

## **SOCIAL JUSTICE: WITH SPECIAL REFERENCE TO CONSTITUTIONAL PROVISIONS AND JUDICIAL TREND IN INDIA**

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### **ABSTRACT**

*The idea of welfare state is that the claims of social justice must be treated as cardinal and paramount. Social justice is not a blind concept, It seeks to do justice to all the citizens of the state. Constant endeavour has to be made to sustain individual freedom and liberty and subject them to reasonable regulation and control as to achieve socio-economic justice. Social justice must be achieved by adopting necessary and reasonable measures. The individual freedom and liberty of citizens must be co-operated with democracy which seeks to regulate freedom and liberty in the interest of social good. Citizens must be able to resist the imposition of any restraints on individual liberty and freedom which are not rationally and reasonably required in the interests of public good in a democratic way.*

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**Keywords:** *Social Justice, Socio-Economic Justice, Liberty and Freedom.*

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### **Introduction**

Social justice is a revolutionary concept. It gives meaning and dignity to life and establishes rule of law. Justice-social, economic and political are interconnected and co-extended. We can't presume the rule of law and the idea of welfare state without all these three form of justice, which are relevant with each other. So justice in all these forms is very significant for any public welfare state. Especially in Indian context social justice is very important for the life, liberty and dignity of Individual.

### **Meaning of Social Justice**

Reasonable, Fair and equal administration of law, justice and opportunity to the each and every person, without prejudice of origin, gender, race, religion, cast, language, etc., is social justice in general.

### **Need of Social Justice**

Man is a social creature and lives in a society. Being a social creature, he has some rights which he gets from the society. In these rights equality and freedom are chief. Whenever we interpret these both rights, then the right of live with dignity is raised in pointed manner. Whenever any right is restricted then inequality and injustice to be generated, which is the root of a lot of social evils?

The Doctrine of social justice is required to finish the social discrimination which is raised by the social inequality so that every person may enjoy the dignify life. Thus doctrine of social justice is must to finish social evils and to get a gentle shape of society.

### **Indian Civil Society and Social Justice**

Indian society has social class system from ancient time. The society was divided in several classes on the ground of work, cast, slaveness, forced labour (BANDHUA'S) in ancient age of time. So that centralization of power, money, education, social powers and material things were found in ancient indian civil society.

Long time ago slave system was in trend in which humans were sold and purchased. The human business was at its extreme stage. Slaves were treated as business goods. They had no rights. Several social evils were in trend like forced labour, untouchability, child marriage, prohibition of widow marriage, sati etc. King had absolute powers of judiciary, legislature and executive. It is an established fact that power corrupts people and absolute power corrupts absolutely. So, most of kingdoms did atrocities on their citizens. By all these problems social injustice was raised.

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After that people were so much dominated and exploited in every manner in British rule. Some business family settled their relation with British administrators to earn a lot of money. Thus people were so much harassed in that time. The freedom fight of India was the fight to get some great ideals; social justice is one of them which have been adopted by the constituent assembly.

### **The Constitution of India and Social Justice**

The Constitution of India has solemnly promised to all or any its citizens justice social, economic and political; liberty of thought expression belief, faith and worship; equality of status and of opportunity; and to promote among the all fraternity assuring the dignity of the individual and the unity of the nation. The Constitution has attempted to attune the apparently conflicting claims of socioeconomic justice and of individual liberty and fundamental rights by putting some relevant provisions.

- **Preamble of Constitution: Place of Social Justice in Face Page Policy of Constitution**

The Preamble to an Act sets out the main objectives which the legislation is intended to achieve. It is a sort of introduction to the statute and many a times very helpful to understand the policy and legislative intent. It expresses what we had thought or dreamt for so long. The Constitution makers gave to the Preamble the place of pride. It embodies in a solemn form all the ideals and aspirations for which the country had struggled during the British Regime.

