

# The Constitutional Safeguard: Social Justice in India

Prankrishna Biswas

Assistant Professor, Department of Political Science, Deshabandhu Mahavidyalaya, Chittaranjan

Dist: Paschim Bardhaman, West Bengal, India, Pin- 713331

Email: [prankrishnabiswas4\[at\]gmail.com](mailto:prankrishnabiswas4[at]gmail.com)

**Abstract:** *The idea of justice is highly necessary for social existence of man. Justice implies impartiality and it is distinct from that equality. Social justice as a term which focus on equal distribution of justice within society. Through this people can equally the benefits social and economic development without discrimination of gender, caste, religion or economic status. The principle of social justice is safeguard equilibrium in the society and deem equal opportunities and equal persons in equal or situation. The concept of social justice mentions various provision of Indian Constitution. In the Preamble, Fundamental Rights, Directive Principles of State Policy of Indian Constitution we visualized so many for implementation of social justice. The theme of the preamble of the Constitution to sources justice, social, economic and political, liberty of thought, expression belief, faith and worship equality states and opportunity to individual and promote to established egalitarian society as well as nation. To access these objective various fundamental rights and its subsequent amendment also desired to ensure social justice the needy citizens. The chapter of Directive Principles State Policy as provided the welfare responsibility of the government. Therefore, the state governance ensuring common good or common interest.*

**Keywords:** Social Justice, Equality, Discrimination, Constitution, Fundamental Rights, Welfare

## 1. Concept of Social Justice

The term 'social' as we understood, its laid down all human being within society, and term 'justice' attached to law, order, liberty, equality and rights. Social justice is modern concept and growth with idea of equalitarian society. Thus, the idea of social justice ensures to provide equal rights all individual within society, in which people have large opportunities to highest possible of development, especially for disadvantaged or marginalized groups. Social justice refers to taking into consideration the under privileged and the deprived segments of the society at the time of making laws and taking policy decisions. The concept of social justice appeared out of a process evaluation of social norms, order, law and morality. The social in social justice connected with different form of inequalities negation and distress in various sphere like education, Health, economy and so on. The delivery of justice and appeal for intervention into these field, which result is creation of its mechanism in pursuance of social equality. The principle of social justice is to organize the society as to abolished the source of injustice in social relations. Thus, the notion of social justice focuses the equal distribution of common good and opportunity. Indian Constitution incorporated specific provisions to ensure social justice. Social justice aims at developing a just social order by eradicating all kinds of social inequality and exploitation for securing the welfare of people in general. The roots of social injustice in India can be traced to the deeply entrenched caste system, which institutionalized discrimination and exclusion.

### Constitutional Provisions Related to Social Justice:

The Constitution of India explicitly recognizes the importance of social justice and provides mechanisms for its realization through the Preamble, Fundamental Rights (Part III), and Directive Principles of State Policy (part IV). These parts of the Constitution work in tandem to provide a robust framework for achieving social justice.

### Preamble:

Social justice mention to the social change of the concept of justice. The basic objective of Indian constitution contained

to promote social transformation. The philosophy of the Indian Constitution assures to all citizens, justice, social, economic and political; liberty of thought, expression belief, faith and worship, equality of states and opportunity; and promotion among them all; fraternity assuring the dignity and the unity of the nation. It serves as a guiding light for interpreting constitutional provisions and shaping policies aimed at equity and inclusion.

### Fundamental Rights:

Through the Fundamental Rights of Indian Constitution, which enacted in part III guaranteed certain political civil rights to all its citizens, whereas the socio-economic rights are to be secured through Directive Principles of State Policy which enacted in part IV. Its main aims for develop modern welfare state which has taken special care of the weaker and disadvantage sections of the society. Subsequently the word 'Socialist' included in the preamble of Indian constitution by 42<sup>nd</sup> constitutional amendment act, 1976 for strengthened the constitutional safeguard of social and economic justice. In the various provisions of the Indian constitution focus to the abolish of social inequality and any type of discrimination on the ground of caste, creed, race, sex, or place of birth. In a democratic country, where implies of securing of the people rule of law, liberty of thought expression belief, faith and worship and equal opportunity, exploitation and uninterrupted interpretation. In the democracy governance chief aims is to protect the human dignity and human rights. Therefore, social justice is very essential for any society to development of underprivileged and deprived people. According to John Locke, who is known as father of Liberalism, all human being enjoys some natural rights viz; life, liberty and property rights. Without these rights human being cannot develop their individual life. Therefore, the Fundamental Rights of Indian Constitution refer eminent values to the people of India. In the Indian democratic rule, the basic objectives of equality and equal opportunities and prohibits discrimination on grounds, caste, creed, color, sex and place of birth, it also provides for "Protective Discrimination" in preference of the weaker and disadvantage sections of the society. The constitution of India

acknowledged to realize the component of social justice. Through under Article 14 of Indian constitution guarantees to every person equality before law. According to this article the state shall not deny to any person equality before law or equal protection of the laws within the territory India. Under Article 15 prohibits of discrimination against any citizens on grounds of religion, race, caste, sex, and place of birth or and them. Through the Article 15(2) mention that no citizen shall be no discrimination to above mention grounds restriction with to some issues. Such as access to shops, public restaurants, hotel or places of public entertainment or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to use general public.

