

CONCEPT OF SOCIAL DEMOCRACY AND SOCIAL JUSTICE: JUDICIAL APPROACH

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Abstract

Concept of democracy and justice has undergone changes from time to time, from country to country and from thinkers to thinkers. In Preamble, the Constitution of India declared to constitute India into a sovereign, socialist, secular, democratic and republic. Also, resolved to secure to all its citizens Justice-social, economic and political. The concept of democracy is not limited to political democracy, but extends to social and economic democracy under the constitutional framework. In the Preamble itself, the Constitution has expressly dealt with aspects of justice i.e. social, economic and political. This is an attempt to elaborate the concept of social democracy and social justice with reference to the Preamble of the Constitution of India.

Key words: *the Preamble, social justice, social democracy, welfare state*

Introduction

The Constitution of India is a unique document. It is not a mere pedantic legal text but it embodies certain human values, cherished principles and spiritual norms and recognizes and upholds the dignity of man. It accepts the individual as the focal point of all development and regards his material, moral and spiritual development as the chief concern of its various provisions. It does not treat the individual as a cog in the mighty all powerful machine of the State but places him at the center of the constitutional scheme and focuses on the fullest development of his personality. The various provisions of the Constitution are enacted for the purpose of ensuring the dignity of the individual and providing for his material, moral and spiritual development and they would be meaningless and ineffectual unless there is rule of law to invest them with life and force.¹

Parliamentary democracy generally envisages (i) representation of the people, (ii) responsible Government and (iii) accountability of the Council of Ministers to the Legislature. The essence of this is to draw a direct line of authority from the people through the Legislature to the Executive. The character and content of parliamentary democracy

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¹ Bachan Singh v. State of Punjab, AIR 1982 SC 1325.

in the ultimate analysis depends upon the quality of persons who man the Legislature as representative of the people. It is said that "elections are the barometer of democracy and the contestants the lifeline of the parliamentary system and its set-up."²

Meaning and contents of social democracy: Trinity of Liberty, Equality and Fraternity

Social democracy means a way of life which recognizes liberty, equality and fraternity as principles of life. They are not separate items in a trinity but they form union of trinity. To diverse one from the other is to defeat the very purpose of democracy. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. Articles 15(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for the protection of society. The right to social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 of the Constitution, are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society, meaningful.³

Aspects of justice and welfare state

The Preamble uses the words "social justice" while speaking of "Justice - social, economic and political". Thus, social facet and the economic aspect are the ideal goal of the welfare State. The Constitution casts a responsibility on the State to sustain social and economic security, for the Preamble is the floodlight illuminating the path to be persuaded by the State to set up a sovereign, socialist, secular, democratic republic.⁴

Concept of social justice under the Constitution

The preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and livable with human dignity. 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. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak,

² S.R.Choudhari v. State of Punjab, AIR 2001 SC 2707.

³ Mrs. Valsamma Paul v. Cochin University, AIR 1996 SC 1011.

⁴ State of Jharkand v. Harihar Yadav, AIR 2014 SC (Supp) 1081.

dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, pecury to ward off distress and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. In a developing society like ours, steeped with unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc. to reach the ladder of social justice. What is due cannot be ascertained by an absolute standard which keeps changing, depending upon the time, place and circumstances. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandate the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to favour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results.⁵

Social Justice is a means to ensure life to be meaningful and livable

The Preamble and Article 38 of the Constitution of India - the supreme law, envisions social justice as its arch to ensure life to be meaningful and livable with human dignity. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are corner stones of social democracy. The concept 'social justice' which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of "justice" in generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex of social change to relieve the poor etc. from handicaps,

⁵ All India Statutory Corporation v. United Labour Union, AIR 1997 645, Para 41 A and 42.

penury to ward off distress, and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation. Social security, just and humane conditions of work and leisure to workman are part of this meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity, the State should provide facilities and opportunities to them to reach at least minimum standard of health, economic security and civilized living while sharing according to the capacity, social and cultural heritage. (Para 20)

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Social, economic and political justice through independence of judiciary

The Preamble of our Constitution stipulates justice - social, economic and political for all citizens of India. It is too late in the day to dispute the position that justice has to be administered through the Courts and such administration would relate to social, economic and political aspects of justice. The Judiciary therefore becomes the most prominent and outstanding wing of the Constitutional System for fulfilling the mandate of the Constitution. For its sound functioning, it is, therefore, necessary that there must be an efficient judicial system. For Rule of Law to prevail, judicial independence is of prime necessity.⁷

Complete justice promised by the Constitution

The Constitution itself, in no uncertain terms, demands that the State shall strive, incessantly and consistently, to promote fraternity amongst all citizens such that dignity of every citizen is protected, nourished and promoted. The Directive Principles, though not justiciable, nevertheless "fundamental in the governance of the

⁶ Consumer Education and Research Centre v. Union of India, AIR 1995 SC 922, Para 21.

