in December 2014. The idea behind setting up of a constitutional bench of social justice was to provide speedy justice to the poor and needy underprivileged people.

II. WHAT IS SOCIAL JUSTICE?

Principally, the Preamble to the Constitution secures social justice for all citizens. It is a settled law that the Preamble is a mandatory part of the Constitution¹ and preciously helps in its translation by highlighting its underlying purpose². Accordingly the provisions are being mentioned under the Part III- Fundamental Rights of the Constitution, Part IV- Directive Principles of the State Policy and Part XVI- Special Provisions Relating to Certain Classes. The primary object of the Constitution is to remove social inequalities of status, opportunity, caste, religion, culture, gender etc. by ensuring social justice to the its citizens. The burden of securing social justice lies on the State as provided under Part IV by implementing state policies. Article 37 provides the State to ensure social justice by implementation of State Policy. Article 38 provides puts the state under obligation to provide social justice to achieve social welfare state. India has adopted mixed economy where socialism lies in the heart of preamble which aims to provide a welfare state.

There is no universally accepted definition of social justice. It has been only defined in the constitution directives and some judicial interpretations have been made about what can constitute social justice. Generally social justice means rectification of injustice it means rectification of injustice in personal relations between people; social justice in its macrocosmic form indicates complex and dynamic social change, in the edifice of a welfare state, aimed at: harmonizing rival claims and interests of different groups, and reconciling individual conduct with general social welfare; removing social, economic and political imbalances (and all forms of inequalities) from social order; and/or providing distributive justice and proportional equality to all, especially the deprived sections of society (Lahoti 2004, p.100; Raju 2006, p. 2-3; Singh 2015).³

Even though the ends of Social Justice may be found in naturalism, the foundational basis of Social Justice still lies purely in positive law, which is Constitution, in it being declared as a Fundamental Right under Article 14 and 21 of the Constitution. Despite the fact that the ends of Social Justice might be found in naturalism, the foundational premise of Social Justice still lies simply in positive law, which is Constitution, in it being pronounced as a Fundamental Right under Article 14 and 21 of the Constitution⁴. In the matter of social issues Judiciary has to play an important and active role to achieve the goals of Constitution in the society.

The Constitution of India in its Preamble has guaranteed the general population a three dimensional justice including social justice. Under the space of 'social justice', a few cases highlighting social issues are incorporated. To specify summarily, about the arrival of surplus sustenance grains lying in stocks for the utilization of individuals living in the dry spell

¹ *Kesavananda Bharati v State of Kerala* [1973] 4 SCC 225; *Charan Lal Sahu v Union of India* [1990] 1 SCC 613, 647-51; *Jacob M Puthuparambil v Kerala Water Authority* [1991] 1 SCC 28, 41, 42

² *In Re Berubari Union and Exchange of Enclaves* [1960] AIR 845 (SC) 856

³ *Crown Aluminum Works v Workmen* [1958] AIR 30 (SC); *Muir Mills Company Limited v Suti Mills Mazdoor Union* [1995] 1 SCR 991; *Consumer Education and Research center and others v Union of India and others* [1995] AIR 922 (SC); *Dalmia Cement (Bharat) Ltd. and Anr. v Union of India (UOI) and Ors. and Suresh Kumar and Ors. v Union of India (UOI) and Ors.* [1996] 10 SCC 104; *Air India Statutory Corporation, etc. v United Labour Union and others* [1997] AIR 645 (SC); *Gajaji Gopalji Jadeja v State of Gujarat* [2005] 2 GLR 1142 (Gujarat High Court)

⁴ *Ashok Kumar Gupta v State of UP* [1997] 5 SCC 201, 26

influenced territories; to outline a new plan for open appropriation of nourishment grains; to find a way to counteract awkward demise of the women and youngsters for need of nutritious sustenance; giving sterile early afternoon supper other than issues identifying with kids; to give night safe house to down and out and destitute; to give restorative offices to all the resident independent of their financial conditions; to give clean drinking water; to give wellbeing and secured living conditions for the reasonable sexual orientation who are constrained into prostitution , and so on., these are some of the ranges where the sacred system needs to assume a proactive part keeping in mind the end goal to meet the objectives of the Constitution.

