



Social Justice: An Indian Scenario

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ABSTRACT

The study of social justice must attend to what justice may mean and whether this justice is available within a variety of social contexts. Theorists engaged in the examination and critique of justice have developed a range of understandings that can be applied. Activists have also provided ideas and practices to the development of social justice. No single conception or practice of justice is adequate for all points in history or for all forms of society. Rather, as societies develop and change through historical processes, so too does justice. India is having one of the most elaborate justice delivery system consisting of police, investigation, prosecution and courts but there has been hardly any programme or scheme for educating and empowering the marginalized groups regarding various entitlements, procedure and forums to access the Justice delivery system, as a result whereof the marginalized group is mostly trapped in the cobweb of police, legal practitioners and courts consuming considerable energy and resources, which otherwise have been invested in productive activities.

This paper tries to investigate into the means and aims of social justice, its impact and the consequences of the same in the contemporary Indian society with some instance. further responds to the challenges of raising awareness to emerging and often competing views on problems faced by Indian judiciary and delay caused in dispensation of justice. This paper asks the practitioner, the activists, and the scholars to consider the variety of notion of justice that exist and encourage all to develop a fairer system of justice at the local, national and global levels. It will also critically examine most of the legal statements and decisions in the way through secondary data.

KEYWORDS: Social justice, Vulnerable, Barrier and Legislation

Received 16 Dec, 2021; Revised 28 Dec, 2021; Accepted 31 Dec, 2021 © The author(s) 2021.

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I. INTRODUCTION

The French Revolution came up with the principles of liberty, equality and fraternity to create a just social order. Thus, social justice is inextricably related with the social order/social structure and therefore a multi-dimensional concept that has to be understood in various ways. The basic aim of social justice is to create a just social order in society. The concept of social justice first surfaced in the wake of industrial revolution and the development of the socialist doctrine. The United Nation 2006, document “social justice is an open world. The role of the United Nations” states that “social justice may be broadly understood as the fair and compassionate of the fruit of economic growth.

Justice as Fairness is the idea that was fully developed and presented in book form in 1971 by John Rawls. The idea simply proposes that the most reasonable principles of justice are those, which can be agreed upon by mutual consent of individuals under fair conditions. John Rawls started working on the idea of ‘justice as fairness’ in 1957 when he published his nine-page article in Journal of philosophy on justice as fairness. The book attracted wide publicity because of the novelty of idea and lucid presentation and was generally accepted to have revived normative political theory after a gap of almost 100 years. Rawls did not stop, in 1971; he went on adding improving and spreading his idea of justice as fairness till his death in 2002. But the main idea remained intact.

The Concept of Social Justice is Replete with multifarious connotations. It is equated with a welfare state. It is considered to be analogous to an egalitarian society. It is treated to be an incident of the Rule of Law. It is co-extensive with social welfare. Because Social Justice is supposed to dwell mainly in the abolition of all sorts of inequalities which are the concomitants of all sorts of inequalities of wealth and opportunity, race, caste, religion, distinction and title. The Declaration of American Independence 1776 discovered it into the man inalienable rights of equality life and liberty. The French Declaration of Rights of man 1789 discovered it into the natural imprescriptible and inalienable rights of man. Such Rights are regarded to be natural because all men are equally endowed with rights by equal war¹

II. SOCIAL JUSTICE: CONCEPT AND DEFINITION

‘Justice’ which has been equated with ‘DHARMA’ in our Shastra is the basis of entire universe. In every system of law, it has been given a supreme place. In fact, it is the fundamental law which governs our life and whenever there is any deviation from this basic law there is likelihood of crisis.

Today, all the civilised societies are engaged in the joint endeavours to secure justice as there are countless injustice done from man to man. Much thinking is done over problems related to this area. In spite of best thinking and best to secure justice, the common man is not getting its due. This problem has increased with growing complexities of society. But with these growing complexities of society, the desire for justice has become stronger and quest for it has become more intensified.

