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Legal opus

Issue No. 12
July 2019



LEGAL OPUS

Issue 12 | July 2019

<i>Content</i>	<i>Page No.</i>
<i>One Nation One Election; Legal and Constitutional Issues</i> <i>Dr. Tharanatha</i>	1
<i>Enforcing Resolution 47 to settle the Kashmir Dispute - A Review</i> <i>Mr. Santhosh Prabhu and Mr. Sumith Suresh Bhat</i>	7
<i>Debt Bondage: Law and Enforcement Issues</i> <i>Dr. Gagan Krishnadas and Dr. Ramesh</i>	14
<i>International Regime Relevant to Climate Change and Renewable Energy</i> <i>Mrs. Chandralekha V. and Dr. T. R. Maruthi</i>	23
<i>An Analysis on Media Ethics and Guidelines of Press Council of India</i> <i>Mrs. Shubhalakshmi P.</i>	32
<i>Multiculturalism - A Boon or A Bane to the Minorities?</i> <i>Dr. Annapoorna Shet</i>	42
<i>JUXTAPOSING- The Indian Scenario of players and Legal aspects of Sports</i> <i>Mrs. K. Vinutha</i>	50
<i>Health under British India & the Committees to Protect Right to Health</i> <i>Mrs. Reshma</i>	57
<i>Bayer V Natco: An Example of use of Lexibilities in the trips agreement.....</i> <i>Mr. Dipa Gautalair</i>	68
<i>An Assessment of the Labelling Regulations in the Indian Food Industry</i> <i>Mrs. Jayamol P. S.</i>	77
<i>Relevance of Professional Ethics in Modern Legal Practice</i> <i>Mrs. Sharika Rai</i>	88
<i>Indian Judiciary and Social Justice in India</i> <i>Mr. Ravindra K. Rajputh</i>	94
<i>Online Shopping - Security Issue and Defective Service</i> <i>Mr. Karthik Anand</i>	101
<i>Problem of Women in Unorganised Sector : Special Ref. to State of Gujarat</i> <i>Ms. Vaishakhi Thaker</i>	107
<i>Safeguarding the Dignity of Women Under Criminal Law</i> <i>Miss. Shantika U. M.</i>	116
<i>Judicial Approach towards the Medcio Negligence Cases</i> <i>Mrs. Deepa Salian</i>	123
<i>Legalperson under Transfer of Property Act- A Legal Dimension</i> <i>Mr. Rakshith B. V.</i>	133
<i>The Principle of Idea-Expression Dichotomy in Copyright Laws</i> <i>Anuttama Ghose</i>	141
<i>Global Brand Building and Legal Framework</i> <i>Mr. Roopesh</i>	151
<i>Making Food a right for all in India: Myth or Reality</i> <i>Ms. Grishma Soni</i>	
<i>The Law of Adultery in India</i> <i>Mr. Maheshchandra Nayak</i>	



Indian Judiciary and Social Justice in India

Ravindra K. Rajput *

Introduction

The concept of Social Justice is full with diverse connotations. It is sometimes equated to Welfare State. It is also considered to be analogous to an Egalitarian society. It is treated to be an incident of the Rule of Law.¹ It seeks to do justice to all the citizen of the state.

The concept of Social-economic Justice is a living concept and this forms the core to the concept of rule of law and to an ideal welfare State. The Constitution of India is a design of mechanisms at work in socio-economic Jurisprudence. The Fundamental rights and the Directive principles of State Policy basically provide the basis for governance of the country and provide a social order in which Justice: Social, economic and political, shall be enforced uniformly in all the institutions of National life.

Justice is genus, of which social justice is one of its species. Social justice is considered as a dynamic device to mitigate the distress of the poor, dalits, tribal's and deprived sections of the society and to elevate them to the level of equality where they can lead a life of dignity.

The concept of Social Justice

The notion of social justice is considered to be relatively new as none of the history's great philosophers - not Plato or Aristotle, or Confucius or even Rousseau or Kant; saw the need to consider justice or the redress of injustices from a social perspective. The concept first surfaced in Western thought and political language in the wake of the industrial revolution and the parallel development of the socialist doctrine. It emerged as an expression of protest against what was perceived as the capitalist exploitation of labour and as a focal point for the development of measures to improve the human condition. It was born as a revolutionary slogan embodying the ideals of progress and fraternity.²

* Assistant Professor, SDM Law College and Centre for Post Graduate Studies in Law, Mangaluru. Email: adv_ravirajput@yahoo.com