In Supreme Court a few cases identifying with the space of 'social justice' are pending for quite a while. Hon'ble the Chief Justice of India is of the view that these cases might be given a particular approach for their initial transfer so that the masses will understand the products of the rights gave to them by the protected content. In this viewpoint, His Lordship has requested constitution of a Special Bench titled as "Social Justice Bench" to bargain uniquely with the matters identifying with society and its individuals, to secure social equity, one of the standards of the Indian Constitution. His Lordship additionally coordinated that this Bench would work from 1st December, 2014 and so as to guarantee that these matters are observed on consistent premise, will keep on sitting on each working Friday at 2.00 p.m. This Bench will contain Hon'ble Mr. Equity Madan B. Lokur and Hon 'ble Mr. Equity Uday U. Lalit. Pending cases as well as be managed by this Special Bench.

III. SOCIAL JUSTICE BENCH

Social justice litigation always protects the rights of vulnerable and disadvantaged people. Social justice is provided to the people who remained disadvantage due to their caste, religion, sex, creed, immigration status, economic status & any other reason. Social Justice Litigation is always considered to be as Public Interest Litigation. Supreme court has always given preference to social justice litigation to provide more preference supreme court has constitution a special 2-judge social justice bench. Article 142(1) of the Constitution empowers the Supreme Court of India to administer complete justice in any matter pending before it.⁵ Supreme Court has the power to establish different kinds of bench for the specific purposes. For example green bench or forest bench deals with the cases of environmental matters. The establishment of 2-judge Social Justice Bench in the Supreme Court is for the advancement of judicial system which can provide speedy justice to the people who are in need.

IV. OBJECTIVES OF SOCIAL JUSTICE BENCH

There are a number of issues existed in the society. Some of the matters are identified to be as social matters such as food, water scarcity to drought-hit people and prevention of premature deaths by lack of nutritional value in the mothers and children, lack of availability of night shelters for the homeless & destitute people, lack of access to medical care, unhygienic mid-day meal, missing children, human trafficking, rehabilitation of acid attack victims etc. It will reduce the burden on lower courts to deal with the issues related to constitutional matters. In December

⁵ *G.M., O.N.G.C. Ltd. v Sendhabhai Vastram Patel and Ors.* [2005] Su¶ (2) SCR 448

2014 Supreme court sets up 2 judges [Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice Uday U. Lalit] special 'social justice bench' for hearing the cases specifically related to the issues concerning social justice, the issues specifically related to women, children or disadvantaged people. The idea of setting up this bench was to ensure the early disposal of these types of cases. So that the rights ensured under the Constitution can be enjoyed fully and the justice shall be provided to the needy people as early as possible. The rights to be ensured include the right to food, shelter, right to health, etc.

V. PROVISIONS RELATED TO BENCH

As per the notification circulated by the Supreme Court of India, the Provisions related to Social justice bench are as follows:

1. Bench should sit on every Friday at 2 pm from 12th December, 2014.
2. It shall hear cases related to women, child & disadvantaged people.
3. Deal with the pending cases as well as new cases.
4. The Bench can take the matter suo-moto in certain cases.

VI. REASONS FOR WINDING UP OF THE BENCH

The then chief justice of India Justice Thakur reviewed the policy of established social justice Bench by former CJI Dattu in the month of March, 2016 and scrapped the social justice bench and the pending cases were given to others.

1. Shelved provision: No disposal of matters heard by the bench in two years.
2. Leniency of bench in granting judgments
3. Bench uses both- persuasion and warning to get the results
4. Non- technical or expert bench
5. The word social justice has not been defined in the SC notification but some illustrations have been provided for the matters relating to social issues.
6. It is unable to deal with the matters involving question of law such as interpretation of the Indian Constitution⁶
7. Lack of jurisdiction: Social Justice Bench has lack of jurisdiction to deal with the matters of private dispute dealing with the question of social justice. The illustrations added to the Supreme Court of India's Notification are (obviously) of Social Justice in its macroform just, it will be an offence to expect that Social Justice Bench won't have jurisdiction to engage private dispute including socialist cases.
8. Sympathetic Bench: Social Justice Bench, being an extraordinarily constituted seat for securing social justice, will promptly allow cures looked for by the candidate indeed, even in marginal cases. It is an attempt to delay the matter to be dealt by the proper bench. It is an abuse of justice by the litigant.
9. There is no need of constituting a separate special bench to deal with social issue because the concept of social justice is very vast.

⁶ *Prakash Cotton Mills (Private) v The State of Bombay* [1957] 59 BOMLR 836 (Bombay High Court) 6

VII. RESUMING OF SOCIAL JUSTICE BENCH

On the very same day of the appointment of CJI Kheher has reversed the decision of winding up of social justice bench by his own predecessor CJI Thakur in the month of January 2017.