- **Preamble**

**WE, THE PEOPLE OF INDIA**, having solemnly resolved to constitute India in to a **SOVEREIGN, SOCIALIST, SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:

- **JUSTICE**, social, economic and political
- **LIBERTY** OF thought expression, belief, faith and worship,
- **EQUALITY** of status and of opportunity.
- and to promote among them all
- **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation ;

**IN OUR CONSTITUENT ASSEMBLY** this twenty- sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**<sup>1</sup>

Thus the preamble of constitution provides socialist democratic setup with social economic and political justice. It means that the preamble of constitution speaks to political, Social and economic justice and equality of status and opportunity. It means that the aim of constitution is to provide social justice, because preamble is the soul of constitution and speaks about the object and intention of framers of constitution. So social justice in Context of constitution gets up from the main page policy of the union of India, that is preamble. Now this is an established fact that preamble is the essential and important part of the constitution and in such situation social justice acquires its energy from this first page union policy.

When we consider number to number every article of constitution then we come to know that the whole constitution is moving around the social, economic and political justice. Every article of constitution sings the song of political, social & economic justice which all are interconnected. Art. 14 is the very first source of social justice in which the extremely of equality exists. All provisions of constitution related to social justice start from Art. 14 and get their shape by it. Whenever we do try to interpret Art. 14 then we always fall in a deep sea of reasonability and fairness.<sup>2</sup>

Right to equality is the heading given in the constitution to a group of Articles, Arts. 14 to 18. Among these Art. 14 is the equality clause because of its wide ambit and applicability. It applies to all persons while, Art, 15 and others cover only citizens.<sup>3</sup> Thus equality is a cherished ideal of humanity. the famous author A.V. Dicey (A.V. Dicey,-Law of the constitution, 10th Ed. PP-202-203) an authority on the British Constitution, has propounded his principles of rule of Law, Equality before the law is part that enduring.

The social problem presented by the existence of a very large number of citizens who were treated as untouchables has received the special attention of the Constitution as Article 15(1) prohibits discrimination on the grounds of religion, race caste, sex, or place of birth. The state would be entitled to make special provisions for women and children, and for advancement of any social and educationally backward classes of citizens, or for the SC/STs. A similar exception is provided to the principle of equality

<sup>1</sup> Preamble of the constitution of India.

<sup>2</sup> Art. 14 of The Constitution of India.

<sup>3</sup> Art. 15 of The Constitution of India.

of opportunity prescribed by Article 16 (1). Article 16 (4) allows the state to make provisions for the resolution of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the state. Article 17 proclaims the untouchability has been abolished & forbids its practice in any form & it provides that the enforcement of untouchability shall be an offence punishable in accordance with law. This is the code of provisions dealing with the problem of achieving the idea of socio-economic justice in this country which has been prescribed by the Constitution of India.<sup>1</sup>

Article 19 enshrines the fundamental rights of the citizens of this country. The seven sub-clauses of Article 19(1) guarantee the citizens seven different kinds of freedom and recognize them as their fundamental rights. Article 19 is considered as a whole furnishes a very satisfactory and rational basis for adjusting the claims of individual rights of freedom and the claims of public good.<sup>2</sup> Articles 23 and 24 provide for fundamental rights against exploitation. Article 24, in particular, prohibits an employer from employing a child below the age of 14 years in any factory or mine or in any other hazardous employment.<sup>3</sup>

Article 38 requires that the state should make an effort 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 national life.<sup>4</sup> Article 39 clause (a) says that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes, or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.<sup>5</sup>

Article 41 recognizes every citizen's right to work, to education & to public assistance in cases of unemployment, old age, sickness & disablement and in other cases of underserved want.<sup>6</sup> Article 42 stresses the importance of securing just and human conditions of work & for maternity relief.<sup>7</sup> Article 43 holds before the working population the idea of the living wage and Article 46 emphasizes the importance of the promotion of educational and economic interests of schedule castes, schedule tribes and other weaker sections.<sup>8</sup>

### Judicial Trend

After our independence a significant change has occurred in the role of judicial process in our society. courts are now taking leading part in the design of administration of many state services including services for mentally ill and retarded, for prison population, for public welfare recipients, and for abused children and other dependent persons. The Supreme court of India evolved a new mechanism of public interests litigation or social interests litigation in the early eighties.

