SOCIAL JUSTICE AND THE ROLE OF SUPREME COURT: A STUDY OF NEHRU ERA

ABSTRACT

THESIS

SUBMITTED FOR THE AWARD OF THE DEGREE OF

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ABSTRACT

A modest attempt has been made in the thesis, "Social Justice and the Role of Supreme Court: A study of Nehru Era", to investigate the basic tenets of social justice to enquire how far the provisions of the Supreme Court conform to the principles of social justice. The relevant provisions of the Indian judiciary were empirically tested in the light of the hypothesis so evolved, especially in regard to their working in the background of the Indian social, economic and political life. The present study has been divided into seven chapters. The first chapter gives the conceptual framework of social justice. It will gleaned from the foregoing study that social justice, in essence, represents a logical synthesis of the principles of liberty equality and fraternity. It transcends the formal aspects these principles where liberty may be interpreted merely as 'absence of restraint', equality merely as 'absence of discrimination', and fraternity merely as charity of the strong and privileged towards the weak and the underprivileged; thus preserving the existing order. On the contrary, demand of social justice tends to issue from the mouth of reformers who seek to make an effective dent in the prevailing socio-economic structure. Thus as principles of social justice
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(a) Liberty in the political sphere demands the due representation of the citizens in decision making bodies, and to make this representation real it is essential that electoral system is so designed that political power vests in true representatives of the people so that manipulative or money power does not serve as gateway of political office;

(b) Equality in the economic sphere demands that equality of consideration and equality of opportunity are not reduced to an empty form due to vast disparities in economic capacities, particularly in the matter of seeking justice in the law courts, and availing of education and other opportunities for self development;

(c) Fraternity in the social sphere can become a real force only when the spirit of fraternity ensues from the feeling of mutual dignity, especially from appreciation of each other's importance in social life, related to the function performed, not from special privileges whatsoever, nor from affinities based on narrow sectarian interest; incidentally it also requires that there are not deprived of their due representation in the decision making organs and role in national life because of their minority character; that the weaker sections are given special consideration in the
distribution of benefits so as to enable them to compete with other sections of equal footing; and that

(d) the right to property is so regulated that an individual’s sphere of wealth is closely related to the function presently performed or service rendered, that major portion of wealth which is largely of social origin accrues back to society for reinvestment in expanding and strange thing social services, and that production of goods and services is undertaken primarily to subserve the social needs rather than for earning huge private profit.

The second chapter covers social justice and Constitutions of India, as explained by eminent members of the Constituent Assembly, means rejection of the existing social structure, promise of social security, provision for equality of opportunity and a smooth and rapid transition from a state of serfdom to one of freedom. In short, it has envisaged a far reaching social changes, a socio-economic revolution, through mechanism of political democracy and individual liberty. Some members of the Constituent Assembly felt that since the social justice enunciated by them and embodied in the Constitution could be achieved only through socialism and in a socialist state, that fact should be specified in the Constitution. However, at the end, they avoided mentioning specifically
socialism or socialist state, for they felt content with the phrase “social justice” which was said to have embodied contents of socialism. After the commencement of the Constitution, the major agrarian reform legislations ran up against conservative stance of judiciary on property and on the question of compensation. So, a few amendments were made to the Constitution to enable the state to forward with agrarian reforms and to facilitate the proper distribution of property and economic rights in the society. Besides, with respect to Preamble the judiciary changed its view and started using it as a tool to interpret the provisions of the Constitution. Because of these facts Parliament by the Constitution, (forty-second) Amendment Act introduced the word “socialist” into the Preamble. Thus, it has been made clear that social justice and Constitution of India envisages not merely the contents of socialism but also it format or what may be called it infrastructure. In other words, the social justice and Constitution of India envisions distributive justice oriented equal dispersal of all social primary goods coupled with protective discrimination in favour of “the least favoured members” of the society to achieve a new social order within the framework of socialist democratic republic.

The third chapter deals with the essence of socio-economic justice as the goal of planned development means reduction in the equality and removal of poverty. These two objectives are interrelated; it need not automatically lead to reduction in
inequality. Both the goals would have to be pursued simultaneously and
incordination. Socio-economic inequality in India is a heritage of long history.
India is the world’s classic unequal society from the time immemorial.
Inequality in India’s past was sanctified by the rigid caste system that had
ordained by professions by the accident of birth in a given family or jati.

