

SOCIAL JUSTICE

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Social Justice is an expression which has found its way in the vocabulary of the Constitution and has become a part of the Constitutional terminology. The Constituent Assembly even before it set out to fulfil its task of framing a Constitution for India declared in the Objectives, resolution passed by it that social justice is one of the goals to be achieved. The Constituent Assembly declared its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution wherein shall be guaranteed and secured to all the people of India, justice, social economic and political. It became the vision of the people of India and a promise of the Constitution speaking through its preamble and some of the enacting provisions that there shall be secured to all the citizens, social justice.

2. It has been a passion with philosophers, politicians, sociologists and other social thinkers to brood over social justice and define its parameters from time to time. Plato thought that society being a combination of different types of men, the producing type, the military type, the ruling type, brought together under the impulse of their need for one another to make a perfect whole which is the product and image of the whole of human mind social justice consists in the full discharge by each one of these types of the specific function for which it is naturally meant. Justice is a bond which holds the society together as a harmonious union of individuals and social justice cannot but be such as to uphold that bond. For Aristotle it became distributive justice, laying emphasis on proportionate allocation of office according to the worth of the individual. Distributive justice was the most powerful instrument for the prevention of revolution which helped in the strengthening of the bond that keeps the society as an integrated whole. Numerous others. Ancient, mediaeval and modern thinkers without citing names for fear of important omissions have focussed their attention and given expression to their views on social justice. And what has emerged out of their varying treatment of the subject is that it is only one of the dimensions of social justice considered to be significant for the society in a certain age, country situation, by the propounder of the view that can be presented in the name of and as the whole of social justice itself. The relativity of the whole idea could not escape the notice of an ardent exponent of social justice amongst the contemporary thinkers a great jurist like Justice V. Krishna Iyer, who has observed that social justice is a relative concept taking in its

wings the people their traditions their toils and torments, their blood, sweat and tears.

3. To find a universal definition of justice, transcending space and time, may be not more than a dream. The nebulous state of social justice on the philosophical side may not, however, prove to be a deterrent for structuring a precise connotation of the term, once it has become part of a legal document like the Constitution. The same note was struck In *Muir Mills v Suti Mill Mazdoor Union*, A.I.R. 1955 S.C. 170, when it was stated that social justice must be founded on solid foundations and not fanciful notions of any adjudicator. But a sample survey of the judicial decisions will indicate that adherence to a specific line is missing and the portrait of a developing idea is to be discerned, the contours still taking shape. If the criterion of greatest good for greatest number was applied in *Sadhu Ram v. Pulin Behari* (1984) 3 SCC 410, the concept of distributive justice was found to have its own appeal in *Lingappa v. State of Maharashtra* (1985) 1 SCC 479, while municipal cleanliness leading to an environment free of pollution and public nuisance was the dominant consideration in *Municipal Council, Ratlam v. Vardichan* (1980) 4 SCC 162.

4. The occupants of a large building in the metropolis in Calcutta, about 38 families, who could not trace their possession to a lawful title, were permitted to purchase the building at a competitive price by offering a higher bid, about one lakh rupees more than the one which was the price at which the bargain for sale had been settled by the Receiver with one of the parties to the litigation. That was what had happened in *Sadhuram's* case and the reason for the view which the Hon'ble Judges decided to take In that case was that a meaningful definition of rule of law must be based on the realities of contemporary societies and where the realities of contemporary societies are acute shortage of living accommodation then if the occupants are prepared to bargain and rehabilitate-themselves on competitive terms, they should be encouraged and no technical rules should stand in their way. The Court should do social justice, it was declared in firm tone, and social justice, which does not have any ritualistic formula or any magical charm, is "the recognition of greater good to larger number without deprivation of accrued legal rights of any body. The idea was further expanded by stating that the felt necessities of time and the convenience of the situation and the needs for adjusting the rights of a larger number of people without deprivation of any accrued right of any body could be justice according to law. In administering justice, social or legal, jurisprudence has shifted away from high spun technicalities and abstract rules to recognition of human beings. Thus it was the inarticulate factor that large number of human beings should not be dislodged from their possession, if it is otherwise possible to do so. loomed large and was considered to be a factor that must and should influence the minds of the Judges. However, the excuse of paucity of funds pleaded by Municipality was repulsed in dealing with the situation arising out of

the failure of the civic body to perform its duty in regard to a dirty nallah flowing through a densely populated locality in the town of Ratlam. And when the Court upheld the constitutional validity of a law in Lingappa's case, that imposed restriction on transfer of land by members of Scheduled Castes and Scheduled Tribes and provided for annulment of transfer and, restoration of lands to them.

5. The challenge of social justice, as seen by Sabyasachi Mukharj J.(as he then was) in the case of Sadhuram, cited supra, is "primarily a challenge to the society at large"; and this observation is a presentation of the crux of the problem in the most vivid terms. Society has, indisputably, an entity, and personality as well, distinct from that of its individual members. It is, therefore, an obligation of the society that justice (whatever be its contents and in whatever manner it may be figured in a given situation at a given point of time) is done to its members and is not denied on account of the prevailing social conditions to them by the society itself. Social equality was denied to a large section of the population in our country and on account of their social status, they had no opportunity for the optimum use of human faculties and for rise and development in personal life. The appalling social conditions operating on the people in varying degrees in different planes had already attracted the attention of social reformers and political workers. The makers of the Constitution could not shut their eyes to the realities of life and had to resolve that if India was to be a Republic founded on equality, fraternity, and freedom, the citizens must have and be meted out justice, social economic and political.

6. Welfare of the people was paramount and no social instrument, be it Constitution or otherwise, would prove equal to its task, unless it promotes welfare of the people and can be effectively used to wipe every tear from every eye. Gandhi thought that anything that is prejudicial to the welfare of the nation is untouchable. No wonder, that social justice was linked with welfare of the people, when it was provided in Article 38 of the Constitution, which is the enacting part, that 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. Elimination of inequalities in status, facilities and opportunities, of discrimination on grounds of religion, race, caste, sex, place of birth and like, of denial of opportunity for securing justice by reason of economic or other disabilities, promotion of the education and economic interests of the weaker sections of the people and their protection from social injustice and all forms of exploitation are but different facets of the conspectus of social justice which are illuminated by the central light house, the welfare of the people, people as a whole, (for Article 38 says welfare of the people, without using any qualifying or restrictive word before "people") according to the needs and requirements of the times. It is rather axiomatic that promotion of the welfare of the people

involves two steps, one, achieving over-all welfare of the people and two, harmonising the interests within the people.

7. Social justice, comprehensive enough to include economic justice as well as political justice, must be distinguished from both, just as component part from the whole, and so distinguished, It has to stand, as Ambedkar thought, on the legs of equality and equal opportunity. And that Is what seems to be the situation in the ultimate analysis. Says Justice P.B. Gajendragadkar In "Law, Liberty and Social Justice" that "the concept of social justice In a comprehensive sense takes within Its sweep the objective of removing all Inequalities and affording equal opportunities to all citizens In social affairs as well as economic activities." For doing justice, the basic structure of society, more exactly the way in which the major social Institutions distribute fundamental rights and duties and determine the division of advantages from the point of view of social cooperation is Important. It may be necessary from time to time to highlight a particular aspect of social justice, or a particular angle from which social justice is to be viewed. But the fact remains that whatever Is adopted as a measure for imparting social justice It has to subserve the same old Ideal and objective of Serve Bhavantu Sukhinah (let all be happy).

[J.T.R.I. JOURNAL – Second Year, Issue – 4 & 5 - Year – March, 1996]