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## **SOCIAL JUSTICE BENCH: AN UNVEILING ECLIPSE.**

### **THE AUTHOR**

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The concept of 'Justice' is most commonly linked within an intrinsic belief that justice can be well related to equality of rights, just and fair treatment in the legal system. This concept has roots incorporated in various constitutions which aims to establish a welfare state and social justice is the necessary implication of such state.

As rightly said by Coretta Scott King:

*"Freedom and Justice cannot be parceled out in pieces to suit political convenience.*

*I don't believe you can stand for freedom for one group of people and deny it to others."*

Freedom and Justice are of central importance for any well-ordered society which aims to stand for the rule of law, absence of arbitrariness, and provides with equal rights, opportunities and freedom to the society. Social democrats and modern liberal thinkers define 'Social Justice' as the attempt to reconstruct the social order in accordance with moral principles. Attempts are to be continuously made to rectify social injustice. It also stands for a morally just and defensible system of distribution of reward and obligation in society without any discrimination or injustice against any person or class of persons. The term "Social Justice" is a concept that brought revolution without socio-economic conflict in the society which demands to check the selfish actions of people in a society for securing the interests, fair treatment to those who are under-privileged. Social Justice is concerned with the society at large and aims to provide justice with application of principles of liberty, equality and rights. In other words, ensuring the well-being of a society by applying principles of Justice maybe defined as "Social Justice".

According to the *Egalitarian Theory*, "*Justice is seen as a concept of fairness to distribution of goods, which are to be distributed equally and fairly among everyone in a society or among a particular family.*"

Though in today's modern society it is not just seen as a concept to provide fairness in terms of distribution of goods but is viewed as fairness in various nits and grits of human life. The principles of Justice in early Indian terminology or concept can be derived and seen from various Holy Scriptures which followed the principles of dharma or righteous acts or duties to live a dignified life, while the concept of modern social justice tries to implement and build a "fair society" and not just develop isolated principles.

The modern philosophy of Justice is seen as rights and not duties. According to Jurist Rousseau, "*men are equal by nature but the institution of private property has made them unequal and further perpetuated inequalities.*"

Political thinkers since earliest times have been trying to formulate the concept of 'Justice'. However, with the dawn of modern consciousness especially under the influence of the

principles of democracy and socialism, this concept has been thoroughly transformed. As a result, the traditional view of justice has given way to the concept of 'Social Justice'. In a nutshell, the problem of Justice in contemporary world is concerned with determining logical criteria for the allocation of goods, services, opportunities, benefits, power and honors as well as obligations in society, particularly in a scarcity situation. In short, 'justice' is concerned with allocation of benefits as well as burdens.<sup>1</sup>

'Social Justice' has been defined by Prof. Adams- "What is Social Justice? The question is as old as history, and generation to come will repeat the question. Justice is in its nature social, for, it consists in right relation of individual to another but, when we speak of social justice we are thinking of collective impression of the idea of Justice through the laws and custom, the orders and social provisions which express the will of the community".<sup>2</sup>

Our progress in this direction depends upon the development of our social consciousness, so that what was regarded as 'just', some centuries ago, is not so regarded today. Slavery and serfdom were widely justified in ancient and medieval Europe; untouchability was justified in India few decades ago; the inferior status of women was taken for granted the world, not so long ago; racial discrimination was justified till recently in some parts of the world. But these conditions are now widely regarded as unjust. Our changing outlook about these problems and changing public opinion in favor of human liberty and equality are ample proof of the dynamic character of the idea of justice.<sup>3</sup>

*"For the formation of socialistic pattern of society based on equality, liberty and fraternity, it laid down certain provisions in Constitution of India for the Social Justice and development of the downtrodden India, as part of national commitment."*

When India became independent, the condition of the Indian people was very vulnerable and poverty-stricken, though not confined to economic one but also extended to the other social-cultural aspect. Post-independent India had expected some sort of egalitarian society to India, not only political freedom, but also social and economic freedom as well. Therefore, to achieve the socialist pattern of society based on the concepts of equality, liberty and fraternity, it laid down certain provisions in the Indian Constitution for the social justice and development of the poor.