¹ Anshuman Gupta, "The Concept of Social Justice and the Poor 2006", Retrieved from <http://www.legalserviceindia.com/articles/sojt.htm>

² The International Forum for Social Development Social Justice in an Open World The Role of the United Nations, United Nations, New York, 2006, p. 12. Retrieved from <http://www.un.org/esa/socdev/documents/ifsd/SocialJustice.pdf>



The application of social justice requires a geographical, sociological, political and cultural framework within which relations between individuals and groups can be understood, assessed, and characterized as just or unjust. In modern times, this framework has been the nation-State.³

The Constitution of India has given 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 has 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 device 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".⁴

Further, Mr. Justice K. Ramaswamy has expounded the concept of Social Justice in *Consumer Education Research Centre v. Union of India*⁵ and observed: "The Preamble and Article. 38 of the Constitution of India are the supreme law envisages social justice as its arch to ensure life to be meaningful and liveable with human dignity".

Social Justice and the Indian Constitution

The makers of the Constitution realised that unless the unequal's are treated unequally, the political, socio-economic, gender and regional gaps would not be abridged. The compelling social situation led to the creation of special provisions in the Constitution of India for the development of social and economic backward classes of citizens. The concept of positive discrimination⁶ was introduced as a policy mechanism to achieve the social goals set for the nation and seen as means by which the backward class of individuals could reach the mainstream and thereby achieve social justice.

An important inspiration for Social Justice can be drawn from the Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policy of the Constitution of India. The Preamble which states that the people of India have undertaken to secure Justice: Social, Economic and Political and the mandate by Article 39A of the constitution which imposes, a duty on the State 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.

In *Air India Statutory Corporation v. United Labour Union*⁷ the Supreme Court stated that the Constitution commands Justice, Liberty, Equality and Fraternity as supreme

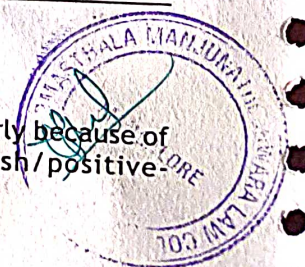
³ Supra note 2 p.12

⁴ S.P. Gupta v. Union of India, AIR 1982 SC 149

⁵ 1995 SCC (3) 42

⁶ The act of giving advantage to those groups in society that are often treated unfairly because of their race, sex, etc. (<https://dictionary.cambridge.org/dictionary/english/positive-discrimination>)

⁷ AIR 1997 SC 645



values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. 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...

In *Dalmia Cement (Bharat) Ltd v Union of India*⁸ the Supreme Court observed: 'It is a settled law that the Fundamental Rights and the Directive Principles are two wheels of the chariot; neither of the two is less important than the other. Snap one; the other will lose its efficacy. Together, they constitute the conscience of the constitution to bring about social revolution under rule of law. The Fundamental Rights and the directives are, therefore, harmoniously interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., social and economic justice provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation.'⁹

However, it is seen that the makers of the Constitution allowed the non-enforceability of these rights, their fulfillment being contingent on the state's economic capacity. However, they should be included in government policies if the state could afford to do so. Consequently, the positive obligations on the State with financial limitations, acted as constrain in the implementation of these principles.

This led to an integrated approach where the fundamental rights and directive principles as mutually complementary and harmonizing. A major beneficiary of this approach is the 'right to life' a human right that foretells a quality of life consistent with human personality. Article 21 of the Constitution, the right to live with dignity, was given an expansive interpretation to recognise not only physical existence but also the necessities of life and a better tomorrow. The right to livelihood¹¹, education¹², shelter¹³, health¹⁴, just and humane conditions of work to workers¹⁵, proper living conditions in the government protective homes particularly for women and children¹⁶, and others became and are a part of the understanding of what constitutes a meaningful life. Further, Articles 39(Equality regardless of gender, Right to equal pay for work, Rights of children, Limits on employment of children); 41(State support for the elderly,

⁸ (1996) 10 SCC 104

⁹ Ibid p.120

¹⁰ Article 21 of the Constitution of India states 'no person shall be deprived of his life or personal liberty except according to procedure established by law.'

