

INDIAN JOURNAL OF CONSTITUTIONAL STUDIES

Issue - May, 2017

Volume I Issue IV

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ISSN 2456 - 5008

Published bimonthly

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- Acknowledgement -

Efforts from many quarters have gone into the successful publication of this Inaugural Issue of the Indian Journal of Constitutional Studies. We would like to express a deep sense of gratitude towards our blind peers who thoroughly validated all articles sent to them for reviews. We would also like to thank our contributors for contributing extraordinary submissions to the issue which stood at par on the rigorous scrutiny.

AN ANALYSIS ON SOCIAL JUSTICE BENCH

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I. INTRODUCTION

Indian Constitution empowers the three pillars Executive, Legislature, and Judiciary to govern the citizens of India and at the same time to achieve the objectives of our constitution. These three pillars have various duties imposed by the constitution. One of the three and significant is Judiciary, the ultimate duty of that is to render justice. Preamble of our constitution confers justice that need to be achieved in all three dimensions which are Social, Economic and Political. And the constitution also empowers the judiciary to administer complete justice on matters before it. By considering all these with the maxim of 'Justice delayed is Justice Denied', former CJI Dattur formed a Social Justice Bench in Supreme Court of India to attain the Social justice. The Social Justice Bench is formed to complete the pending cases and for speedy justice for the cases related to social interest in the society.

II. SOCIAL JUSTICE BENCH

Social Justice Bench was formed with an objective to achieve justice for the cases where the social interest is involved. It also aims to complete the cases in a speedy manner. But there is no precise definition for the term 'social justice' anywhere and the notification which formed the bench itself not clearly explained the term. The notification tried to explain the term by various examples such as "release of surplus food grains lying in stocks for the use of people living in the drought affected areas; to frame a fresh scheme for public distribution of food grains; to take steps to prevent untimely death of the women and children for want of nutritious food; providing hygienic mid-day meal besides issues relating to children; to provide night shelter to destitute and homeless; to provide medical facilities to all the citizen irrespective of their economic conditions; to provide hygienic drinking water; to provide safety and secured living conditions for the fair gender who are forced into prostitution, etc.,"¹ but still it is not universally accepted.

The said notification has to be seen through the lens of constitution. From that we got an outline of social justice, that includes elimination of inequalities, ensuring equal access to justice, just

¹ APOORVA MANDHANI, "SC's Social Justice Bench scrapped" at <http://www.livelaw.in/scs-social-justice-bench-scrapped/> accessed on 14/04/2017

and humane conditions of work including maternity relief, affirmative action through special provisions for women, children, the socially and educationally backward, etc.,

So, as a Social Justice Bench, aimed at to harmonizing rival claims and interests of different groups, and reconciling individual conduct with general social welfare, removing social, economic and political imbalances from social order, and providing distributive justice and proportional equality to all, especially for the deprived sections of society.²

III. HISTORICAL BACKGROUND

Social Justice Bench is formed on December, 2014 by a notification issued by former Chief Justice of India Justice. H.L. Dattu, during his tenure. He constituted the bench and its objectives based upon the importance and need for social justice, the duties of the Judiciary, and the powers given to the judiciary conferred by our Constitution. The bench formed on the objective to attain justice on social issues where the mass social interest involved and at the same time there were so many pending cases in Supreme Court and an important needed to give on social issues to solve in a speedy manner so in order to deliver justice for the social issues in a speedy manner he formed the bench. The bench would sit on every working Friday at 2.00 p.m. and it comprised of Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice Uday U. Lalit. The bench was constituted to decide not only on the pending cases but also to take fresh matters.

The ultimate object of the Bench is to render speedy justice. But the bench in its one year of existence has not even delivered a single judgment. The reasons were because of the nature of the social issue cases, those cases have a nature of monitoring the progress that too when multiple functionary of the Government were involved required to keep a track on the progress. But still the bench ruined various big players who done injustice to the people and the bench was known for hauling up Government officials for ineptitude. And also, the bench got a high status over the advocates of the Supreme Court of India as the most progressive bench.