Granville Austin stated that *"probably in no other constitution in the world has provided so much impetus towards changing and rebuilding society for the common good."*<sup>4</sup> Before its independence during the British regime, the government had introduced various provisions of reservations so as to uplift the weaker sections and tribal of the society.

<sup>1</sup> 5 O.P.GAUBA, AN INTRODUCTION TO POLITICAL THEORY 413.

<sup>2</sup> See Introduction line Prof. Adams in Charles W. Pipkin, The ideas of Social Justice, 1927

<sup>3</sup> 5 O.P.GAUBA, AN INTRODUCTION TO POLITICAL THEORY 416.

<sup>4</sup> Austin Granville, Working a Democratic Constitution: The Indian Experience.

Krishna Iyer in his work of 'Justice and Beyond' rightly proclaims "social justice is not an exact static or absolute concept, measurable with precision or getting into fixed world. It is flexible, dynamic and relative."<sup>5</sup>

In *D.S. Nakara v. Union of India*<sup>6</sup>, the Supreme Court held that the principal aim of a socialist state is to eliminate inequality in income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially in terms of security from cradle to grave. Amongst there, it envisaged economic equality and equitable distribution of income.

Through 'Social Justice', the Congress has always regarded its primary responsibility as being to emphasize its objective of an independent and united India, with no scope for exploitation, and all the diverse elements in the nation cooperating for the common good and advancement of the people. Nehru particularly was clear about the vital points that inspired the freedom movement. After the general elections of 1937, he had said: "*we went to our people and spoke to them of freedom and the ending of their exploitation; we went to that forgotten creature, the Indian peasant, and remembered that his poverty was the basic problem of India; we identified ourselves with him in his suffering and talked to him of how to get rid of it through political and social freedom.*"<sup>7</sup>

The concept of "Social Justice" which the Constitution of India, engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social Justice" is an integral part of "Justice" in the generic sense.<sup>8</sup>

The concept of welfare state wherein the governmental task have increased by several folds, setting up various administrative agencies carry out the objectives of a social welfare state. Centers around the problems concerning social justice. The doctrine of Socio-economic Justice has been recognized in Articles: 38, 39, 41, 42, 43, 43A of the Constitution. The Constitution by these articles, which are directed by the states, ensure social justice for the welfare of the state. Social Justice is not a simple or single idea of a society, but is an essential part of a complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life livable for greater good of the society at large. It requires the abolition of all sorts of inequities which result from inequalities of wealth and opportunity, race, caste, religion and title.

The proper function of a Preamble of any statute is to explain certain facts which are necessary to be explained before the enactments contained in the act can be understood.<sup>9</sup> A court may look into the object and policy of the act as decided in the preamble when a doubt arises in its mind as to whether the narrower or the more liberal interpretation ought to be placed on the language which is capable of bearing both meanings<sup>10</sup>, but an ambiguity cannot be created or emerged in

<sup>5</sup> Krishna Iyer, Justice and Beyond, Deep and Deep Publication, New Delhi (1982) p.63.

<sup>6</sup> (1983)I SCC305.

<sup>7</sup> DR. SUBHASH C. KASHYAP, THE FRAMING OF INDIA'S CONSTITUTION 119.

<sup>8</sup> 9 DURGA DAS BASU, COMMENTARY ON THE CONSITUTION OF INDIA 588.

<sup>9</sup> THRING, PRACTICAL LEGISLATION 92.