¹¹ *Olga Tellis v Bombay Municipal Corporation* AIR 1986 SC 180

¹² *Unnikrishnan v State of A.P.* AIR 1993 SC 2178

¹³ *Chameli Singh v State of Uttar Pradesh* AIR 1996 SC 1051

¹⁴ *Consumer Education & Research Centre v Union of India* (1995) 3 SCC 42

¹⁵ *Delhi Jal Board v National Campaign for dignity and rights of the sewerage and allied workers* (2011) 8 SCC 568

¹⁶ *Upendra Baxi v State of U.P.* (1998) 8 SCC 622



107

841

State support for the unemployed, State support for the disabled, Right to work); 42(Right to safe work environment); 43(Right to reasonable standard of living); 45(provide early childhood care and education) and 47(Right to health care) contain the main objectives, namely, the building of a welfare State and an egalitarian social order.

The Supreme Court of India and Social Justice

The role of judiciary in India has been seen to achieve the dream of Social Justice as provided in the Preamble and various provisions of the Constitution of India. The Supreme Court has played a pivotal role to make India a welfare state and to make the dream of Social Justice a reality. The Supreme Court has acted as Instrument of Social Justice and has given adequate support to causes of weaker sections of Society. The Judiciary has virtually enforced Directive Principles of State Policy through the doors of Fundamental Rights with the interpretive tools.

In India, Social justice can be seen achieved through Public Interest Litigation; through Judicial Activism and Judicial Review. Justice V. R. Krishna Ayer and P. N Bhagwati recognized the possibility of providing access to Justice to the poor and the exploited people by relaxing the rules of locus standi. The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoner's. The PIL was filed by an advocate on the Basis of the news item published in Indian Express, highlighting the plight of thousands of under trial persons languishing in various Jails in Bihar. These proceeding led to the release of more than 40,000 Under Trial prisoners. Right to Speedy Justice emerged as a basis fundamental right which had been denied to these, prisoners.¹⁷ And thus, in subsequent cases the same pattern was adopted by the Judiciary.

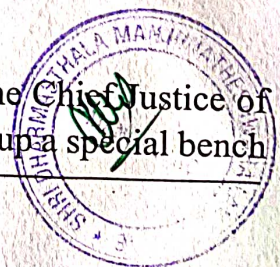
Further, Judicial Activism and Public Interest Litigation are seen as two sides of the same coin, they go hand in hand. Through Judicial Activism the apex court has activated the administrative machinery when they have failed to perform their legal obligation. Thus, it is seen by this judicial process, not merely initiation of action in case of inaction, but the courts have also monitored and channelized the action in the proper direction.

Thirdly, the power of judicial review is an integral part of our constitutional system. It is an essential component of the rule of law, which forms one of the basic feature of the Constitution of India. Here, every State action has to be tested for its adherence to Rule of Law and exercise is performed, when occasion arises, by reason of a doubt raised in that behalf in the courts.

Social Justice Bench

In the month of December, 2014 when Justice H L. Dattu was the Chief Justice of India, the Supreme Court of India had issued a notification to set up a special bench

¹⁷ Hussainara Khaton v. State of Bihar, AIR 1979 SC 1360



known as the Social Justice Bench (SJB). The Bench was constituted to specially deal with matters in the domain of 'social justice' which was pending before the Supreme Court for many years. The objective behind this was to adopt a specialized approach towards such cases of social justice for early disposal, which in turn would help the affected people obtain the fruits of the rights guaranteed to them under the Constitution of India.

Some of the issues related to social justice pending at that time were: release of surplus food grains for the use of the people living in drought affected areas, to frame a fresh scheme for public distribution of food grains, taking steps to prevent untimely death of women and children, hygiene of midday meals provided under the Midday meal schemes, night shelter for homeless and destitute, equality in providing medical facilities to citizens irrespective of economic conditions, hygienic and clean drinking water and secured living conditions for women forced into prostitution.¹⁸

The Bench in its early setup consisted of Justice Madan B Lokur and Justice UU Lalit, who used to sit for two hours to once a week to deal with these important issues affecting a large number of deprived and discriminated population, expeditiously.

Although the Bench was very vibrant at the time of its constitution, it suffered a very big setback when later it had been done away with the existence of the Bench and distributed the matters to several other Benches. This led to increasing pendency of cases and not a single judgement after that by the Bench. Seeing the kind of cases coming up before the Bench, it is a necessity to exert pressure on the governments or authorities to implement the benefits and rights properly. But again a question arises on judicial activism (interference of judiciary in the functioning of the legislature of government). As 'Separation of Power' is a part of the basic structure of our Constitution, a question can well be raised on the judiciary exceeding its powers under its domain. This may lead to a loss of faith of the government on the judiciary, which may in the long run make the government defiant in following the directions of the judiciary. Since the judges are appointed by President or Governor, it may lead to loss of transparency in appointment of judges also.¹⁹