In December, 2015 Hon'ble Mr. Justice T.S. Thakur was appointed as Chief Justice of India. During his tenure on March, 2016 he removed the Social Justice Bench by a notification for its poor performance by creating a constitution benches and new roster of hearing cases relating to miscellaneous cases. The cases pending in the Social Justice Bench distributed to various benches.³

In January, 2017 Hon'ble Mr. Justice Khedar was appointed as Chief Justice of India, in a two weeks of his appointment he passed a notification of altering the roster of hearing cases and composition of benches he reconstituted the Social Justice Bench back to the Supreme Court of India for hearing the social issues matters. The bench will follow the same procedure which was

² Kansal, V, 'Supreme Court of India Social Justice Bench: Maiden Dichotomy Between Equity and Law in Indian Jurisprudential History', 2015(1) Law, Social Justice & Global Development Journal(LGD)

³ Supra footnote 1

earlier followed such as will sit on alternate days and the composition also the same Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice Uday U. Lalit.⁴

IV. CASES HEARD

The social justice bench was formed to hear cases which concerns the social issues in our society. And as per to achieve the object it heard various causes related to social issues where mass social interest were concerned. But during its one year of existence before Justice Thakur dissolved the bench, it not even delivered judgment for one case but while hearing it delivered various orders, directions and also expressed various opinions on matters. Few cases were,

In *ER.Kumar v. UOI*⁵, were a writ filed before the Supreme court, regarding the right to shelter conferred under article 21 of our constitution for homeless persons in urban areas, the case transferred to this bench and the bench expression its opinion while hearing the arguments, that providing home doesn't mean only the superstructure, at the same time it requires the place to live with dignity.

Later, after the dissolution of this bench the case again transferred to other bench, where the case disputed.

In *Dalit Manavadhikar Kendra Samiti v. State of Rajasthan*,⁶ were the petition filed concerning the vacant post of chairman, in the State Human Right Commission of Rajasthan for a long time. The court felt dissatisfied for the non-action by the state government on this issue for a period of 5 years. The state claimed that they couldn't found a suitable person for the post. The court sarcastically opined that does "Every Chief Justice of India were suitable person? But still they were appointed right? Why can't you?" and directed the state to fill the post within 3 weeks from the date order.

In *Tennydard M.Marak v. UOI*⁷, where the appellant is a former congress leader from Meghalaya, and the All Northeast Indigenous Garo Law Promoters Association, claiming the tribal status of Meghalaya Chief Minister Mr. Mukul Sagma, and also accusing him that he had the surname only to show that he belongs to tribes but he is actually not. The bench dismissed with opinion impliedly (this is not a suitable forum to decide on this matter) by expressing you have every liberty to claim this matter in any other forum.

In *Trained Nurses Association of India v. UOI*⁸, were the bench heard a claim from the Nurse association regarding the policies of sexual harassment in workplace related to vishaka guidelines and also regarding the service condition and pay scale matters. The bench expressed its view that the arguments made by the petitioner is not satisfactory. And directed to come with better arguments in next hearing.

⁴ LIVELAW NEWS NETWORK, "CJI Khehar Brings In Changes: No More NMDs, Social Justice Bench Reconstituted" at <http://www.livelaw.in/cji-khehar-brings-changes-no-nmds-social-justice-bench-reconstituted-read-circular/> accessed on 17/04/2017

⁵ WRIT PETITION (CIVIL) No. 572 OF 2003

⁶ WRIT PETITION (CRIMINAL) NO.122 OF 2013

⁷ WRIT PETITION(s) (CIVIL) NO. 343 OF 2014

⁸ WRIT PETITION No(s). 3559 OF 2012

Later the bench got dissolved and the case went to another panel of bench consisting of Justice Anil R and Justice Dare J were the court expressed the opinion that the structure of pay scale and the condition of service were unsatisfied. And directed the state government to set up a committee to look into these matters and to submit a report within 4 months.

In *Independent thought v. UOI*⁹, were a petition filed by Independent thought an NGO, claiming to struck down the criminal procedure amendment made by the parliament on IPC, 1860 in 2013, which alters S.375(2), states if a man had sexual intercourse with his wife if she is not under 15 is not a rape. Which is violation of article 14, article 15 and article 21 of our constitution. The NGO claims that the state permits intrusive sexual intercourse with a minor child between 15 -18 only on the grounds she has been married which also violation of POSCO act. The bench was added the NCW as a party to the case and sent notice to the center to consider the age mention in S. 375(2) of IPC, 1860.

In Re: Human conditions in 1382 prisons¹⁰, where a writ registered based upon the letter sent by the former Chief Justice of India Justice. R.C. Lahoti to CJI to look into the conditions of the 1382 prisons in India. The bench passed an order to the central government to furnish certain information about the issues first related to overcrowding in prison and improving the living condition of prisoners. And also asked to submit a model of prison in 3 months and asked to form a committee if necessary.