⁷ Subhesh Sharma v. Union of India, AIR 1991 SC 631, Para 8.

Country", direct the State to utilize the material resources of the community for the common good of all, and not just of the rich and the powerful without any consideration of the human suffering that extraction of such resources impose on those who are sought to be dispossessed and disempowered. Complete justice social, economic and political, is what our Constitution promises to each and every citizen. Such a promise to each and every citizen, even in its weakest form and content, cannot condone policies that turn a blind eye to deliberate infliction of misery on large segments of our population.⁸

Significance of the Preamble

After the advent of the Constitution of India, the State is under an obligation to improve the lot of the work force. Article 23 prohibits, inter alia, beggar and other similar forms of forced labour. The Directive Principle of State Policy incorporated in Art. 38 mandate the State to secure a social order for promotion of welfare of the people and to establish an egalitarian society. Article 39 enumerates the principles of policy of the State which include welfare measures for the workers. The State policy embodied in Art. 43 mandates the State to endeavour to secure, by a suitable legislation or economic organization or in any other way for all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and Cultural opportunities. Article 43A enjoins on the State to take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishment, or other organizations engaged in any industry. The fundamental rights enshrined in Arts. 14 and 16 guarantee equality before law and equality of opportunity in public employment. Of course, the preamble to the Constitution is the lodestar and guides those who find themselves in a grey area while dealing with its provisions. It is now well settled that in interpreting a beneficial legislation enacted to give effect to directive principles of the State policy which is otherwise constitutionally valid, the consideration of the Court cannot be divorced from those objectives. In a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit on the labour by the legislature but without rewriting and/or doing violence to the provisions of the enactment.⁹

⁸ Nandini Sunder v. State of Chhatisgarh, AIR 2011 SC 2839, Para 12.

⁹ Steel Authority of India Ltd. v. National Union Water Front Workers, AIR 2001 SC 3527.

Directive Principles of State Policy

Every law must be tested with reference to preamble and Directive Principles of State Policy. Our constitutional history shows that we at one point had rigorously defended individualistic rights (e.g., Right to Property). Slowly we have moved towards community rights by invoking Directive Principles of State Policy as a tool to judicially interpret Part III of the Constitution. Directive Principles of State Policy is a normative goal in the Constitution. Such important part cannot be restricted to only Part III interpretation and reduced to two wheels of chariot rather it is like a bright sun which should shine in every part of the Constitution.¹⁰

Socialist concept

There cannot possibly be any doubt that socialistic concept of the society as laid down in Part III and IV of the Constitution ought to be implemented in the true spirit of the Constitution. Decisions are there of the Supreme Court on more occasions than one stated that democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. In *D.S. Nakara's Case*, AIR 1983 SC 130, as also lately in *Secretary, H.S.E.B. v. Suresh*, AIR 1999 SC 1160, the same has been well pronounced.¹¹

Conclusion

The Constitution of India embodies certain human values, cherished principles and spiritual norms and recognizes and upholds the dignity of man. The Preamble contains in a nutshell, its ideals and its aspirations. The preamble is not a platitude but the mode of its realization is worked out in detail in the Constitution.

Social democracy means a way of life which recognizes liberty, equality and fraternity as principles of life. They are not separate items in a trinity but they form union of trinity. To diverse one from the other is to defeat the very purpose of 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. The aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law,

¹⁰ Justice N.V. Ramana in *Jindal Stainless v. State of Haryana*, AIR 2016 SC 5617, Paras 180,181.

¹¹ G.B. Pant University of Agriculture and Technology, Pantnagar, Nainitalv. State of U.P., AIR 2000 SC 2695, Para 3.

therefore, is a potent instrument of social justice to bring about equality in results.

No authority created under the Constitution is supreme; the Constitution is supreme and all the authorities function under the Supreme law of the land. The rule of law under the Constitution has a glorious content.¹²



¹² Subba Rao, C.J. Sikri, Shah, Shelat and Vaidialingam, JJ. In L.C. Golak Nath v. State of Punjab, AIR 1967 SC 1643, Para 15.