



The constitution of India and social justice: An analysis

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Abstract

The present paper seeks to analyze the interrelationship between the Constitution of India and the objective of social justice. The demand for social justice through constitutional means is traced back to the freedom struggle when India was governed according to the whims and fancies of the British government. Standing in utter contrast to the laws of that period, the Constitution of India contains various provisions and special safeguards for the underprivileged and vulnerable sections—the Scheduled Castes and Scheduled Tribes, Other Backward Classes, minorities, women, children and so on—for realizing the goal of social justice. It is to be analyzed whether the Constitution of independent democratic sovereign India is instrumental in realizing the goal of social justice or not, whether the Constitution duly represents all sections of society and strives to fulfill their diverse goals and aspirations or not. This paper emphasizes that constitutionalism as a method of socio-political action is legitimate for realizing social justice.

Keywords: equality, liberty, fraternity, justice, constitution, safeguards, rights

Introduction

Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution ^[1].

Dr. B. R. Ambedkar

The Constitution of India and social justice bear a sort of means-ends relationship—the Constitution being the means and social justice the end. Contrary to the Machiavellian conception that the ends justify the means, the founding fathers of the Indian Constitution believed in the purity of means. As a fundamental document enshrining their ideals and aspirations regarding a new India, the Indian Constitution stands as a beacon on the road to social justice and incorporates for its realization several unique features which have stood the test of time.

The Rawlsian idea of justice consists in ensuring a fair distribution of primary goods which includes rights and liberties, income and wealth, power and position, status and opportunities, individual dignity and self respect. It also consists in ensuring special safeguards by the state to those sections of society which are poor, destitute, vulnerable and disadvantaged ^[2]. Justice through constitutional means and safeguards acts as a catalyst of transformation from ignorance to knowledge, inequality to equality, bondage to liberation, sectarianism to fraternity and injustice to justice.

The demand for justice presupposes that there is injustice in a society. The terms “justice” and “injustice” are not absolute but relative in nature. The voice for justice is raised by those

who are otherwise deprived of justice. Justice *per se* is an abstract entity. To be meaningful, it cannot but involve certain values such as equality, liberty, fraternity and so on. Justice, be it social or economic or political, is ensured through these values. Among these, the procurement of social justice has been the chief demand of the Indian masses as well as the chief aim of the Indian Constitution.

Indian society is highly stratified and is qualified through a wide range of inequalities in terms of one's income, wealth, social status, gender, place of birth and so on. It has been plagued by various social evils and malpractices such as child marriage, female infanticide, bonded labour, Untouchability and so on which have crept in through the ages. These socio-religious evils are the offspring of misbeliefs, misconcepts, dogmatism, ignorance and superstition. Keeping in mind the inherent contradictions of the Indian society and also the large size of our country where there are diverse social, religious, cultural and geo-physical elements, the founding fathers of our Constitution tried to give an inclusive, just and integral shape to it. The Preamble of our Constitution while declaring India to be a sovereign, socialist, secular, democratic and republican polity also lays down certain ideals that the Constitution seeks to realize. It cherishes the objectives of equality, liberty, fraternity and justice. Here justice implies social, economic and political justice and is secured through various provisions contained chiefly in Parts III and IV of our Constitution. These two parts reflect the core philosophy of the Constitution and are essential for the reclamation and development of human personality.

Part III of the Constitution deals with the fundamental rights which are guaranteed to every citizen irrespective of one's caste, creed, race, religion, sex and place of birth. Democracy presupposes the existence of the right to liberty and equality.

They constitute the very essence of democracy. The Right to Liberty (Arts.19-22) provides to its citizens liberty of thought, expression, belief, faith and worship. However, the right to liberty *per se* is not an absolute right but qualified. It is subject to certain reasonable restrictions to maintain law and order and also to protect the unity, integrity and sovereignty of India. Freedom does not mean mere political freedom. There is difference between the concept “freedom to” and “freedom from”. Freedom is usually understood as the freedom to assemble, speech, expression, movement, trade and profession. However, it also involves freedom from injustice, poverty, hunger, ignorance, social and economic discrimination. The former implies the positive version while the latter implies negative version of freedom. Social justice could be brought about only when political democracy is extended in social and economic field through constitutionalism.