<sup>10</sup> In *re Berubari Union*, A.I.R. 1960 S.C. 845(846) (India).

order to bring in the aid of the preamble as that would be frustrating the enactment.<sup>11</sup> The preamble of the constitution is not flourished of words, but was an ideal set up for practices and observance as a matter of law through constitutional mechanism.<sup>12</sup>

The ideal and the objective of the constitution is summed up in its opening words, that is, the preamble, according to which people have declared India a sovereign, socialist, secular, democratic, republic and have resolved to secure its citizens, social, economic and political justice: Liberty of thought, expression, belief, faith and worship: and the equality of status and opportunity and to promote among them fraternity assuring the dignity of individual.<sup>13</sup> To give contents to these ideals the constitution guarantees the fundamental rights to the individual.<sup>14</sup> And imposes some positive obligations on the State in the form of Directive Principles of State Policies<sup>15</sup>.

It is well accepted by thinkers, philosophers and academicians that if Justice, Liberty, Equality and Fraternity including social, economic and political Justice, the golden goals set out in the Preamble of the Constitution are to be achieved, the Indian polity has to be educated and educated with excellence.<sup>16</sup> The mode of realization of this ideal, namely, the establishment of an egalitarian society, permeated by social, economic and political justice, is carried out in detail by the various provisions of the Constitution.<sup>17</sup>

Jurist H.M. Seervai has a different view on the Preamble, according to him, the words “Justice, liberty, equality and fraternity” are words of passion and power- that the last three were the watchwords of French Revolution. If they are to retain their power to move man’s heart and to stir them into action, the words must be used absolutely- as they are used in the Preamble. But, do they throw any light on the provisions of the constitution? The only one of the objectives which is directly incorporated in any article is “Justice; social, economic and political” for Art. 38 provides “*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 institutions of the natural life: And Art. 39 amplifies the concept of Justice by providing that the State shall ‘in particular’ direct its policy towards securing the objectives set out of clauses (a) to (f) of that article.<sup>18</sup>

‘Justice’, briefly speaking, is the harmonious reconciliation of individual conduct with the general welfare of society. Every man acts according to his self-interest, but his act or conduct is said to be ‘just’ only if it promotes the general well-being of the community. Justice is what is demanded by or conforms to public good. Therefore, all that is laid down by the law in conformity with public good is at once in conformity with Justice. In the modern democratic setup, justice has not only to be done, but it must be shown to be done. This is what is generally known as ‘Rule of Law’. There could be no republic except one founded on Justice. Justice is

<sup>11</sup> Gopalan v State of Madras, A.I.R. 1950 S.C. 27 (India).

<sup>12</sup> Indra Sahwney v Union of India, A.I.R. 1993 S.C. 447 (India).

<sup>13</sup> 8 M.P. SINGH, OUTLINES OF INDIAN LEGAL & CONSTITUTIONAL HISTORY 203.

<sup>14</sup> INDIA CONST. art. 12-35.

<sup>15</sup> INDIA CONST. art. 36-51.

<sup>16</sup> P.A. Inamdar v State of Maharashtra, A.I.R. 2005 S.C. 3226 (India).

<sup>17</sup> Golaknath v. State of Punjab, A.I.R. 1967 S.C. 1643 (India).

<sup>18</sup> 9 DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 523.

eternal. Without justice, political as well as judicial administration of the state cannot run and the country may verge upon anarchy and rebellion.<sup>19</sup> In the Preamble, the Constitution speaks of other forms of Justice which a welfare state is bound to dispense to the people who made the Constitution. The word 'Justice' envisioned in the Preamble is used in a broad spectrum to harmonize individual right with the general welfare of the society. It implies equality and consistent welfare completing demands of Distributive Justice with those of Cumulative Justice.<sup>20</sup> Justice aims to promote the general well-being of the society as well as individuals' excellence.<sup>21</sup>