The genesis of Article 16 (4) and scrutiny of debates in the
Constituent Assembly over the contents of reservation clause in Article 16 (4)
revealed two significant ideas. First, the exact use and connotation of the world
“backward” must be understood in the context of an attempt made to reconcile
the opposing views of perfect equality of opportunity reservation-promoted
equality of opportunity in the matter of government employment. Second, the
reservation of posts and appointments in service under the state were meant for
communities, which hitherto had no “proper look-in” into the administration.
Thus, the state authorities were expected to determine or bring with in the fold
of “backward classes” those Classes or communities, which hitherto had no
berth in the administration and the determination of Backward classes and the
scheme of reservations of posts were such that they did not destroy the principle
of equality of opportunity. The ideas that emerged from debates in parliament
and constituent Assembly over Article 15 (4) and Article 16 (4) respectively
would show that makers of the Constitution did not consider “caste” as a dominant criterion for determining the backwardness of the people.

A close survey of reports submitted by various class commissions during the period of 1955 and 1990 has revealed that most of the commissions harped on “caste” as an inevitable test to determine the backwardness of people. The Mandal Commission, which was latest commission constituted by the Central government, made caste as a unit or what it called a recognisable and persistent collectivities for dealing with the problem of backwardness. Further, it said that since Article 340 of the Constitution spoke of “socially and educationally backward classes”, the application of economic tests” for their identification seemed to be misconceived. It virtually discarded the economic or poverty test to determine the Backward Classes of people. This view of the commission is narrow and the caste test may perpetuate caste system instead of eradicating social evil of backwardness.

Equality in law in the sense of absence of discrimination of any kind has been embodied in clauses (1) and (2) of Article 15. Equality in fact in the sense of different treatment in order to attain a result which establishes an equilibrium between different situations has been stipulated in clause 4 of Article 15. The concept of equality in fact is essentially different treatment in
order to attain a result which establishes an equation between two different situations in which the weaker sections and forward communities are found in the society. This, in other words in known as “protective discrimination” and “compensatory discrimination”. But, whether the compensatory discrimination stipulated in favour of weaker sections is creative in nature or destructive in character depends on two factors, namely, (1) the quantum of compensatory benefits conferred on weaker sections and (2) the duration for which they have been given.

The idea of compensatory state action was to make people who were really unequal in their wealth, education or social environment, equal in specified areas. Equality of opportunity guaranteed by Article 16 (1) could be gauged only by the equality attained in the result. Article 16 (1) only a part of a comprehensive scheme to ensure equality in all spheres. It was an instance of the application of the larger concept of equality under the law embodied in Article 14 and 15. Therefore, Article 16 (1) permitted classification just as Article 14 did.

The forth chapter analysis the views of the judicial response to social justice has revealed that they accorded prime importance to it. They described the social justice as the signature tune of the Constitution. The Court discussed all aspects
of the concept of social justice and explained its various connotations. First, social justice means socialism, because its goal is to bring national wealth and means of production under state control to subserve the common good. But, at the same time in a mixed economy interests of private enterprise cannot be stifled unjustly. So, necessarily a just balance must be maintained between conflicting interests. With such a role assigned to socialism it become more dynamic than doctrinaire. As indicated by the judiciary, social justice is dynamic socialism which aims at a just socio-economic order.

Second, social justice demands the existence of reasonable and just procedures which are conducive to the pursuit and protection of the rights of ordinary people. Therefore, procedures must necessarily be freed from stifling technalities in order to render access to justice a meaningful concept to common man. Third the concept of social justice envisages creation of a new human order and egalitarian society, wherein gender justice, dalit justice and equal justice among the chronic unequal, were assured. Forth Fundamental Rights must be construed in the light of Directive Principles and the Preamble, which, in effect, means that they have to be construed in the light of the concept of social justice. It is also said that the dynamic Directive Principles energies the static provisions of the Fundamental Rights. This rule of interpretation has rendered the social justice a vibrant concept of the Indian Constitutional
jurisprudence. Fifth, socio-economic justice stemmed from the social morality and then became an enforceable formula and hence it abhors economic exploitation. Finally, social justice contemplates comprehensive social security schemes and also lays stress on distributive justice. Thus meaning attributed to, and the unique role designed by for, the concept of social justice by the judiciary have made the social justice a multi-dimensional vibrant concept of for reaching importance.

The fifth chapter deals with Public Interest Litigation: A Post Nehru Phenomena which has significantly broadened the sphere of judicial activity, is a notable aspect of social justice. Under this concept, any one can bring a disputed issue, a public grievance, or any other such matter direct to the notice of the Supreme Court merely by sending a post card briefly stating the case and thus avoiding the elaborate and costly procedure that is prescribed for raising a matter in a Court. The variety of cases decided by the Courts is itself evidence of the wide scope of judicial activism. Some examples are bonded labour, displacement and other grievances of tribals, child adoption and ecological threats to society. These indicate the broadened view of the judiciary role in a democracy.