Equality cannot produce in a society unequal. Equality loses its meaning to promote the deprived sections to get equal opportunity they must be brought to a position of development through reservations and special privileges. This what is known as 'Protective Discrimination'. The concept of 'Protective Discrimination' is favor of Scheduled Castes and Scheduled Tribes and Backward Communities which was not mention in the original constitution. It was included in the Indian constitution by first constitutional amendment act 1951. In case of State of Madras vs Shrimati Champakon (1951) Supreme Court declaring that the Madras government reservation policy for backward classes in educational institution is unconstitutional. Under Article 15(4) the state can create any provisions for the reservation of socially and educationally backward class of citizens or the Scheduled Castes and Tribes. Similarly, Article 16 provide equality of opportunity for all citizens in matter relating to employment or appointment to any office under the state. It is mention that there shall be no discrimination against any citizens on grounds only of religion, race, caste, sex, descent of them, in respect of any employment or office under state. The Article 16(4) deals with the state shall make any provision for the reservation of opportunities or in favor of any backward class of citizens, which in the opinion of the state is not adequately represented in the service under state With the Article 17 of the constitution also promotes social by abolishing untouchability. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable under the state. Through Article 23 and 24 also provide to promote social justice, those provisions are mention of rights against exploitation. Under Article 23, traffic in human being and beggar and other similar forms of forced labour are prohibited and any contravention of this provisions is declared an offence punishable by law. Similarly, Article 24 provides that no child below the age of fourteen year shall be employed to work in any factory or mine or engaged in any other hazardous employment. The constitution provides effective provisions to ensure social justice to the magnetized sections of the society. Through under Article 29(2), no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them. Such provision improves the idea of economic justice. According to Article 325 no person is to be declared disqualified for inclusion in electoral rolls on the basis of religion race, caste or sex. Under Article 326 of the constitution recognized the base universal adult suffrage. Without ineligible person according to parliamentary law,

every 18 years age citizen have the voting rights. In the original constitution the age of universal adult suffrage was 21 years. Since it reduced to 18 years through 61<sup>st</sup> constitutional amendment act 1988. So, in the part on fundamental rights which contains clear and certain provisions for the implementation of social justice.

### **Directive Principles of State Policy (DPSPs):**

The Directive Principles of State Policy also deals with concepts of social and economic justice or secure the social and economic rights of citizens, in general, by the state. Dr. B.R. Ambedkar remark that the Directive Principles of State policy is the 'novel features' of Indian Constitution. With the Article 36 to 51 included the provisions of Directive Principles of State Policy, which the state must responsible which governing the nation. By Article 37 these principles shall not be enforceable by court or it made non-justiciable. So, these principles are the basic guidance of the state. When these principles are non-justiciable in any court in India but they are nevertheless fundamental in governance of the country and their application in the laws shall be the duty of the state. The theme of Directive Principles of State policy classified into three broad categories, - Socialist, Gandhian and Liberal-intellectual. Its main objectives are meant for develop the idea of social and economic democracy, which established the theme of 'Welfare State' in India. The Indian Constitution enshrined the concept of social justice according to India conditions. It progresses both distributive and corrective justice in order to established on egalitarian society. Under Article 38 of the constitution which provides that, "the state tries to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all institutions of the national life. When we look in the Article 39, it provides the opportunities of the citizens, men and woman equally, have the rights to an adequate means of livelihood and equal pay for equal work both men and woman. In accordance with Article 41 of the Constitution, the state shall endeavour to securing the rights to work, to education and public assistance to the unemployment old age, and in case of illness. Under article 42 deals with that the state will create for human conditions of work and take necessary action for maternity relief. Through the Article 43 the state will provide a decent living wage for the citizens and to improve all workers, agricultural industrial or otherwise, conditions of work ensuring a compatible standard of life. The 42<sup>nd</sup> Constitutional amendments act, 1976 included some provision in the Directive Principle of State Policy, which also promote the idea of social justice. Such as Article 39 look for that the state shall direct its policy towards securing that child are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity that childhood and youth are protected against exploitation and against moral and material abandonment. To ensure justice, the state will enforce the law on the basis of equal opportunity and also provide free legal aid to the poor not denied to any citizen by reason of economic and other disabilities these are mention by Article 39 (f). Another important Article 43A of the Constitution states that appropriate arrangements will be made for the participation of worker in the management of undertaking organisation or industries. When we look on Article 46 its emphasis for the protection of social justice. It provides that the state will strive to improve with special care

the educational and economic interests of the under-development section of the society, and in particular of scheduled caste and scheduled tribe and shall protect them from social injustice and all for of exploitation. However, herein it has to be mentioned that the implementation of these Directive Principles of State policy was not an easy task.

