

Social Justice and the Poor in India

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Abstract

The concept of social justice has become a common part of the political lexicon in recent years. In the modern organized society, administration of Justice is the paramount duty of the State. Access to Justice is considered as one of the chief Human Rights of any individual. In this regard, every State is creating institutions, the court, to provide justice to its citizen. In India, the Indian Justice system suffers from two major defects, namely delay in Justice and costly Justice, which led to a situation in which the poor cannot afford for justice in the court system prevailing in the country. The person those who are denied justice in such situation have nowhere to go. After comparing the prospect and problems of the Act with other judicial mechanism available, it can be concluded that the Gram Nyayalaya, the court at grass root level is a revolutionary concept of providing access to justice to millions of rural poor living in the remote areas. Although, some practical problems may be detected at the early stage of implementation but the earnest steps to plug the loopholes may make it more beautiful and effective than the ADR techniques.

Keywords: Justice, Speedy Trial, ADR

The Concept of Social Justice

“It is unacceptable that someone can work full time - and work hard - and not be able to lift themselves out of poverty.” Sherrod Brown

“It is poverty to decide that a child must die so that you may live as you wish.”
Mother Teresa of Calcutta

“In a country well governed, poverty is something to be ashamed of. In a country badly governed, wealth is something to be ashamed of.” Confucius

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“Money won't create success, the freedom to make it will.” Nelson Mandela

The term social justice was first used in 1840 by a Sicilian priest, Luigi Taparelli d'Azeglio, and given prominence by Antonio Rosmini Serbati in *La Costituzione Civile Secondo la Giustizia Sociale* in 1848. It has also enjoyed a significant audience among theorists since John Rawls book. *A Theory of Justice* has used it as a pseudonym of distributive justice.

The concept of social justice is a revolutionary concept which provides meaning and significance to life and makes the rule of law dynamic. When Indian society seeks to meet the challenge of socio-economic inequality by its legislation and with the assistance of the rule of law, it seeks to achieve economic justice without any violent conflict. The ideal of a welfare state postulates unceasing pursuit of the doctrine of social justice. That is the significance and importance of the concept of social justice in the Indian context of today.

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 or a preposterous dogma. It seeks to do justice to all the citizen of the state. Democracy, therefore, must not show excess of valour by imposing unnecessary legislative regulations and prohibitions, in the same way as they must not show timidity in attacking the problem of inequality by refusing the past the necessary and reasonable regulatory measures at all. 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.

That, shortly stated, is the concept of social justice and its implications. Citizens zealous of their individual freedom and liberty must co-operate with democracy which seeks to regulate freedom and liberty in the interest of social good, but they 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. It is in the light of these difficult times that the rule of law comes into operation and the judges have to play their role without fear or favour, uninfluenced by any considerations of dogma or isms. The term social justice is a blanket term so as to include both social justice and economic justice.

The Problems of the Poor in India

“Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.” Nelson Mandella

“Poverty is the worst form of violence.” Mahatma Ghandi

“Poverty is like punishment for a crime you didn't commit.” Eli Khamarov

“Women do two thirds of the world's work. Yet they earn only one tenth of the world's income and own less than one percent of the world's property. They are among the poorest of the world's poor.” Barber B. Conable, Jr.

“Poverty is everyone's problem. It cuts across any line you can name: age, race, social, geographic or religious. Whether you are black or white; rich, middle-class or poor, we are ALL touched by poverty.” Kathleen Blanco

This vice of social inequality assumes a particularly reprehensible form in relation to the backward classes and communities, which are treated as untouchable; and so the problem of social justice is as urgent and important in India, as is the problem of economic justice. Equality of opportunity to all the citizens to develop their individual personalities and to participate in the pleasures and happiness of life is the goal of economic justice. The concept of social justice thus takes within its sweep the objectives of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities.

The problem of poverty and unequal distribution of wealth may be confined to the bigger cities and towns in India but the problem accentuated by the vice of social inequality existing in a gross form prevails in all of our villages. For instance, the harijans constitute a large class of landless labourers who are treated as untouchables by the rest of the community, who have no house to live in, generally no clothes to wear, who do not get food to eat & sometimes even decent drinking water is beyond their reach. The poor also have no access to legal assistance. Poor people are vulnerable to injustice. Poverty fosters frustration, ill feeling and a brooding sense of injustice.