“What is Justice”? The concept is very difficult to define. Many attempts to define it are either thwarted or failed. Justice changes with the advancement of society. Today individual wants justice not only against one another but against the community and against state. So many factors combine to make its composition. Many evils at one time have been part of Indian life for centuries have become crime. For example, untouchability, bonded labour, dowry practice etc.²

This is evident from the way various thinkers and philosopher conceived the notion of justice. John Rawls conceptualizes justice as fairness.³ The concept of just society should emphasis on the principle and practice aspect of it, justice is notion allotment of something to person, in other word distributive justice that involves comparative allotment. Each theorist therefore defends its own definition and therefore it has become problematic to define social justice⁴. But each conceptualization is concerned with the distributive character for imparting justice. He further gives three different and conflicting meaning and interpretation of justice as three principles of justice i.e., to each according to his rights, to each according to his deserts, and to each according to his needs.⁵

Social justice means providing justice to all those people who have had to face injustice having been subject to some form of dominance. They may have had to face injustice due to their verna, ethnicity, profession, gender, economic status, region, religion, tradition, language or physique. Social justice, basically, is an incessant battle against privileges-based meritocracy. Humanism and compassion are the cornerstones of this battle. The idea of securing an equal opportunity for all and the theory of social diversity are its sword and rifle.⁶

III. IMPORTANT THEORIES OF SOCIAL JUSTICE

There are numerous theories of justice and equality. Each theory has a specific target to achieve on whose basis it is being theories. They have to take into account all the complex conditions. To found a just society, you need the conception of justice. Indian/Hindu conceptions of justice are found in *Smrites* and *Dharma Shastras*. But, the concept or theory of social justice in the modern sense is, probably, missing in our ancient texts. But, in the occidental world, the concept and theories of social justice are found since the days of Socrates and Plato. The disciples of Socrates, Thrasymachus and Polymarchus, argued that justice was the “justice of the strong and wealthy”, Socrates dissented and asserted that justice was based on knowledge for “knowledge is virtue” and vice versa. Inspired by the teaching of his mentor Socrates, Plato enunciated a class-based theory of social justice.

The utilitarian theory of justice comes from the ideas and works for social reform introduced by Jeremy Bentham, John Stuart Mill and their followers. Utilitarianism, as a doctrine, argues that the rightness of actions is to be judged by the overall amount of happiness it produces. David Miller distinguishes between four types of utilitarian theories as act utilitarianism utilitarian generalization, actual-rule utilitarianism and ideal-rule utilitarianism that try to produce general amount of happiness in society.⁴

Another important theory is propounded by John Rawls⁷, his watershed publication *A Theory of Justice* (1971) came at a time when serious questions were raised about the future of liberal political theory, especially in the own country United States in the context of the ongoing furious debate over the Vietnam war, the raging racial inequality and large-scale unemployment. Rawls in his theory of justice seeks to unite the libertarians’ ideal of liberalism with the economic egalitarianism into a single theoretical structure. He seeks to redefine the relationship between liberty, equality and fraternity. He rejects meritocracy and advocates fair equality of opportunity in order to correct morally arbitrary inequality in society. He is uncompromising on the primacy of liberty but wants that society endeavours to equalize economic wealth, social status and political power.⁸

After the independence of India, the preamble of the Indian Constitution solemnly resolved to provide all its citizens justice-social, economic and political; liberty of thought, expressions, belief, faith and worship; equality of opportunity and status; and to promote among them all fraternity, assuring the dignity of individual and unity. Theses are main principle of Ambedkar’s theory of social justice.⁹

- **Social Justice under the Constitution of India:**

A picture of the constitution will give us the right perspective for appreciation of the scope and place of Social Justice as an aspiration of the Nation. The former chief Justice of India, P.N. Bhagwati observed: "Today a vast social revolution is taking place in the judicial process, the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for providing access to justice to large masses of the people who are denied their basic human rights and to whom freedom and Liberty has no meaning.

Social Justice is the foundation stone of Indian Constitution. It is found useful for everyone in its kind and flexible form. Although it is not defined anywhere in the Constitution but it is an ideal element of feeling which is the goal of Constitution. Social Justice is a relative concept which is always changeable according to circumstances, need and ambition of people. But in our Constitution, it is used in very wider sense which includes social and economic Justice both. According to chief Justice Gajendragakar-"In this sense social Justice hold the aims of equal opportunity to every citizen in the matter of social and economical activities and to prevent inequalities."

- **Concept of Access to Justice**

Social justice concept and theories have evolved in the 18th to 20th centuries as an integral part of the growth of the liberal democracies in the West. Access to Justice refers in the words of Prof. Upendra Baxi, "is the availability of effective means to seek justice by which one can participate in the judicial process."