#### Others Constitutional provisions:

The Indian Constitution also provides some special provisions for under privileged and disadvantage sections of society. When we focus on Article 330 and 332 of Indian constitution ensure reservation seats to House of People and Legislative Assembly of State to deprived sections of the society such as Scheduled Castes and Scheduled Tribes. Such provisions reflect the idea of the distributive form of justice. The enhancement of the weaker sections of the society are further safeguarded under article 335, who are belong to scheduled castes and Scheduled Tribe shall be take into consideration consistently with the maintenance of efficiency of administration in the making of appointment to services and post in connection with the affairs of the union or of a state. Another important provision is contained in Article 338 that provide appoint a special officer for Scheduled Castes and Scheduled Tribe. Later on, the basis of 65<sup>th</sup> Constitutional amendment act, 1990 was regarded as a distinct improvement to the setting up a National Commission for Scheduled Castes and Scheduled Tribes. Since the 89<sup>th</sup> Constitutional amendment act, 2003 divided this commission and established two separate commission, Article 338 contains to National Commission for Scheduled Castes and Article 338A contains to commission for Scheduled Tribes. Through under Article 339, the president may appoint at any time, after ten years of commencement of the constitution, a commission to report on the administration of the Scheduled area and welfare of the Scheduled Tribes in states.

The constitution does not define Backward Classes in India. However, in the Article 340 contain that a commission can be appointed may by order the President to investigate the conditions of socially and educationally backward classes could propose measure to be taken by central or state governments in order to improve their condition. Such a commission was appointed in 1953 under the chairmanship of Kaka Sahed Kalekar, which recommended to determine the test by which any particular class or group of people can be called Backward. The second commission appointed in 1979 under the chairmanship B.P Mandal, during the period of led by Morarji Desai government. The commission submitted its report in 1980 and it identified that 3743 OBCs (Other Backward Classes) without Scheduled Castes and Scheduled Tribes on the basis of social and educational status which is 52% of India's total population. The Commission also recommended reservation to 27% of jobs for OBCs. After one decade the V.P. Singh government declared to implement the Mandal Commission report in 1990. The issue is leading to widespread students protests and raised a political storm country wide and to classing of the government decision of giving. Indira Sawhney vs Union of India case (1992) Supreme Court set aside the challenge and both sides passed the act with a provision that maximum reservation can be 50% educational seats or job vacancies. Thereafter, 27% reservation for OBCs in government jobs has been implemented in 1993. Despite robust constitutional

provisions and affirmative policies, India still faces significant obstacles in achieving comprehensive social justice:

## 2. Conclusion

The Indian Constitution considered a social revolution that would introduce a new social order, through which prevent of discrimination so that every citizen of India was enjoy equal opportunities for moral and material development. On the other way the Constitution also ensure of the disadvantaged sections of the society and providing for special safeguards in terms of public employment, with the provisions of reservation for Scheduled Castes and Scheduled Tribes and Other Backward Classes. In the end we can say that the vision of the Indian Constitution is to established an egalitarian social order. The various initiatives have been taken by Indian government which ensure to make social justice to all citizens.

## References

- [1] Ali, S. W. (2006). Social Justice and The Constitution of India. *The Indian Journal of Political Science*.
- [2] Austin, G. (1999). *Indian Constitution: Conerstone of a Nation*. New Delhi: Oxford University Press.
- [3] Basu, D. D. (2020). *Introduction to The Constitution of India*. India: Lexis Nexis.
- [4] Basu, D. D. (2013). *Introduction to the Constitution of India* (21st ed.). LexisNexis Butterworths Wadhwa Nagpur.
- [5] Bhargave, R. (2008). *Politics and Ethics of the Indian Constitution*. New Delhi: Oxford University Press.
- [6] Das, H. H. (2001). *Indian Government and Poiltics*. Mumbai: Himalaya Publishing House.
- [7] Kashyap, S. c. (1994). *Our Constitution an Introduction to India's Constitutional Law*. India: National Book Trust.
- [8] M, H. (2014). Policy and Policy of Sub-Categorization of Scheduled Caste Reservations in India. *The Indian Journal of Political Science*.
- [9] Nirmal, C. J. (2000). *Human Rights In India: Historical, Social and Political Perspectives*. New Delhi: Oxford University Press.
- [10] Samadder, R. (2009). *State of Justice in India: Issuces of Social Justice* . New Delhi: SAGE Publications.
- [11] shashanktyagi. (n.d.). Retrieved from <http://www.legalservicesindia.com/article/1457/Indra-Sawhney-&-Others-Vs.Union-of-India.html>.
- [12] Upadhayay, R. P. (2009). Contemporary Issues In Social Justice: (Indian Context). *Indian Political Science Association*.