

Constitution of India and Social Justice: A Contemporary Review

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Abstract: Constitution of India, 1950 serves as a guide to policy planners and to every citizen of India. The subject of social justice has always bedeviled the socio-political milieu of India especially since independence. The paper examines the leading provisions of the Constitution of India and governmental initiatives to address social evils like untouchability and other entrenched discriminatory practices in society. An analytical approach has been adopted to glean out the shortcomings of legislative endeavours. In the process, several important judgments and Committee findings have been integrated.

Keywords-Constitution, social justice, fairness, discrimination, equality

The Background

A Constitution is not merely a document which lays down the broad framework for a polity to function but is in fact, an expression of the vision of a nation state. Especially, in a nation with a professedly democratic ideal it plays an extraordinary role. It is not only a legal testament but a livery of hopes and dreams. It not only envisages capturing the political and social philosophy of the society within the black letters but is also a reflection of the soul of a society. A Constitution in this respect guides the destiny of nation and is its conscience. It enables the aspirations of the people to take shape. It promises a regime of justice and fairness in its daily life. It seeks to ensure that discrimination, want and prejudice do not become obstacles in the achievement of nation hood.

The Constitution of India too aims to fulfill these objectives. For a nation to persevere, it must integrate the divergent shades of its socio political order in a united whole. This is not a simple expectation. When we chose to adopt democratic principles to govern our policies we also agreed to undertake the gargantuan exercise to make democracy a living reality. Nationhood, to my mind is not automatically bestowed by adoption of a Constitution. Yes, for governance sake, a skeletal outline is etched. But flesh and blood still has to be added. Nationhood is sought to be realised through rigorous political activity, flourishing meads of public opinion and presence of economic security in the humblest of homes. India desiresto achieve nationhood. It will prosper in due time. Road to nationhood is long and winding. The survival and continuance of our polity rests on the promise of delivery of social justice. On the eve of the passing of the Constitution in Constituent Assembly Dr.Bhim Rao Ambedkar uttered immortal words:-

“On 26 January, 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man, one vote and one vote, one value. In our social and economic life we shall, by reason of our social and economic structure, continue to deny the principle of one man, one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life?”¹

Social justice is not a mere catchword. It is pregnant with profound hope and meaning. Preamble of the Constitution enshrines the promise of social justice. It is not difficult to understand the intent of the framers of the Constitution when they raised the promise of social justice to a sanctified pedestal. By placing it among other broad objects they made it clear that it is an essential prerequisite for a civilized society. Barbarism and brute force ruled for a long time in history. In the march of civilization we observe that mankind has gone through testing phases in nurturing fine human qualities and building democratic institutions. The need to have an impartial judicial mechanism has been viewed as essential for peaceful co-existence. Internecine conflicts have raged in hoary past to gain control over life sustaining resources and acquire political supremacy. The arch of justice is built in different traditions to accord value to human life. It is considered supremely essential to maintain peace.

However, Indian society offers a more complex situation. Over thousands of years people of myriad racial origin have migrated and have made India their home. Turks, Afghans and many others have settled in India in stilled phases of migration. Political expediency and social insecurity has always driven people to look out for greener pastures. Migration within the boundaries of the Indian subcontinent has taken place. People have interbred as well. Niall Ferguson, a contemporary writer in his book *Empire: How Britain Made the Modern World* (2012) puts forward a thesis that in pre independence India after more than two centuries of contact with Europeans a substantial mixed race population referred to as ‘Eurasians’ sprang up who were usually employed in low level public sector jobs particularly in the railways and telegraphs. Indian society thus, populates vast human heritage.²

Liberty is a much cherished value. The desire of Man to subjugate and to rebel against authority, both these emotions lie at the heart of liberty discourse. J.S. Mill dwelt on this tension between what he called ‘authority’ and ‘liberty’. Glaucon (philosopher Plato’s elder brother) in the *Republic* said that,

“Justice-that is, the laws of the state or the moral conventions that we observe in society-was a necessary evil, a compromise between our desire to exploit and our fear of being exploited.”³

¹ Available at <https://scroll.in/article/802495/why-br-ambedkars-three-warnings-in-his-last-speech-to-the-constituent-assembly-resonate-even-today> visited on 29.11.2019 at 11.01 a.m.