The bench hears matters relating to the careless approach of governments and the enforcement agencies in prevention of human trafficking; finding missing children; provide hygienic midday meals; welfare measures to construction workers and rehabilitation of acid attack victims and protecting women's dignity by reining in rough elements. To illustrate the concern couple of cases to show the involvement of the bench are as follows: while dealing with the issue of the plight of acid attack victims the bench has come up with a very significant step. It provided for an institutional mechanism for rehabilitation of victims of acid attacks and it also forced the Centre and States to draw a strict regime for the counter sale of the corrosive

¹⁸ Social Justice Benches of Supreme Court of India; Retrieved from <https://www.gktoday.in/academy/article/social-justice-benches-of-supreme-court-of-india/>

¹⁹ Supra note 18



substances used in acid attack. The second achievement was with relation to the equitable distribution of building cess collected by the government. The Bench forced the government to make efficient utilization of the 2% cess collected on the cost of construction from builders to the betterment and welfare of construction workers and their children's education. The amount collected by way of cess is now Rs. 20,000 crore. The Centre has now framed a policy for the registration of all construction workers under the Employees Provident Fund Office.²⁰

It was Justice J S Khehar who revived the popular social justice bench that was set up in December 2014. This has been a very welcoming step on his part as the need of this special bench was being strongly felt with the piling up of cases related to social justice before the Supreme Court for many years. The Bench started functioning from December 12, 2016²¹.

With regard to proceeding before the SJB is not adversarial but a cooperative and collaborative process to adjudicate in a social context. The judges are not only sensitive to any inequality of parties but also positively inclined towards the disadvantaged, thereby adopting a problem-solving approach to secure the observance of basic human rights. The cooperative and collaborative process aims to involve the petitioner, the State or public authority and the Court through means of dialogue, contestation and norms for eliciting grounded factual realities for implementing schemes and programmes of the relevant ministries, departments and programmes of state governments dealing with skills, livelihoods, entrepreneurship development, health, education, social assistance and others.

We see a 'twin-strategy of expediency' the matters before SJB. A great focus is placed on tackling delay, reduction of paper work and time allowed for oral submissions. According to Justice Lokur: 'The first strategy is to minimize the workload and update the position about the two year or more pending cases to know their exact status particularly where government of India is responsible for social welfare programmes/schemes. The second strategy is to ask the parties to submit written submissions as the SJB does not want to spend hours hearing arguments or going through records running into thousands of pages. After receiving the written submissions, we have time to read and focus on important issues such as implementation and related matters. The written submissions will be supplemented by a brief oral submission in the court. It may take thirty minutes or one hour but the time limit for making oral submissions would definitely be reduced. We will be in a position to solve these issues and bring about a fundamental change in Indian society.'

Conclusion

Notwithstanding the above-mentioned constitutional and judicial approach, the social reality of India remains disturbing. A 2015 UN Report states that nearly 300 million

²⁰ Supra note 18

²¹ Ibid

people live in extreme poverty in India and face deprivation in terms of access to basic services including health, education, water, sanitation and electricity.²² The UN Annual Hunger Report, 'The State of Food Security in the World 2015', states that India is home to 194 million hungry persons: a figure that surpasses China. In 2012 India had the highest global number of under-five deaths with 1.4 million children dying before reaching their fifth birthday.

A serious deterrent for Non-inclusive growth patterns and impregnable, though invisible, are walls of separation between people on the grounds of caste, class, religion or gender, which have promoted social and economic inequality. The vanity of both the political leadership and the administrative authorities in discharging their constitutional role and statutory duties coupled with widespread corruption signify the absence of social justice and the blatant violation of human rights. Added to this in the administration of justice, trial time in India has become a great challenge to the judiciary.

So the best way the Bench can achieve its goals is to maintain transparency in its decision making and ensure that its orders are not unreasonable for the government to enforce it. The challenge for the bench is the limited bench time being given to them. It feels like due consideration need to be made in considering more judicial bench time and to this would be the need of increased bench size, if the SJB needs to tackle its function successfully. Nevertheless, the SJB is a great start and a reflection of a progressive judicial commitment to provide social justice in a nation of 1.35 billion people can be seen.

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²² The UN Economic and Social Commission for Asia and the Pacific, 'India and the MDGs: Towards a Sustainable Future for All' (The UN India Report 2015), Retrieved from <http://www.unescap.org/resources/india-and-mdgs-towards-sustainable-future-all>



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