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A Social Justice and Human Right in India

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Abstract

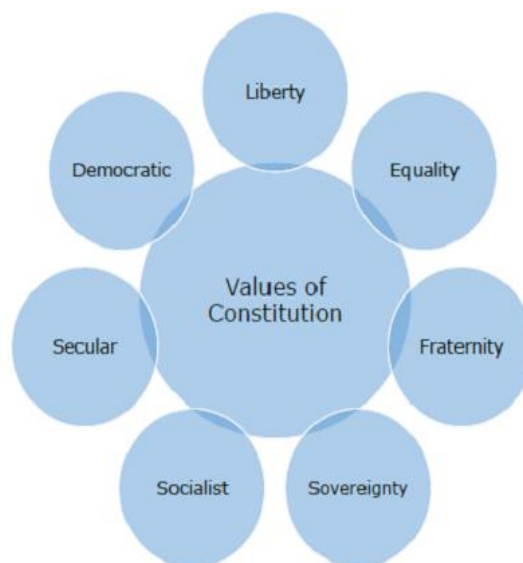
This paper focus on social justice and human right in India, Social Justice as a concept is based on equal distribution of Justice. Social Justice as a concept in India is related most specifically with equal distribution of rights without discrimination of gender, caste, creed or economic status. The purpose of social justice is to maintain or to restore equilibrium in the society and to envisage equal treatment of equal persons in equal or essentially equal circumstances. The social solidarity was to be brought about by the concept of social justice. In the Indian Constitution it finds place significantly in the Preamble, Fundamental Rights and Directive Principles of State Policy. The leaders of India "s freedom movement visualized that in the new dispensation following political freedom, the people should have the fullest opportunity for advancement in the social and economic spheres and that the state should make suitable provisions for ensuring such process.

Key word- Rights , Human, Justice, Equality

Introduction

The fundamentals of the Indian Constitution are contained in the Preamble which secures its citizens, Justice, social, economic and political, Liberty of thought, expression, belief, faith and worship, Equality of status and opportunity, and to promote among them all Fraternity assuring the dignity of the individual and the unity of the nation. The theme of the objectives permeates throughout the entire constitution. It was to give effect to this objective the Fundamental Rights and the Directive Principles of the State policy was enacted in Part III and Part IV of the Constitution, and through them the dignity of the individual was sought to be achieved and maintained. The absolute concept of liberty and equality are very difficult to achieve in modern welfare society. That is why fundamental rights have not been provided in absolute terms. The form in which such rights have been provided is in the form of restrictions which the government is expected to follow in the governance of the country. However, the enjoyment of these rights is subjected to the interest of the people. The State may therefore, encroach on the domain of these rights for the common good or the common interest. The question whether a fundamental right be subjected to restrictions for the common good or public interest will depend upon the conditions and circumstances prevailing at a particular time. The Constitution of India, instead of formulating fundamental rights in absolute terms, and depending upon the judiciary to come to the rescue of the legislature, permits the State to impose directly to impose limitations on the fundamental rights. It is interesting to note that under the Indian Constitution fundamental rights have been provided in different forms. Only a free society can ensure the all-round progress of its members which ultimately helps the advancement of human welfare. Therefore, every democracy pays special attention to securing this basic objective to the maximum extent without, at the same time, endangering the security of the State itself. The Fundamental Rights envisaged in Part III of the Constitution of India has a tremendous contribution in rendering social justice to the country at large and till date it thrives to maintain its constitutional goal, in guiding legislation aimed at social welfare for the common good and common interest of the people.

Indian Constitutional provisions ensuring Social Justice:



Fundamental rights in Part III some of which are available to all persons and some are enjoyable only by the citizens of India are:-

- a) Equality before law (Art 14)
- b) Prohibition of discrimination on ground of religion, race, caste, sex or place of birth (Art 15)
- c) Equality of opportunity in matters of public employment (Art 16)
- d) Abolition of Untouchability (Art 17)
- e) Abolition of titles (Art 18)
- f) Protection of certain rights regarding freedom of speech etc. (Art 19)
- g) Protection of life and personal liberty (Art 21)
- h) Protection in respect of conviction for offenses (Art 20)
- i) Protection against arrest and detention in certain cases (Art 22)
- j) Protection of traffic in human beings and forced labour (Art - 23)
- k) Prohibition of employment of children in factories or mines or in any other hazardous employment (Art 24)
- l) Freedom of Religion (Art 25 - 28)
- m) Protection of interests of minorities (Art 29-30)
- n) Judicial remedies for enforcement of rights conferred by this Part-III of the Constitution (Art 32)

Special provisions for backward classes of society

By incorporating the system of special provision for backward classes of society, it is to try to make the principle of equality more effective. The State, according to Article 15(1) of the Constitution, "shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them." Under Article 15(4) the state shall make any special provision for the advancement of any socially and educationally backward classes of citizen or for the scheduled castes, and the Scheduled tribes and in the same manner by accepting the opportunity of equality to employment under state in Article 16 (1), it has excepted the principle of equalization under Article 16(4). If it is in the opinion of the state that any class of the citizens has not adequately representation under state employment, state shall make any provision for the reservation of appointments. According to Art 46 the State shall promote with special care the educational and economic interests of weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation. In a very important case of Indra Shahani vs. Union of India⁸ the Supreme Court declared twenty seven percent reservations legal for socially and economically backward classes of the society under central services. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society

Equal pay for equal work

'Equal pay for Equal Work' has not been secured as a fundamental right, but has been held to be deductible from Articles 14, 16 and 39 (d). It has been held that this principle of equal pay for equal work' might be applied to cases of unequal scales of pay based on no classification or irrational classification. Denial of equal pay for equal work becomes irrational classification within Article 14. When the difference in duties difference in pay; difference in duties justifies discrimination in pay then writ can be used to enforce the principles of equal work if Article 14 is infringed.

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. An employee belonging to backward classes has a fundamental right to be considered for promotion on the basis of Article 16 read with Article 46. In a case²⁵ the court held that "means test" might be adopted for identifying the weaker section of the people. The commonly known as Mandal Commission case, the Court laid down that the expression 'weaker sections of the people,' was wider than the expression "backward classes of citizens" or "socially and educationally backward class" or "Scheduled Caste and Scheduled Tribes". The expression included all sections of the society, who were rendered weaker due to, various causes including poverty and natural and physical handicaps. The State may make such provisions or reservations for the betterment and amelioration of the weaker and economically backward sections and to implement the Directive Principle contained in Article 46.

Conclusion

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. Medium may be distributive or compensatory justice. The adopted type may be of quality, Necessity, Equality, Freedom, Common interest or other. Although the Supreme Court has not found any possible definition of Social Justice²⁶ but has accepted it as an essential and an organ of legal system.

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