It is to be noted that Access to justice is not just of crucial importance in the enforcement of other substantive rights but a human right in itself. In a welfare State, one of the fundamental duties of the State is to make available for its citizens, justice-delivery mechanisms. Failure to make the necessary means and mechanisms available is tantamount to the denial of justice. In the absence of justice-delivery mechanisms, an individual whose rights have been violated is unable to effectively vindicate his rights. In other situations, although means and mechanisms may be available, citizens may find themselves deprived of justice, as the former may be inaccessible to them. Such a situation may arise on account of the existence of various impediments that prevent a justice-seeker from realizing effective access.¹⁰

- **Barriers to Access to Justice**

There is a very common adage "Justice delayed is justice denied" (William E Gladstone) and "Justice denied anywhere diminishes justice everywhere" (Martin Luther King Jr.). Delay in dispensation of Justice generally devalues judgements. It generally creates anxiety among the litigants and result in deterioration of the evidence upon which rights are determined.¹¹

What are the impediments that may generally hinder citizens from effective access to Justice? Broadly speaking there are operational barriers and structural barriers to access to justice. Operational barriers are those that are related to administration of justice system.¹² Undue delay in the disposal of cases, high costs of litigation, procedural technicalities, unfilled vacancies in judges' posts, poor ration of judges to population, backlog of cases, are some of the operational barriers that disallow effective access to justice. While structural barriers reflect problems that have to do with the very basic form of societal organizations but are inherently linked to the administration of justice.¹³ Inadequate laws, lack of legal aid and legal representation, lack of legal awareness, socio-economic inequalities and such other factors compose the structure barriers.¹⁰

In India three issues that regularly bedevil public debate over what is just, might serve to illustrate the point. First what secularism actually means has become a matter of contentious debates. Is secularism about constructing a "wall of separation" between the state and religion. The second tension that continuously bedevils political debate in India is the one between universal conceptions of gender justice and personal laws of minority religions and third tension ridden issue in India is that of affirmative action, or protective discrimination for the Dalits/scheduled castes. The disagreements over the above cited principles of justice: secularism, gender justice and affirmative action, pose some of the most difficult problem for Indian democracy.¹⁴

IV. HISTORICAL BACKGROUND OF SOCIAL JUSTICE IN INDIA

In India, the urge for democratic socialism to have a just order has come from Marxist socialist tradition with influence of Marx and Gandhi, Jawaharlal Nehru, Jayaprakash Narayan, Acharya Narendra Deve, Ram Manohar Lohia, Ashok Mehta and Minoo Massani were all influenced by democratic socialism and strove hard for the dissemination and inculcation of those values.

Ambedkarian approach is relevant in Indian context, as it goes beyond the difference traditions of social justice in India.¹⁵ Throat has emphasized the importance of Ambedkarian perspective for social development in India. Ambedkar has presented a radical alternative for social development in India as 'State socialism' in his States and Minorities. His social development agenda was different from Nehru and Gandhi is

clear when Ambedkar responded to the resolution of Nehru on aims and objectives of future Constitution on December 13, 1946 in the Constituent Assembly:

Ambedkar said:

I must confess that coming as the resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this resolution, although non-controversial, is to my mind very disappointment. I should have expected him to go much further than he has done... there are certain provisions which speak of justice, economic, social and political. I should have expected some provisions whereby it would have been possible for the state to make economic, social and political justice a reality and I should have from that view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country (Ambedkar, 1947).

“... Political reforms.....cannot ignore the problem arising out of the prevailing social order”. (Ambedkar, 1990).¹⁶

Ambedkarian perspective of just society cannot be confined to his initiatives for the social liberation of Dalits by annihilation of caste by framing the Constitution and making provisions for SCs/STs in terms of protective discrimination policy and special measures and safeguards for these groups, though it is extremely important. Ambedkar has provided an alternative to social order in India, which could be free of hegemony, exploitation and oppression based on caste, class, ethnic group, sex, etc.¹⁷

The position of Social Justice in present times for an instance were the extension of the thoughts of Buddha, Christ, Kabir and Marx. Those fighting for social justice are, undoubtedly, responsible for the constriction of the meaning of the concept.⁷ In the process of analysing the present situation of social justice then we have to look Sociological Jurisprudence in its Indian perspective. It would be necessary to survey the present as well as the pre independence Indian Law.

If we look the position of social justice in medieval time, we found that in 1564 Akbar abolished *Jizya* and began to charge uniform trade tax from all, this tax was particularly hated by the Hindus as it was a symbol of their inferiority and involved quite a lot of humiliation. The abolition of *Jizya* tax meant that both the Hindus and Muslims came to be considered as equal citizens of the state. The offices of the state were open to all on merit and without distinction of caste and religion. Akbar noticed many social evils prevailing in the society for which both the Hindus and Muslims were responsible. He now embarked upon social reforms which touched both the communities whether it was child marriage, *sati* practice and encouraged widow remarriage among the Hindus. In 1562, he stopped the practice of converting the prisoners of war to Islam. He also abolished slave trade¹⁸

Although large number of Acts were passed viz., abolition of slavery, prevention of exploitation of women and children, also agrarian reforms and humanization of institution of marriage were few initiatives by British colonial ruler, while making these Acts, the British adhered to a “cautions approach”, because they do not want to hurt the sentiments of Indian people on other hand.