The new changes in the bench are as follows:

- Timings of the Bench: The Bench has been directed to sit at 2 pm every Friday.
- Adjudicating powers: The adjudicating powers of the new bench have been increased by giving that the matters to be heard are social issues including environmental matters.
- Bench can take the matter suo-moto.
- Bench has the power to hear the pending cases and new cases
- Number of Judges: The number of judges in the bench remained same. The bench is to be comprised of 2-judges only.

VIII. CASES HEARD BY SOCIAL JUSTICE BENCH

1. Welfare of construction workers: On 5th Sept, 2015 Supreme Court Social Justice Bench had taken action against the casual approach of State & centre governments towards the welfare of construction workers in the case filed by An NGO, National Campaign Committee for Central Legislation on Construction Labour claiming that the Governments are not passing the money to the Welfare Boards. The construction workers were not even provided with the basic facilities with keeping this view in their minds; the Bench had directed Labour Secretary to explain how governments are spending money collected over Rs. 27,000 crores as construction cess.
2. Writ for missing of children: Supreme Court Social Justice bench heard writ petition on 18th April, 2015 filed by NGO Bachpan Bachao Andolan against increase in number of missing children and the misappropriate approach of Ministry of Women and Child Development for not complying with the directions. Supreme Court said that “Children are missing in the country and you (Centre) cannot be so casual in your approach. Your secretary is just writing letters. We are extremely dissatisfied”⁷. Supreme court imposed fine of Rs. 50,000 for misappropriate approach and not maintaining website www.trackthemissingchild.gov.in. The fine is to be deposited to Legal Services Authority.
The bench also expressed disappointment over the vacancies in the National Commission for Protection of Child Rights (NCPCR) and the non-establishment of Juvenile Justice Boards in various states.
3. Re-Inhuman Conditions in 1382 Prisons: On 24th April, 2015 Supreme Court Social Justice Bench issued guidelines on related to Prison Reforms in the country. Bench observed that “poverty cannot be the ground for retaining a person in custody due to non-furnishing of the bail amount to be paid by them”. The bench said that “Prison reforms have been the subject matter of discussion and decisions rendered by this Court from time

⁷<http://www.livelaw.in/sc-directs-ministry-of-women-and-child-development-to-explain-the-position-regarding-the-missing-children-issue/>

to time over the last 35 years. Unfortunately, even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their reform”⁸.

- a) Reviewing the Model prison manual within 3 months by Bureau of Police Research and Development.
 - b) Establishment of Under Trial Review Committee in every district within 1 month
 - c) The Under Trial Review Committee is to be met every quarter.
 - d) The Under Trial Review Committee should specifically look into the aspects of the implementation of sec 436 & 436A of CrPC.
 - e) The Under Trial Review Committee will also look into the implementation of Probation of Offenders Act, 1958 for the first time offenders.
 - f) The living conditions of the prisoners should be maintained properly and the Director General of Police in-charge of prisons shall take care of the allocation of sufficient funds.
 - g) Direction were given to the State legal Services Authority lawyers to file urgent applications before various courts for securing the rights of under-trial prisoners and assistance shall be provided to the them.
4. Shelter for homeless persons: On 13th Dec, 2014 Supreme Court ordered the Centre to verify the number of homeless people in the country Also directed the Union Govt. and all the States to constitute the executive committee of the National Urban Livelihoods Mission (NULM) by December 31. Secretary, housing and urban poverty alleviation ministry, will chair the Committee.⁹
- On 25th April, 2015 Social Justice Bench of Supreme Court took a notice on the National Urban Livelihood Mission who builds permanent shelters in 790 urban cities. The Court observed that the Centre has given Rs. 1,078 crore to state for building shelters for homeless people. The bench has shown the concern over the quality of shelters and facilities to be provided therein. It was considered to be as scam by NULM.¹⁰
5. Rape videos circulated on Whatsapp: Social Justice Bench of Supreme Court has taken suo-moto matter of the issue where 2 rape video had been circulated on the whatsapp. The Bench directed the CBI to conduct investigation to identify the culprits and to seek the responses from the Governments of Uttar Pradesh, West Bengal, Odisha, Delhi & Telangana.
6. Relief for acid attack survivors: Social Justice Bench of Supreme Court in the case of *Laxmi v. Union of India*¹¹ on 10th April, 2015 gave following directions¹²:
- a) Directed private hospital should provide free treatment to acid attack survivors,

⁸<http://www.livelaw.in/prisoners-like-all-human-beings-deserve-to-be-treated-with-dignity-sc-issues-landmark-guidelines-on-prison-reforms/>