This judicial activism sharing the passion of our Constitution for social justice was started since the Menaka Ganghi case,<sup>9</sup> in which fundamental right of personal liberty has been converted into a regime of positive human rights unknown in previous constitutional diction. State of Uttar Pradesh (right to human dignity), Sheela Barse V. Union of India<sup>10</sup>, M.K. Sharma V. Bharat electronics Ltd.<sup>11</sup>, Sankar V. Durgapur Projects Limited relying on Olga Tellis the court held that compelling a person to live in subhuman conditions amounts to the taking away of his life, Poola Bhaskara Vijay Kumar v. State of Andhra Pradesh (right to prisoner to get wages (Art. 21) Peoples Union for Democratic rights V. Police Commissioner, Delhi Police<sup>12</sup> (against police brutality), Krishen Pattanyak V. State of Orissa (Victims of starvation deaths in the district of Kalahandi, Orissa), vishal Jeet V. Union of India (child abuse and forced prostitution), M.C. Mehta V. State of Tami Nadu (right of children against exploitative employment in hazardous industries), Delhi Judicial Service Association, Tis Hazari Courts Delhi V. State of Gujarat (also known as Nadiad case) (police brutality to C.J.M. Nadiad), Banwasi Sewa Ashram U.P. where advises and other back-ward class people used forest as their habitat and means of livelihood and parts of such forests were declared as reserved.

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1 Art. 16 of The Constitution of India.  
 2 Art. 19 of The Constitution of India.  
 3 Art. 23 and 24 of The Constitution of India.  
 4 Art. 38 of The Constitution of India.  
 5 Art. 39 of The Constitution of India.  
 6 Art. 41 of The Constitution of India.  
 7 Art. 42 of The Constitution of India.  
 8 Art. 46 of The Constitution of India.  
 9 A.I.R. 1978 S.C.C. 597  
 10 (1986) 25 S.C.C. 176 (right to legal aid)  
 11 (1987) 3 S.C.C. 231 (right to have safety and protection to the workers)  
 12 (1989) 4 S.C.C. 430

In these cases the judges declared that in a developing society judicial activism is essential for participative justice. The bureaucrats as well as the elected representatives will have to face the judicial admonition and pay the penalty of the people in misery cry for justice. So we can see that the Supreme Court has always stepped in to protect the interest of the Indian citizens whether it has been has the case for consumer protection of claiming insurance or be it representation of suppressed classes. It has used the medium of social justice as an umbrella term to deliver justice.

### **Conclusion**

To find out the general definition is very hard. It is the basic essence of rule of law. The concept of social justice is not only to establish the rule of real justice within the four walls of court rooms but in all the aspects of society. This concept provides the equal rights, opportunities and fullness of life till the person very last line and number of society. But it is not only the duty of state or courts to establish the social justice, the real solution lies within us only.

We ourselves are the ultimate solution of the social justice. We have to aware while dialoguing with poor and backwards. We have to shift from general equality to specific equality of opportunities. We must kept this fact in our mind that if a large number of people show disregard or disgrace to smaller sections or backward sections of community then the social justice loses its identity. The proper reorganization from the majority of people plays a vital role in the identity of weaker section and in the social justice ultimately.

From the very beginning of the social state, laws have been developing in the positive direction to establish the rule of law and civilization with human dignity. It means laws develop towards the human social good. The ultimate goals of laws are to recognize the rights, dignity, fair and natural justice for every individual. The aim of every legal system is to give the very fullness of life to every single individual till the last line and the last number of society.

Justice should not only the subject of intellectual discussions or debates in close A/c conference rooms, but it must be dispensed with equal opportunity without prejudice of any social, economic or political ability, and very importantly on time. Judges have to play their role without any favour or fear to establish the rule of law and the justice-political, social and economic which all three are inter connected.

### **References**

- ✓ Art. 14 of The Constitution of India.
- ✓ Art. 15 of The Constitution of India.
- ✓ Art. 16 of The Constitution of India.
- ✓ Art. 19 of The Constitution of India.
- ✓ Art. 23 of The Constitution of India.
- ✓ Art. 14 of The Constitution of India.
- ✓ Art. 24 of The Constitution of India.
- ✓ Art. 14 of The Constitution of India.
- ✓ Art. 38 of The Constitution of India.
- ✓ Art. 39 of The Constitution of India.
- ✓ Art. 41 of The Constitution of India.
- ✓ Art. 42 of The Constitution of India.
- ✓ Art. 43 of The Constitution of India.
- ✓ Art. 46 of The Constitution of India.
- ✓ All India Reporter.
- ✓ Supreme Court cases.