After the independence, social legislation gained a new impetus. The rule of law and the legal system were strengthened considerably. The Constitution of India became the main inspiration for making a variety of legislations.

Social Justice to Vulnerable Groups:

In India, attempts to repair complex forms of historical injustice, specifically untouchability, have produced unanticipated outcomes. Independent India adopted an ambitious programme of redistributive justice, which sought to turn existing inequities and hierarchies on their head. To accomplish this task, the project had to take cognisance of background inequalities, many of which were composed of little but layers of historical injustice. This initiative ensures the right of all citizens to privileges, opportunities, income, voice, and recognition. Most of the goods to which people have a right can be summarised in three categories: the right to material good, to voice and to recognition. Within the project of redistributive justice, affirmative action policies guaranteed the physical presence of Dalits in state-maintained educational institutions, in public employment, and in elected bodies. The advantages of this policies are, however, unevenly spread out. The constituency of affirmative action has benefited, but in bits and pieces.¹⁴

Social groups like Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Caste (OBC), women, children, minorities and the people with disabilities need special focus and attention. According to the Article 46, the welfare measures that are directed to State for weaker section include: promote with special care their economic interest, educational interest, protect them from social injustice and from all forms of exploitation.

Although women are an important segment of human family, they often do not get their due. They undergo pain and sufferings in the crime committed against them. There is a need to take a fresh look at the laws and understand why they have failed so miserably. The Criminal Law (Amendment) Act, 2013 was enacted in order to amend the Indian Penal Code, 1860, the Criminal Procedure Code, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.¹⁹, was enacted after the Supreme Court laid down guidelines for the same in the Vishakha case.²⁰ But even after the amendment there is no sign of decline in the crime against women.²¹

India is a welfare State with constitutional mandate and democratic obligations to ensure social inclusion of all its citizens with special focus on the vulnerable, disadvantaged and weaker sections of the society. Empowering them at par with the rest of the society as part of social inclusion and inclusive development is the commitment of successive Governments to the people of the country. Some of the important measures and interventions can be classified as educational, social, economic, political, employable and affirmative action i.e., reservation in employment, education, political representation etc.²²

The constitutional perspective of social justice:

The framers of Constitution realized that unless unequal is treated unequally the socio-economic, political, regional and gender gaps could not be bridged. The compelling social situation led to the creation of special provisions in the Constitution for the advancement of socially and economically backward classes of citizens. The positive discrimination was thought of as a policy mechanism to realize the social goals set before the nation and as means by which the backward citizens could reach the mainstream to achieve social justice.²³

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.

Directive principles of state policy bring social justice: -

The Directive Principles of State Policy lay foundations for a 'Welfare State' which needs to work for weaker sections of society. Accordingly, there is a need to identify specific groups among SC, ST and OBCs for whom specific welfare measures could be designed and ensured.

It is also observed that common and indigent man could not pay court-fees for seeking justice in court of law. The existing provision for exemption from court-fee for paupers apply only to extremely poor people and is of no use to the ordinary poor litigants who may be able to pay some money but not the entire cost. It has been, therefore, rightly mentioned that doors of temple of justice are open with a golden key. It must also be remembered that the mandate of Article 38 of our Constitution, which reads as under: "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 national life."²⁴ In India all State securing economic justice through Article 39 specifically which contains broader perspective of social justice. Article 39(a) speaks of men and women equally to have the right to adequate means of livelihood. Article 39(b) Distribution of ownership and control of the material resources of the community to the common good. Article 39(c) to ensure the economic should not result in concentration of wealth and means of production to the common detriment.; Article 39(d) speaks of equal pay for equal work for both men and women; Article 39(e) speaks of health and strength of workers, men and women and the measures to prevent exploitation of children. Article 39(f) directs those children be given opportunity and facilities to develop in a healthy manner and in conditions of freedom and dignity.

Social justice through the welfare legislation:

The welfare legislations enacted during the post-independence era. The establishment of Human Rights Commission, Women's Commission, Family Courts, Industrial tribunals, Administrative Tribunals, Ombudsman, Panchayati Raj, and Lok Adalats etc are only a few illustrations to suggest that the sole objective is to make justice available to a common man and ameliorate the sufferings of masses including women, children and other neglected and weaker sections of the society. The laws relating to consumers protection, dowry prohibition, abolition of bonded labour, control of environmental pollution etc. have been enacted to provide social justice. As of January 2017, there were about **1,248 laws**. However, since there are Central laws as well as State laws, it is difficult to ascertain their exact numbers as on a given date and the best way to find the Central Laws in India is from the official websites.