² Ferguson, Niall, *How Britain made the Modern World*, Penguin India, New Edition, 2012

³ Available at <https://plato.stanford.edu/entries/plato-ethics-politics/> visited on 29.11.2019 at 11.57 a.m.

Attainment of liberty from colonial yoke was central to Indian freedom struggle. Quite understandably, Indian Constitution acknowledges that citizens have some inalienable rights which it recognizes through its provisions and more specifically through fundamental rights provisions. However, we must ask-How does it seek to address the concerns of Dalits, Tribals and other backward communities? Importantly, how it wishes to secure social justice?

Laying Of the Turf

It is difficult to exactly define the idea of 'social justice'. The concept may acquired different meaning from one society to another though the essence may remain the same. While in United States of America, it may conjure image of the struggle of Blacks against apartheid and resultant constitutional legacy; in Australia it may convey the struggle of the aborigines for their rights and social dignity. Broadly speaking, social justice implies *absence of unequal treatment and empowerment*. It would also mean removal of practices which deprives a particular group in society of access to dignified living since antiquity. In India, it holds a special meaning.

While freedom struggle raged against imperial domination before Constitution an almost parallel movement was underway to emancipate the lot of millions of Indians who were on the fringes of society. They led a life marked by abject social discrimination and economic uncertainty. They were leading a subhuman existence. Social ills of untouchability and other caste related infirmities dotted the social landscape of India. Dr. Ambedkar led the fight against entrenched social biases from the front. He built on the premise set by eminent social reformers like the Jyotiba Phule and others. His political career is characterized by an unending zeal to ameliorate the deplorable plight of the untouchables and other depressed communities. While performing duties in the capacity of Chairman of the Drafting Committee in the Constituent Assembly, Dr. B. R. Ambedkar ensured inclusion of a number of provisions which aim secure social justice in the Indian scenario.

The Constitution of India seeks to achieve social justice from many starting points. It need not be said that by enshrining these provisions it limits in any way the power of the legislature to draft any new law with change in time and emergent considerations to secure social justice. Two themes dominate the social justice object of the Indian Constitution. These are:-

1. Affirmative action
2. Anti Discrimination measures

Let us understand these themes.

Affirmative Action:-

Affirmative action or positive discrimination purports to eliminate inequality in society through reservation in public offices and educational institutions. Reserving seats is a legal tool used in practising democracies. Various theories of justice attempt to answer the requirement of having affirmative action in a Constitution. Aristotle felt that justice means equality. At the time of imagining India as an independent nation it was clear to framers that a heterogeneous and highly unequal society like India cannot do without affirmative action provisions. Granville Austin in

his book, *The Indian Constitution-Cornerstone of a Nation* (2009) has noted that basically Indian Constitution is a social document. It is socialist in its tenor and its aims to secure social justice in every facet of life. The beneficiaries of reservation are identified constitutionally in case of India. Dr. Ambedkar was always aware of the fact that a class of people lives beyond the pale of mainstream social system. The issue of representation of untouchables and other backward classes in the political and social life of the nation was at the core his idea of justice.

Questions like who is unequal and who should be a rightful claimant to reservation has dogged scholars. Under the Indian Constitution, Article 14 negatively puts an obligation on the state where state is obligated not to discriminate against any person equality before the law and equal treatment of law. This provision implies that state shall not only ensure that law treats everybody equally but also the law itself is oriented towards eliminating inequality. The interpretation of equality clause has often challenged judicial ingenuity.

In *State of Jammu and Kashmir v. Triloki Nath Khosla*⁴, Justice Chandrachud has observed:

“Equality is for equals. That is to say, those who are similarly circumstanced are entitled to an equal treatment.”