Democracy realizes that this problem, which concerns a large number of citizens, cannot be successfully met unless law is used wisely to restore balance to the economic structure and to remove the causes of economic inequality.

The Constitution of India and Social Justice

The Constitution of India has solemnly promised to all its citizens justices- 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 socio-economic justice and of individual liberty and fundamental rights by putting some relevant provisions.

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 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.

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. Article 31 makes a specific provision in regard to the fundamental right to property and deals with the vexed problem of compulsory acquisition of property.

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.

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.

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 undeserved want. Article 42 stresses the importance of securing just and humane conditions of work & for maternity relief. Article 43 holds before the working population the ideal 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.

The social problem presented by the existence of a very large number of citizens who are 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 of opportunity prescribed by Article 16 (1) in as much as Article 16(4) allows the state to make provision 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 that 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 ideal of socio- economic justice in this country which has been prescribed by the Constitution of India.

Where does the Solution Lie?

The solution to social injustice lies within us only. We should be aware of the expressions - the poor, the backwards, social justice which are being used to undermine standards, to flout norms and to put institutions to work. We should subject every claim whether it is made in the name of the poor, the backward, whosoever to rational examination. After it has been in effect for a while, subject every concession to empirical evidence. We should shift from equality of outcomes to equality of opportunities. And in striving towards that, nudge politicians to move away from the easy option of just decreeing some reservations, etc to doing the detailed and continuous work that positive help requires, the assistance that the disadvantaged need for availing of equal opportunities.

We must bear in mind that if the majority disregards smaller sections in the community, it drives them to rebellion. We should try to refashion the policies of state on truly secular and liberal principles. The individual and not the group should be the unit of state policy.

Since no society is static, and social processes are constantly changing, a good legal system is one which ensures that laws adapt to the changing situations and ensure social good. Any legal system aiming to ensure good should ensure the basic dignity of the human being and the inherent need of every individual to grow into the fullness of life. The hope of the Indian masses does not lie in the legal system alone, but in their conscious awakening and fight for social and economic justice. Knowledge of their legal rights however, can be an important motivating force in this. Many NGO's and individuals are emerging in different parts of the country to take up the cause of social change and change for a more just India, where justice will not merely be talked about in intellectual discussions on the intricacies of law, or written about in books, which the masses can't read, or exchanged for good old money, but actually lived and experienced by the majority of the people.

Indian Judiciary's Interpretation of Social Justice

In *Oriental Insurance Co. Ltd. v/s Hansrajbai V. Kodala*² the Apex Court held, "the object is to expeditiously extend social justice to the needy victims of accidents curtailing delay - if still the question of determining compensation of fault liability is kept alive, it would result in additional litigation and complications in case claimants fail to establish liability of defendant, Wherever the Legislature wanted to provide additional compensation, it has done so specifically."

The Supreme Court has firmly ruled in *Balbir Kaur v/s Steel Authority of India*³ "the concept of social justice is the yardstick to the justice administration system or the legal justice and it would be an obligation for the law Courts to apply the law depending upon the situation in a manner whichever is beneficial for the society" as the respondent Steel Authority of India was directed to provide compassionate employment to the appellants.

² (2001) 5 SCC 175

³ (2000) 6 SCC 493

In *Superintending Engineer, Public Health, U.T. Chandigarh v/s Kuldeep Singh*⁴ the Supreme Court held that "It is the duty of the authorities to take special care of reservations in appointments as a part of their constitutional duties to accord economic and social justice to the reserved categories of communities. If ST candidate is not available, the vacancy has to be given to SC candidate and the reserved roster point has to be filled in accordingly." In *Ashok Kumar Gupta v/s State of U.P*⁵ it was held by the Apex court that "To give proper representation to SC/ST Dalits in services is a social justice which is a fundamental right to the disadvantaged. It cannot be said that reservation in promotions is bad in law or unconstitutional."

In *Consumer Education & Research Centre v/s Union of India*,⁶ it was held that "Social justice is a device to ensure life to be meaningful and livable with human dignity. State has to provide facilities to reach minimum standard of health, economic security and civilized living to the workmen. Social justice is a means to ensure life to be meaningful and livable."

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 of consumer protection or claiming insurance or be it representation of suppressed classes. It has used the medium of social justice as an umbrella term to deliver justice.

⁴ (1997) 9 SCC 199

⁵ 1997 (5) SCC 201

⁶ (1995)3 SCC 42