After the report submitted the expressed its view that the prisoners, like all human beings deserve to be treated with dignity so asked to do the favor regarding that and to submit a report on the action taken by the state.

In Re: chopping of the palms of two migrants¹¹, were a suo moto filed about the chopping of right hands of two migrant workers from Odisha to Andhra Pradesh by the contractor. The court expressed his dissatisfaction and felt sad for the carelessness of the states. And directed the both states to send a report on the migrants and asked to take measures within 4 weeks. And also ordered the state legal services to visit the migration places regularly to avoid exploitation, malpractices, and violations etc. and also asked to the contractors please don't treat people as dirt.

In *Bachpan Bachao Andolan v. UOI*,¹² a case filed regarding the procedure filed for the cases related to trace the missing children. During the hearing the court found that in National Commission of Protection of Child Right, a major post was not filled by the central government for a long period of time and directed to fill the post at the same imposed fine sum of Rs. 25,000 over the Central government for his carelessness.

⁹ WRIT PETITION(S) (CIVIL) No(s).382 OF 2013

¹⁰ WRIT PETITION (CIVIL) No. 406 OF 2013

¹¹ WRIT PETITION (CIVIL) No. 55 OF 2014

¹² WRIT PETITION (CIVIL) No.51 OF 2006

In Re: Indian Express Newspaper report dated 10.04.2013¹³, were the newspaper reported on an action of a woman cop who puts a minor rape victim in lock-up, the bench directed the state government to take necessary action against her and also asked to circulate rules and regulations to all police stations, to prevent these kind of actions in future.

In Re. Prajwala letter dated 18.02.15¹⁴, were the letter converted into writ on the matter governing the activities of individuals in social media in respect of phonography content (sex videos) circulation. The court asked the government to set up a special committee to coordinate with WhatsApp ltd to do a confidential meeting on this matter and asked to submit a report.

In *National campaign committee for central legislation on construction labor v. UOI*¹⁵, were regarding the action of central advisory committee of labor ministry which are supposed to meet once in 6 months but not done for a period of one year. And also regarding the fund collected under the Building and other construction workers welfare cess act, 1996 and the Building and other construction workers (regulation of employment and conditions of service) act, 1996. The bench directed the union ministry of labor to submit a report on the budget plan of 27,000Rs which collected by them for the benefit of construction workers.

In *Lalit Kumari v. Government of UP*¹⁶, where regarding the uniform guidelines for registration of FIR's in matrimonial cases. The bench directed the state to look upon in it.

In *SL Foundation thorough it President v. UOI*¹⁷, were the bench heard a case regarding the devadasi system followed by few South Indian states such as Andhra Pradesh, Karnataka, etc. and directed the central government and State government to review and resolve the matter by forming an committee by themselves and to submit a report.

There so many cases like these the bench gave directions, orders etc. but the bench didn't complete a single case yet. The reason for this one the nature of social issues, and other the involvement of mass social interest in it. Most of the cases were settled by various other benches. But still the proportionality of cases filed with forum available is quite high.

V. UP'S AND LOOPS

Generally everything in the world whatever you take either things or situations always have both advantages and disadvantages. Like that social justice bench also consists of both ups and loops to the society. Everything which ever created by a person consist positive intent or a good motive but due to various reasons will turns into negative or will lose its objectives, similarly this bench also formed on the positive notion but due to few issues is still not effective yet. First we will see about the ups to the society, because of this bench the social justice can be served to the

¹³ SCOI Report, '7 cases showing why SC's social justice bench has failed to close a single case of social justice' at <http://www.legallyindia.com/supreme-court/7-cases-showing-why-sc-s-social-justice-bench-has-failed-to-close-a-single-case-of-social-justice-20150829-6518> accessed on 18/04/2017

¹⁴ Bhadra Sinha, 'SC orders CBI probe into rape videos circulated on WhatsApp' at <http://www.hindustantimes.com/india/sc-orders-cbi-probe-into-rape-videos-circulated-on-whatsapp/story-6OUIIUVqd0nVqKHrXPxyeK.html> on 19/02/2017

¹⁵ INSC: (2009) INSC 54

¹⁶ WRIT PETITION (CRIMINAL) NO. 68 OF 2008

¹⁷ WRIT PETITION (CIVIL) No. 127 OF 2014.