In a judicial sense, justice is nothing more or less than exact conformity to some obligatory law; and all human actions are either just or unjust as they are in conformity to or in opposition to law. Our Constitution realizes that a true democracy requires not only equality but also justice. As a result of this twofold ideal, it not only provides for securing equality of status and opportunity by prohibiting discriminations by the state on the grounds of religion, race etc. but at the same time makes special provisions for the promotion of the interest of the backward and weaker section of the people, in whose case mere equality of status and opportunity may not be adequate to secure their well -being as a part of general welfare of society. The Constitution which is the fundamental law of the country has given supreme importance to Justice. A nation bereft of Justice has no civilization, no democracy and no prosperity. In the present constitutional setup, Social and Economic Justice has seriously been engaging the attention of the court. Rightly have the framers of the Indian constitution set justice above everything else and social and economic justice above political justice.<sup>22</sup>

The objective for social justice has been embodied not only in the second clause of the Preamble but also in various provisions of the Directive Principles in part IV. Social Justice is one of the sub-divisions of the concept of Justice. It is concerned with the distribution of benefits and burdens throughout the society as it results from social institutions- property systems, public organization etc.<sup>23</sup>

The Fundamental Rights include equality before law (Article 14); prohibition of discrimination in terms of religion, race, caste, sex or place of birth (Article 15); equality of opportunity in matters of public employment (Article 16); abolition of untouchability (Article 17); Protection of right to freedom of speech and expression, assembly association, free movement, residence, and settlement in any part of India, and occupation, trade or business (Article 19); protection against ex-post facto laws, double jeopardy and self-incrimination (Article 20); protection of life and personal liberty (Article 21); Right to elementary education (Article 21A); Protection against illegal arrest or detention, the right to consult and to be defended by a lawyer of one's choice and prevention of detention and police custody without being placed before a magistrate within 24 hours (Article 22); prohibition of traffic in human beings and forced labor (article 23); prohibition of children under 14 in factories, mines or hazardous occupations (Article 24);

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<sup>19</sup> 9 DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 583.

<sup>20</sup> 9 DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 584.

<sup>21</sup> Dalmia Cement (Bharat) Ltd. v. Union of India, (1996) 10 S.C.C. 104 (India).

<sup>22</sup> 9 DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 585.

<sup>23</sup> M Nagraj v. Union of India, A.I.R. 2007 S.C. 71 (India).

freedom of conscience, free profession, practice and propagation of religion (article 25); protection of interest of the minorities (Article 29&30); and the right to constitutional remedies (Article 32).

Among Directive Principles of State Policies are: the obligation on the state to secure a social order for the promotion of welfare of the people (Article 38) and in particular to secure adequate means of livelihood and equal pay for equal work to men and women, community control on material resources for the common good, and operation of the economic system, in a way that does not result in the concentration of wealth and means of production to the common detriment; protection of the children and protection against exploitation of childhood and youth (Article 39), obligation to secure right to work, education and public assistance in case of want (Article 41); just and humane conditions for work and maternity relief (Article 42); living wages for workers (Article 43), childhood care and education for the children (Article 45), promotion of educational and economic interests of scheduled caste, scheduled tribes and other weaker section (Article 46), and improvement in living standards, nutrition, and public health (Article 47) and provision for equal Justice and free legal aid (Article 39A).<sup>24</sup>

The Directive Principles cannot be enforced in the courts but they are “fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.”<sup>25</sup>

India, being a democratic republic where ‘We, the people of India’, are the sovereign. Despite of the fact that India is a federal state, it follows a single integrated system of court to render Justice with the Supreme Court of India at the apex and High Courts at the provincial level and subordinate courts under each High Court.

Access to Justice is an important criterion of democracy in action.<sup>26</sup> Ordinarily, the word ‘Justice’ indicates legal Justice<sup>27</sup> which is available only through the courts when disputes between two or more individuals or between individuals and the State assumes the form of a litigation<sup>28</sup>. For Baxi (1987), access to Justice means the ability to participate in the judicial process.<sup>29</sup> Article 21 says: No person shall be deprived of his life and personal liberty, except according to the procedure established by Law. Therefore, for a person to defend his/her liberty, they should have an access to Justice and to have that, it is important to have equal opportunity. This is ensured through Article 39A of the Indian Constitution which tries to promote Justice on the basis of equal opportunity.