⁹<http://www.livelaw.in/supreme-courts-social-justice-bench-orders-centre-verify-number-homeless-time-bound-manner/>

¹⁰ <http://www.livelaw.in/sc-takes-a-dig-at-the-centre-calls-the-permanent-shelter-scheme-a-scam/>

¹¹ [(2014) 4 SCC 427

¹²<http://www.livelaw.in/sc-social-justice-bench-orders-private-hospitals-to-provide-free-treatment-and-corrective-surgery-to-acid-attack-survivors-orders-governments-to-provide-3-lakh-financial-relief-to-survivors/>

including medicines & expensive reconstructive surgeries.

- b) Directed state governments & Union territories and Medical Council of India to “take up the matter with the private hospitals” to ensure that acid attack victims are attended to immediately and adequately.
 - c) Certificate is to be providing to the victims by every hospital that the victims approach to the hospital and for future benefits.
 - d) Governments should provide Rs. 3 lakhs financial relief to acid attack victims.
 - e) Banned off-the-counter sale of acid all across the country and to be included as unregulated sale substance.
 - f) Organise public awareness programmes for acid-attack.
 - g) Penalty is to be imposed on the hospital that refused to give treatment to acid attack victim.
 - h) Emergency treatment shall be provided to the victims by private hospitals.
7. Rehabilitation of Reang Tribes: On 16th Jan, 2016 Social Justice Bench of Supreme Court order the Centre to file a fresh affidavit regarding the rehabilitation of Reang tribes of Mizoram and Tripura. Supreme Court has shown displeasure over the slow progress work from past 10 yrs for rehabilitation whereby previously the PIL was filed by the Akhil Bharatiya Vanvasi Kalyan Ashram in 2005 and in 2007 by Asian Indigenous & Tribal People’s.
8. National policy on old-age people: On 29th Aug, 2015 Social Justice Bench of Supreme Court reminded the Central Government to revise the National Policy on Old-age People while hearing the petition filed by Adv. Sanjeeb Pangrahi for securing the rights of old-age people and to conduct the survey of right deprived old-age persons. The Bench said that “national policy on old age homes is 15 year old. You need to update it. So much has happened since 1999.”¹³
9. Protection of good Samaritians: On 10th April, 2015 Social Justice Bench of Supreme Court expressed their concern over the increase in the numbers of road accidents and for the Protection of Good Samaritians while hearing the case Save life Foundation v. Union of India. The Bench gave the following orders and directions¹⁴:
- a) Directed the Central Government to organise a meeting of Transport Secretaries of all states with the aim to frame a policy to control the menace of road accidents.
 - b) Directed the State to make strict laws for the offences related to road such as drunk-driving, over-speeding and other related offences
 - c) The strict procedure is to be followed while issuing the driving license.
 - d) Awareness programmes are to be conducted to spread awareness among the society.

Cases heard by the bench but were listed for some other benches are as follows:

1. Karma Dorjee & Ors. v. Union of India- A PIL was filed for SIT to investigate the racial

¹³<http://www.livelaw.in/supreme-court-reminds-the-centre-that-national-policy-on-older-persons-is-old-and-outdated-emphasizes-the-need-to-update-it/>

¹⁴<http://www.livelaw.in/sc-directs-the-central-government-to-frame-a-policy-to-curb-road-accidents/>

attack on Northern east people living other parts of India heard the matter on 1st Dec, 2015

2. Manipur encounter matters: Plea was filed for the justice for the relatives who died in the fake encounters. Social Justice Bench of Supreme Court heard the matter on 10th Nov, 2015 and directed the investigation & revision of each case and punish the criminals.
 3. Rehabilitation of kashmiri pandits: A petition was filed by All India Kashmiri Samaji on the implementation of a special package which was offered by the central government for restoring properties to Kashmiri Pandits, which were auctioned illegally between 1990-97, and providing them jobs upon their return to the valley.
 4. Exploitation of children in orphanages in Tamil Nadu.
 5. Sardar Sarovar Dam Rehabilitation case
 6. Monitoring of Nirbhaya Fund
 7. Fund for rehabilitation of Devadasis in Karnataka
-

IX. SUGGESTIONS

Some of the suggestions made by me are as follows:

- The timings for the sitting of bench shall be increased so that the social justice shall be secured properly.
 - The number of judges in the Bench shall be in odd-number, so that in case of any conflict of views decision can be taken at ease.
 - The adjudicating powers of the bench shall be increased.
-