society. Already in India there are so many cases were pending before the court, in that there are so many important matters and emergency matters were there. So, if a court look into the emergency cases such as election matter etc., which came recently due to its urgency the regular pattern will get disturbed and that too if the case is resolved or else it will go for days and days. These emergency cases itself goes for days and days what about social issue cases, which requires to look very carefully and needed to be monitored because of involving mass social interest of the society. By forming a separate bench exclusively for to decide on the matters of social issues will get resolved and justice can be served speedily. These are the main objectives of social justice bench. The panel also will remain same so, they will learn a good knowledge on these matters and get to know how to handle these sensitive issues rather than other justices. And also the matters concerning the critical issues of society can be analysis with reasonable care it can achieved by a separate forum rather than a forum which hearing junk of multiple nature cases.

In the loops site, first with the name itself, 'social justice' which is not defined yet and how the judges were able to deliver social justice and also the people can approach the court only when they get know what will be the remedy or the just. Not only that if the judges itself not clear about what all cases comes under the term social issue and what all won't come. The citizen of India who have high rate of illiteracy can't understand the rights or the remedies and also the purpose of the court. Another issue is regarding the parties the preamble states constitution is to secure all its citizens and justice need to be served on all three formats social, economic and political, whether the parties or the issues only related to citizens or the person includes foreigners, company etc.,? The bench were formed to attain the objective of constitution by delivering social justice on the preamble part, creates a confusion. We have the ineffectiveness due to poor implementation. The general nature of the social issues were requires to look very carefully and also to be monitored with the progress. But the objective is to render speedy justice which is not clear how they can achieve the both at the same time. In the urge to achieve the objective there can be various misleads can happen with the help of concept of independent judiciary, that if the bench feels lazy it can dismiss the case either on the concept of social justice means it won't come under social justice or on the reasoning of speedy. Similar happened in this bench also few cases were, in *National coalition of education v. UOI*¹⁸, were the petitioner claimed regarding the primary education schools and teachers were not sufficient and under the regulation of RTE act. But the bench asked the petitioner to claim in High Courts. In *PUCL v. UOI*¹⁹, The bench agreed to issue notices on the question of maternity benefits under the National Food Security Act, and on the issue of dubious and repeated extension of deadlines for implementing the Act, without amending it, but asked the petitioners to approach the high courts.²⁰ In *Brave Heart v. Government of NCT, Delhi*,²¹ were the case regarding refusal of treatment for acid attacks in the private hospitals, the bench asked the petitioner to claim in the

¹⁸ WRIT PETITION (CIVIL) No. 267 OF 2014

¹⁹ WRIT PETITION (CIVIL) No. 277 OF 2015

²⁰ SCOI Report: Spotlight on 6 more cases before SC's social justice bench and the fight against procedural resistance at <http://www.legallyindia.com/supreme-court/scoi-report-spotlight-on-6-more-cases-before-sc-s-social-justice-bench-and-the-fight-against-procedural-resistance-20150906-6549> on 19/04/2017

²¹ Ibid

High court. There are so many cases like this irrespective of the importance the court refused to take the cases, these three cases which have the importance fundamental rights of a citizen conferred under part III of our constitution, in first case, Article 21A, mandates the right to education for the children age between 6-14 this is regarding that only but still the court dismissed. These things is not their faults they also humans right how they can take everything on their head, the reason because of the poor guidance given to them. Lack of poor guidance and time, is the sole reason for the achievement achieved by the bench that is not even a single judgment delivered in its one year of existence. It needs a proper rules and regulation regarding the issues which they should take or leave with proper implementation and some time to dissolve those cases will give the result of effective social justice bench which achieved its objectives.

VI. CONCLUSION

Countries like India which have huge population with high illiteracy rate, poor legal system, poor machinery of governments who were supposed to be the servants and secure the citizens were they themselves having clashes which causes much more confusion. And also the bribery, which is available like air in whole India causes much more and more problems in every fields. Based upon the illiteracy, poor machinery of Government and bribery causes issues in our society and these are the major reason for the problems in our society. If we clears these things from our society we don't requires a social justice bench, but our fate we unable to remove those things in one go, so the other one and only solution is a proper implementation social justice bench with clear vision and mission. The Judiciary need to look into it and do something for the betterment of the bench which ultimately results in good to the society.