In India, Supreme Court and the High Courts have played a dominant role in enabling the poor and weaker sections of the society to have access to the courts.<sup>30</sup>

<sup>24</sup> 8 M.P. SINGH, OUTLINES OF INDIAN LEGAL & CONSTITUTIONAL HISTORY 204.

<sup>25</sup> INDIA CONST. art. 37.

<sup>26</sup> V. V. Devasia & Leelamma Devasia, ‘Women, Social Justice and Human Rights’, p. 157.

<sup>27</sup> Cf. Kartar v State of Punjab, (1994) 3 SCC 569 (paras. 399, 414) - RAMASWAMY, J. (CB).

<sup>28</sup> 9 DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 583.

<sup>29</sup> Baxi, Upendra, (1987), Right to be Human, Lancer International.

<sup>30</sup> V. V. Devasia & Leelamma Devasia, ‘Women, Social Justice and Human Rights’, p. 160.

Quoting Justice Iyer<sup>31</sup> who calls for a radical change in the Judiciary: “No radical jurist, lawyer or judge, can remain content with angelic articles of the Constitution when they bark out but never bite and are out of bounds for the lowly and the lost. If Justice is what Justice does and inJustice is what inJustice does, we have, by and large, inherited and preserved a system which does little Justice and much injustice. Here is a summons for change if we harden to the times. The social dimensions of law and the new horizons of Justice seek chemical change. My thesis is that Indian jurists, alive in the Third World conditions and the lot of the Fourth World denizens, must so catalyze the operation of the legal system so as to promote social Justice and ensure, by suitable legislation and practical schemes that justice does not sway from the plentiful pariahs of the Indian society. Judicial-Reform, in the Indian constitutional context, means nothing else, nothing less.”<sup>32</sup>

Our Supreme Court has emphasized that in view of the objective of Social and Economic Justice in the Preamble and Part IV of the Constitution which are binding on the judiciary, it is the duty of Indian Courts not only to decide justiciable causes between two parties as in other countries governed by the rule of law, but also ensures social and equal justice between chronic unequal in a more positive and meaningful sense; India, therefore needs a judiciary which is in the tune with the social philosophy of the constitution.<sup>33</sup> Hence, the judiciary, as an interpreter of the Constitution and statutes and a provider of Justice, plays a crucial role in creating a socio-legal atmosphere in the country.

Former Hon’ble Chief Justice H.L. Dattu, constituted the ‘Social Justice Bench’ so as to exclusively deal with matters involving rights and entitlements of women, children and deprived sections of the society. This initiative had the objective to expedite the delivery of such aforesaid matters and to assure the weaker section by providing them with Justice and stability as a means to not be deprived of Justice at the least. To establish such a Bench to deal with cases in social justice in particular, give it a face to which people can look upon to, the highly esteemed minds of the two judges in this bench had the aim to change social and economic order of this diverse country. This bench shared views and responsibility in changing the mindset of Indian society through its variety of cases of societal importance by raising different opinions and thoughts, perhaps the expeditious disposal was not the only means for forming this bench. It cannot be denied over time that the views of judges have shaped the rights enjoyed by the weaker or poor sections in our society and this constitution of such a bench gives us further hope.

Though, the Bench upon formation looked perfect, it had its criticisms as well, which finally led to it being quashed, upon its failure to deliver a single judgment in one year. The specialized bench consisting of just two judges hampered the diversity of judicial opinions, sensitivity and interplay of thoughts as other judges had no say in it, and we should not forget that there’s no appeal against the Supreme Court. This exclusive bench, thus gave no opportunity to other benches as well as other judges to express their views in these matters and any order or judgment passed by this bench may get open to huge criticism.

<sup>31</sup> Krishna Iyer, V.R., (1985), *Judicial Justice: A New Focus Towards Social Justice*, Bombay: N.M.Tripathi.