The Constitution while in one stroke through the fact of its enactment and adoption brought each citizen immediately at equal level, it aspires to realise equality in due course of time on the social and economic front. Economic equality is not guaranteed by the Constitution though striving for economic justice is a part of the Preamble. The reason why economic justice finds no express recognition is quite understandable. The state can only be expected to distribute resources equitably. Further, it can be directed to undertake fair procedures to distribute resources taking into account principles of natural justice.

However, it would make the very functioning of a polity tedious if state was to overnight put a morsel in every mouth. This was suitably appreciated by the framers. Thus, Directive Principles of State Policy were framed and though non justiciable these are positive directives on the state in its welfare avatar to make social justice a living reality. Article 37 of the Constitution amply makes it clear that the directives are fundamental to governance. Superior courts of India have taken the aid of these directives to lend greater significance and broaden the scope of fundamental rights.

In this regard, Article 38 of the Constitution of India calls upon the state *“to promote the welfare of the people by ushering in a social order in which justice, social, economic and political, shall inform all its institutions of national life. To achieve this, the state is asked to ‘strive to minimize inequalities of income and also eliminate inequalities in status, facilities and opportunities.’”*

Article 46 of the Indian Constitution instructs the state *“to promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the scheduled castes and scheduled tribes and protect them from social injustice and all forms of exploitation.”*

Article 39 of the Indian Constitution contains a list of directives which nudges the state to orient its policy in such a manner as to benefit the teeming populace of India. Concentration of wealth

⁴ (1974 1 SCC)

is looked down upon. Monopoly over material resources is not approved of. On the importance of having such principles in the Constitution, Dr. Ambedkar had observed that although non justiciable, the political party whosoever may be in power in future shall be tested in electoral battles.

Anti-Discrimination Measures:

Dr. Ambedkar in his monograph, “*The Hindu Social Order: Its Essential Principles*” points out that the leading principle of caste system is the fixation of rights and continuance of such rights by heredity mode. For example, in the economic field every member must follow the occupation of the caste to which he/she belonged. He notices that inequality in the distribution of the rights is the core of this system. Further, he concluded that the system is hierarchical with *graded entitlements* of various rights to choose occupation, acquire property and receive education. It can be said that the social mobility of an individual in life was restricted at the time of birth itself.⁵

Dr. Ambedkar in 1919 for the first time made a concerted attempt to change the attitude in the formulation of British policies with regard to depressed classes by giving a written statement to Southborough Committee. His aim was to dispel the popular belief that untouchables and Hindus were same having no separate interests and establishing the fact that untouchables were a distinct community in the Hindu society. He argued that untouchable was not even a citizen, as the discrimination robbed him of certain civil rights. According to him, the untouchability of untouchables put civil rights like personal liberty, security, equality before law etc. far beyond their reach.

The predicament of Indian society where a Dalit's caste status deeply scarred his social interaction and the vestiges of feudal order monopolized life sustaining resources perplexed him. During pre independence period, by choosing to crusade against the venom of caste based discrimination Dr. Ambedkar proposed the view that removal of caste based discrimination in all forms is the first step towards realization of freedom. Dr. Ambedkar challenged the then widely held view that political freedom should be the first priority and social reform can follow thereafter. His political approach was marked by an uncanny prescience. He could foresee that the denial of basic human rights to a large section of Indian population will only keep a working democracy on tenterhooks.

While playing an instrumental role in the drafting of Constitution he ensured that provisions like Article 17 see the light of day as he felt there is a need to provide constitutional protection to Dalits from caste based oppression and violence to which he was very alert and aware.

Article 17 of the Constitution of India, 1950 in one flourish abolished the social evil of untouchability. It makes the observance of disabilities emerging from it punishable under law.