The term “equality”, in its literal sense, implies the absence of special privileges and undue favor to a particular section of the society. In order to promote equality of status and opportunity to all its citizens without any discrimination, the Right to Equality is incorporated as a fundamental right. Again, equality is social, economic and political. The various provisions of this right in the chapter on fundamental rights are—equality before the law and equal protection of law (Art. 14); prohibition of discrimination on the grounds of caste, class, religion, sex and place of birth (Art. 15); equality of opportunity in matters of public employment (Art. 16); abolition of Untouchability (Art. 17); and abolition of titles (Art. 18). These provisions have been enshrined in order to bring every individual on the same platform irrespective of one’s social, economic and political power, position and status.

Here, the question arises as to why the concept of “positive discrimination” is incorporated in our Constitution and whether it violates the very essence of the right to equality or not. The justification for “positive discrimination” or “reservation” for certain communities is based on the idea that mere provisions for formal equality would bear scanty fruits. The “equality of opportunity” principle has to be reconciled with the demands and aspirations of the underprivileged and the disadvantaged. The communities who have so long been deprived of their fundamental rights cannot be left merely on the mercy of the formal principle of the “equality of opportunity.” In order to ensure their proper representation in the socio-economic and political life, they have been provided special constitutional safeguards.

The Constitution not only provides for fundamental rights to the citizens but also guarantees their enforcement in case of any violation. Mere provisions of rights would scarcely be enough if there is no authorized machinery for their protection and enforcement. In order to protect the entire edifice of Part III of the Constitution or even the Constitution *per se*, Article 32—read as the Right to Constitutional Remedies—has been inserted. As per this article, the Supreme Court under Article 32 and the High Courts under Article 226 are the guardians and defenders of the fundamental rights of an individual and can issue writs in the form of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari to this effect. This article constitutes the very essence of the Constitution. In the

words of Dr. Ambedkar, who took great pains to get it passed by the Constituent Assembly as the “*soul of the constitution and very heart of it*”.

The inclusion of fundamental rights in the Indian Constitution has gone a long way towards making India a political democracy. However, mere political democracy cannot fulfill the objective of social justice. Social justice invokes the ideal of social and economic democracy. Social justice implies the equal treatment of all citizens irrespective of any distinction based on caste, color, race, religion, sex and so on. In the words of Dr. Ambedkar: “What are we having this liberty for? We are having this liberty in order to reform our social system, which is full of inequality, discrimination and other things, which conflict with our fundamental rights”^[3].

Part IV of the Constitution is earmarked for the realization of socio-economic democracy and social justice. It contains a separate list of policy guidelines known as the “Directive Principles of State Policy.” Dr. Ambedkar called these Directive Principles as a “*novel feature*”^[4] of the Constitution, while Sir B N Rau, the constitutional advisor to Constituent Assembly stated that the Directive Principles are understood as “*...moral precepts for the authorities of the state. They have at least an educative value*”^[5]. They impose a moral obligation on the government for their implementation. They are the positive sanctions on the state. They seek to realize the high ideals of equality, liberty, fraternity and justice. The former Chief Justice of India, M C. Chagla, while highlighting the importance of Directive Principles argues that: “*...if all these principles are fully carried out, our country would indeed be a heaven on earth. India would then be not only democracy in the political sense, but also a welfare state looking after the welfare of its citizens*”^[6]. In the words of Dr. Ambedkar:

Surely, as some have said, it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country^[7].

It is to be noted here that Dr. Ambedkar who was the chief architect of the Indian Constitution, himself belonged to the depressed classes that had been denied justice for ages. It was, therefore, natural for him to have taken special interest in the provisions of Constitution ensuring social justice for these classes. His genius, however, lies in rising above his own situated-ness and designing a Constitution which brought a new hope not only to his people but also the marginalized and disadvantaged tribals, women, minorities and millions of faceless underprivileged Indians in general. This is reflected in the various special constitutional safeguards provided to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities, women and children.

Even a cursory glance at the above-stated provisions is sure to reveal that the Indian Constitution duly represents every section of Indian society. It provides equal opportunity to all citizens for the full realization of their potential irrespective of

any prejudice. However, it has to be remembered that the constitution of a country is to be evaluated in relation to its people and political parties. It functions through them; otherwise, it is as good as a dead document. The Indian Constitution derives its authority from the people of India. It merely provides machinery for governance but cannot itself govern. It provides the means for law and administration but cannot itself administer. It is the people who govern a state constitutionally or unconstitutionally. In this context, Dr. Ambedkar says:

Who can say how the people of India and their parties will behave? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fall. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play^[9].