<sup>32</sup> V. V. Devasia & Leelamma Devasia, ‘Women, Social Justice and Human Rights’, p. 163.

<sup>33</sup> Gupta v. Union of India, A.I.R. 1982 S.C. 149 (India).

Justice Jagdish Singh Khehar revived this bench on his appointment and the bench continues to hear cases for two hours every Friday.

The reach of social justice is progressive, but considering the depth of history this country holds, with all its freedom struggles and hundreds of laws offering a variety of special facilities to all its citizens, the lacuna in satisfying the basic fundamental needs leading to widespread poverty, itself creates the need of social justice in the society. With 53% of over 965 million people are under poverty line, only 16% of households meet the basic requirements as electricity, water, toilet facilities etc. and with more than 71% of women being illiterate, India needs versatile change so as to develop. The approach to education here, still needs development so as to replace the state of unemployment to recruitment and placement. Nevertheless, we cannot avoid the psychological prejudices vested in the citizens, originating and growing within us since Independence, regarding all relatable grounds as gender, caste, religion etc. Moreover, all required changes aren't as quickly attainable as it seems and perhaps our psychological barriers, which lets us divide and discriminate, cannot suddenly change into good faith but at the same time, social justice is a hope which gives us mental security against all such unfortunate or inevitable occurrences and so is achieved by the way of this bench.<sup>34</sup>

On Friday, 18<sup>th</sup> September, 2015 the bench in *Re: Inhuman conditions in 1382 prisons*<sup>35</sup>, queried the Government why there has been poor progress in releasing the under trials. The bench found that 67 percent of prisoner population in the country were under trails.

Similarly, in the case of *Bachpan Bachao Andolan v Union of India*<sup>36</sup>, which is about the steps being taken to trace the missing children. The bench complimented the UP counsel Gaurav Bhatia for promptly correcting the state government's affidavit which made it unhappy at the last hearing. The bench had imposed a fine of Rs.25000 on the UOI for not filling the vacant posts at National Commission for Protection of Child Rights during its last hearing.

The policies framed and implemented by the government so as to cater to various basic needs of the people who are poor, weak and backwards who are often discriminated and have created their own guards against the government and are still living isolated - away from the progress and development throughout the country. There still exists people who do not have the reach to educational institutions, who do not profit from any of the government policies made for them or for people at large and still live mostly unaware and deprived of opportunities. We need to analyze and understand that such people, who do not know their basic rights, do not really relate to what is happening around and do not have expectations or voice against the tensions and wrongs of the government, but can easily relate to changes which could be made by us because maybe they do not understand what it is like policies on paper but they would surely understand the actions for their betterment. Thus, the impetus to achieve social justice needs to come from within each and every individual. Keeping in mind all such discriminations which are taking place since so many years of independence but on the optimistic side, yes we are changing but at

<sup>34</sup> Shashikant, Constitution of India (Apr. 20, 2017, 12:06 AM), <https://iitbwritersbloc.wordpress.com>.

<sup>35</sup> MANU/SC/0131/2016.

<sup>36</sup> MANU/SC/1585/2016.

a low pace and what is important is that social justice should be effective enough to be able to reach to all such problems and cases prevailing. The needs of the society do not cease to exist and there are always new ones or the prevailing existing ones unsolved. One major need is employment of the people and the old employing techniques of getting hired or placed with regard to the present society is not the only one to depend up to; the country is represented at a global level now and entrepreneurship by way of establishing a business not only yields profit to the organization but also creates and provides employment to many across countries. Employing techniques that involve a judicious mix of machines and manual labor, the country's enormous economic potential can be exploited to the benefit of the less fortunate sections of the population. Without administrative and political decentralization the goals of social Justice may not be accomplished. Letting people decide what their development needs are will not only generate social and political awareness among them but also instill a sense of self-respect and build strong leadership at the local and community levels.

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