V. ROLE OF JUDICIARY AS A DISPENSER OF SOCIAL JUSTICE:

The cry for speedy justice is going to be shriller in the next three decades as a conservative judicial estimate predicts that case pendency is going to register a five-fold increase to touch 15 crores but the judge's strength will go up only four times to settle at 75,000. At present, nearly 19,000 judges, including 18,000 in trial courts, are dealing with a pendency of 3 crore cases, resulting in a civil case lasting for nearly 15 years.²⁵ In fact, more than 30 million cases are now pending with different courts of India and the number of such inconclusive cases in 24 High Courts has mounted up to 3.85 million. The accumulation of such pending cases points out that our judicial system is collapsing day by day losing faith of the people.²⁶

It may be emphasized once again that to expect judiciary alone to provide a complete answer to the miseries of millions is an illusion. It is necessary that the two other organs of state, i.e., the Governors and the administration should make it a common cause by joining hands with the judiciary on the principle of cooperation, mutual respect and good will. A hostile attitude on the part of the governors and the bureaucrat, can thwart all the attempts of the judiciary in this direction to a very large extent.

Although the Concept of Social Justice has no definite and fixed meaning – The Supreme Court in **D.S. Nakara v. Union of India**²⁷ has observed that the principal aim of socialism is to eliminate inequality of income and status and standard of life and to provide a decent standard of life to the working people. The expression 'social and economic justice' involves the concept of 'distributive justice', which can note the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between the unequal in society. Social Justice, therefore, comprehends more than lessening of inequalities by differential fixation, giving debt relief or regulation of contractual relations.

In **Minerva- Mill's case**²⁸, and the Supreme Court put on firm hold that the directive principles and fundamental rights should be harmoniously interpreted as two wheels of the chariot to establish an egalitarian social order After **Champak am Dorai Raj's case**²⁹. The State shall protect them from social injustice and all forms of exploitation. **Rangachari's case**³⁰, **Thomas case**³¹, declared that reservation in Promotions is a part of equality in Article 16(1) which was reiterated in **Indira Sahwny's case**³² that Article 16(4) is facet of Article 16(1) itself. Social justice to Scheduled Casts and Schedule Tribes for socioeconomic equality in results on par with other social group citizens has constitutionally been guaranteed to them. The protection of the minorities in Articles 29 and 30 is a facet of right to social justice and prohibition on grounds of religion outlawed by guaranteeing freedom of religion, right to practice of their choice and right to manage subject to social welfare of their institutions.

The Apex Court in **Ashok Kumar Gupta case**³³ held that the term Social Justice is a Fundamental Rights. In **Ajaib Singh**³⁴, Court observed that in dealing with industrial dispute the Courts should keep in mind the Doctrine of Social Justice. Supreme Court in **Municipal Corporation of Delhi**³⁵, the provision entitling maternity leave under the maternity Benefit Act, 1961, even to women engaged on casual basis or on muster roll basis on daily wages and not only to those in regular employment are in consonance with the doctrine of social justice and any contention against it is contrary.

VI. CONCLUSION

In spite of the tremendous progress in almost all of the area especially in economy, science and technology, infrastructure development, the gap between poor and rich is being increased day by day. In India, courts have performed a great role to make the social justice successful. In the field of distributive justice, legislature and judiciary both are playing great role but courts are playing more powerful role to deliver compensatory or corrective justice but these principles are known as mutually relatives not mutually opposites. Ideals and goals are to deliver social justice. "In keeping silent about evil, in burying it so deep within us that no sign of it appears on the surface, we are implanting it, and it will rise up a thousand-fold in the future. When we neither punish nor reproach evil doers, we are not simply protecting their trivial old age, we are thereby ripping the foundation of Justice from beneath new generations."

India is one among the nations that upholds the principle of social justice. Yet, enunciating the principle of social justice is one thing, but making it effective is quite another. In order to achieve social justice, we, the Indian people, need to address the myriad of problems that people face in this country, because of caste, gender, religion, culture, tradition and other³⁶.

It is clear from the above discussion that still gross social inequity in all levels is existed in the society. we have to redress this inequality and change our focus from criticism to developing a theory of justice committed to intervening in and transforming the real societies. In conclusion it will be important to stress, that India has not the shortage of laws for securing justice, it has only the shortage of commitment for implementation of the laws. It should also be remembered that it is not only the responsibility of political elite to work for achieving justice to all the section of the society, in fact it is duty of every Indian to assist his country man so that justice can be secured to every section of the society.

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