One of the most significant features of our Constitution is that it is not immune to amendment but can be amended according to the provisions contained in Article 368. More than hundred amendments within a period of seventy one years reflect the flexible nature of our Constitution. This flexibility is indispensable to the cause of social justice because social needs and aspirations keep on changing and constitutional provisions ought to reflect the same. Many of these amendments have been highly controversial and raise a debate as to what extent the Constitution can be amended. In this respect, Dr. Ambedkar quotes Thomas Jefferson who argues “...for the right of every generation to revise a constitution on the grounds that one generation had no right to bind succeeding generations, ‘for this would mean that the earth belongs to the dead and not to the living’^[10].”

In spite of the above, it has often been observed that various governments have tried to amend the Constitution to safeguard their petty interests and have attempted to subvert the basic constitutional framework permanently. To substantiate this point, I would quote John Rawls who says “...the political forum is so constrained by the wishes of the dominant interests that the basic measures needed to establish just constitutional rule are seldom properly presented^[11].”

This makes one realize that the basic constitutional structure stands as a hurdle in the path of vested interests and thus proves true to the aspirations of its founding fathers who wanted to steer India on to a path of holistic development. As a corollary, it becomes imperative for the three organs of the government, especially the judiciary, to see to it that the letter and spirit of the Constitution is not unnecessarily tempered with. In addition, the citizens of India, whatsoever their status and position may be, have to keep faith in the efficacy of Constitution to address their grievances. The media and the intelligentsia have to maintain constant vigil and pressure upon the government to incessantly work towards the realization of the ideals enshrined in the Constitution.

All this assumes new-found importance in the contemporary scenario when Indian democracy stands threatened by unconstitutional means—insurgency, Naxalism, terrorism and

so on. In addition, there are the age-old banes of casteism, communalism and regionalism as well as various racial and ethnic conflicts that have stood as impediments in the path of progress and development. We may have a more or less established system of political justice but socio-economic justice remains to be procured. One man one vote and one vote one value may have been realized but one man one value is still a distant dream^[12]. However, sometimes, even the political justice seems to be defective when unfair means are adopted to gain power as John Rawls argues “*Universal suffrage is an insufficient counterpoise; for when parties and elections are financed not by public funds but by private contributions ...*”^[13] Hammered by these problems and unsupported by successive governments, it is unsurprising that the masses are increasingly getting attracted towards extra-constitutional and even unconstitutional measures for their ends. The dangers inherent in this development cannot be overemphasized.

Conclusion

It may however be safely asserted that the Indian constitutionalism is well equipped to deal with all these challenges effectively. It is based on the basic human principles—peace, non-violence, equality, liberty, fraternity and justice. It believes in conscious evolution and reform as against blind rebellion. And the fact remains that the socio-economic and political status of the disadvantaged and the underprivileged has improved whenever policies in keeping with the spirit of the Constitution have been framed. This in turn rules out the necessity as well as validity of any supra-constitutional means and affirms the legitimacy of constitutionalism as an effective method of socio-political action and as a potent instrument of social justice.

The citizens who elect a government share with it to an extent the responsibility for its actions. Hence, if it performs in an unjust and arbitrary manner, people have every right to protest against it. However, this has to be done in tandem with the Constitution. Extra-constitutional methods may win us a battle, but will ultimately lose us the war, since it must not be forgotten that the most potent weapon in the hands of the citizens is the Constitution itself. And it is firmly believed that while the masses cannot be entirely absolved of responsibility, the onus lies primarily with the state to design its policies and programmes in a manner which is fair, just and all-embracing. If it truly embarks on the path of social justice, it will find in the Constitution a worthy friend, philosopher and guide.

References

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2. John Rawls expresses the general conception of justice in the following words: All social primary goods—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored, A Theory of Justice, I have elaborated on the same.
3. Hande, 2009, 73.
4. Ibid, 41.

5. Sharma BK. Introduction to the Constitution of India, Prentice Hall of India Pvt. Ltd, 2007, 125.
6. Chagla MC. An Ambassador Speaks, Asia Publishing House, 1962, 35.
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9. Hande, 2009, 241.
10. Omvedt, Gail. Ambedkar: Towards an Enlightened India, Penguin Books India, 2008, 122.
11. Rawls, John. A Theory of Justice, Universal Law Publishing Co, New Delhi-India, 2010, 226.
12. On the 26th of 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?, from Dr. Ambedkar's speech in the Constituent Assembly on 25 November, 1949, quoted in Hande, 2009, 247.
13. Rawls, 2010, 226.