Article 35(a) (ii), a striking provision of the Indian Constitution expressly empowers the parliament over state legislatures to make laws for prescribing punishments for those acts which are declared as offences under the fundamental rights chapter. Such matters are:

⁵ Available at <https://ruralindiaonline.org/library/resource/dr-babasaheb-ambedkar-writings-and-speeches-vol-iii/> visited on 29.11.2019

Article 17 prescribed “*punishment for enforcement of any disability arising out of untouchability.*”

Article 23(1) “*prescribed punishment for traffic in human beings and imposition of Begar and other forms of forced labour.*”

Article 15(1) lays down that “*the state shall not discriminate against any citizen on grounds only of religion, race, caste sex, place of birth or any of them or be subjected to any disability, liability, restriction or condition with regard to –*

(a) *Access to shops, public restaurants, hotels and places of public entertainment; or*

(b) *The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated for the use of general public.*”

Article 25(2) (b) further empowers the state “*to make a law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*”

Post Constitutional Developments:

The framers of the Constitution felt it expedient to provide a frame work for keeping a vigilant watch over the constitutional safeguards and their working provided to various groups. Article 338(1) provided for “*the appointment of a Commissioner of Scheduled Castes and Scheduled Tribes. Appointed by the President, he was tasked “to investigate all matters relating to the safeguards provided to the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the president upon the working of those safeguards to the president from time to time.”*”

His reports were to be submitted to each house of parliament.

Overtime, it was felt that the office of the office of Commissioner lacked teeth and actually fell short in redressing grievances of the victims of caste oppression. For example, on receipt of a complaint he could request the local authority or an institution to extend protection of law to the complainant. Beyond this he could do little.

Article 338 of the Constitution has been as per requirement amended by the Constitution of India, 65th Amendment Act, 1990 and it abolished the office of the Commissioner and provided for appointment of a national Commission for the Scheduled Castes and Scheduled Tribes. The Central and every State government are now required to consult the commission on all major policy matters affectingscheduled castes and scheduled tribes. The Commission was accorded the power of a civil court “*trying a suit and in particular in respect of such matters as summoning and examination of witnesses, discovery and production of documents.*”

The Constituent Assembly debates reveal; the acceptance by the members of the fact that untouchability is only a symptom of the disease, the real culprit being the caste system. However, it was realized that caste system as a social institution can only perhaps die a slow death and will not disappear overnight. Directive Principles envisage the creation of a social democratic order devoid of inhuman discriminatory practices.

The Untouchability (Offenses Act), 1955 was enacted by the parliament to give effect to Article 17 of the Constitution which provided for the abolition of untouchability. The Act provides that “*where any of the forbidden practice under the Act is committed in relation to a member of a scheduled caste the court shall presume, unless the contrary is proved that such act was committed on the ground of untouchability.*” In order to facilitate a just trial, a special rule of evidence was introduced whereby the normal legal presumption was reversed to assume that the

accused had committed the offence of untouchability until the contrary is proved. The burden of proof shifted from the prosecution to the accused.

The Act failed in checking untouchability and the government then appointed a Committee in April, 1965 under the leadership of Ilaya Perumal to suggest changes in it. Through an amendment it was renamed as “Protection of Civil Rights Act, 1955”. The Act was enacted with the object of “*providing punishment for preaching and practicing untouchability.*”

Denial of entry into places of worship loomed large on the minds of the legislators while enacting this Act. Other related acts of denial pertain to health centers, public resorts, eating joints, sources of water or any other place where amenities are provided for the public. From 1970's onwards a sharp rise in the violence against Dalits is noticed. “*The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989*” was enacted in the year 1989 to curb the violence perpetrated against Dalits and Tribals.

To Conclude:

Twenty first century beckons a turmoil filled future for Indian society. A substantial population of our country continues to languish under deprivation at various levels of society.

The sheen of the grand ideal of the Constitution is struggling to keep itself intact. Political representation of the most neglected is slowly becoming a reality. Much is still desired. Dr. Ambedkar felt that persons who would grace the high constitutional offices would bring in social justice through the nature of their work and department. They will illumine the grand hope of the Constitution through judicious exercise of powers. If Constitution fails, he had said, then the document cannot be blamed and it can only be concluded that Man was vile. The achievement of a constitutional democracy was dear to framers of the Constitution. The Constitution continues to serve the democratic yearnings of our people. Lot of faith is reposed in its working. It seems Constitution will continue to paint the socio-political scene of India with myriad colours and social justice may become a felt reality some day. Let us hope that day is not far.