There is no denying that Public Interest Litigation has increased the quantum of work of High Courts and the Supreme Court, especially of the
latter. The judiciary also enters the field which is strictly that of the executive and the legislature. Infact, in some cases the Supreme Court has given suggestions and even issued directives to the legislature concerned to follow up a particular matter and ensure that the cause of social justice is always upheld.

There is of course a limit to which Public Interest Litigation and judicial activism can go, otherwise its own workload, which is now much too heavy, will increase beyond measure. While it is true that society has a moral and Constitutional obligations to ensure that injustice is not done to any section, such as the tribal, bonded labour, women or any other suppressed category, the system cannot be strained to disconcerting limits.

There is also a question of availability of financial resources for carrying out social and economic, reconstruction programmes, even though these programmes are dictated by the concept of social justice. India is a poor country and has a vast percentage of neglected, deserving people whose plight arouse sympathy in every human heart, except the most callous. However, neither social reform nor social justice can be ensured in a short time. An outstanding instance is that of colossal poverty. Justice demands that all socio-economic inequalities should be redressed. But it is not possible to remove
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poverty and bring everyone to the same level, with a magic ward as it mere. Social justice, therefore, is an ideal which we should all promote earnestly.

The sixth chapter cover the Nehru's Ideas on social justice. Nehru concern for national unity, equality, dignity, justice and the socio-economic upliftment and welfare of the people was well known. He understood the needs and ethos of his people. His fascination for socialism, and economic development was born out of his deep concern for the suffering Indian masses. He was firmly committed to planned economy which, he left, could alone resolve the socio-economic disparities of the modern world. Nehru viewed that socio-political independence of Afro-Asian countries could only be safeguarded through economic and progress.

In the tribal and rural sphere, Nehru laid emphasis on tribal integration, that is integration of tribal communities with the rest of the Indian population and protecting and respecting the tribal autonomy and identity from outside interference. He unassisted on apt utilization of tribal genius embodied in the techniques of production process. He adopted vital measures aimed at elimination of the economic backwardness of the rural populace. He was opposed to discrimination of any kind against any citizen anywhere on grounds of religion, caste beliefs and sex. He planned and implemented developmental schemes for the promotion of the welfare of the weaker sections. On women,
disabilities and handicaps. He was staunch supporter of women’s education and firmly believed in equality of men and women. He was deeply perturbed by the social absurdities like dowry system, growth of purdah and seclusion of women from day to day life.

Nehru looked upon socialist pattern of society as an extension of democracy and freedom. Democracy, he left had no meaning without equality and equality cannot be established so long as the principal instruments of production are not owned by the state.

The last chapter, which is the seventh chapter, is the concluding chapter. In this chapter the ideas discussed in the preceding chapters have been summed up.
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CERTIFICATE

This is to certify that the work described in the thesis entitled, "Social Justice and the Role of Supreme Court: A Study of Nehru Era" is the original work of Mr. Mohd. Ashraf Ali and is suitable for the submission for the award of Ph.D. degree in Political Science.

Dr. S. Waseem Ahmad
Supervisor
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PREFACE

The constitution of India, which has been described by an eminent writer as a “corner stone of a nation”, has bestowed sufficient thought on the underprivileged. A number of provisions incorporated in it for their benefit tell the tale of statesmanship of the framers of the Constitution, for the vitality of a Constitution depends on the extent to which it affords protection to the underprivileged one such laudable provision relates to poor and neglected sections of the society, which has directed the state to promote with special care the educational and economic interest of such people. Besides, the Constitution has laid great stress on social justice. No comprehensive analysis in a single work seems to have been made so far of the connotations of social justice and the scope of the constitutional safeguards provided in favour of the poor and neglected sections of the Society. This thesis is the result of an attempt to analyse the connotations of social justice and the scope of the Constitutional provisions made for the benefit of the poor sections and role played by the Supreme Court in this field.
The expression "poor and neglected sections of the people" is not defined in the Constitution. But, certain indications have been given in the Constitution to identify them. So attempt has been made in the thesis to identify them. A scrutiny of the provisions of the Constitution, particularly of Part III in the Constitution, has revealed the use of four phrases, namely, women, Scheduled Castes and Scheduled Tribes, Backward Classes. It is confined to the ascertainment of meaning and contents of social justice, identification of certain weaker sections, particularly the socially and educationally Backward Classes, and examination of the extent to which social justice has been rendered or made meaningful to the said four groups of weaker sections. Further, the enquiry has been focussed mainly on the decisions of the Supreme Court bearing on the subject.

The concept of social justice has been discussed in three succeeding chapters. The first chapter deals with the social justice. The conceptual framework. In this chapter various theories of social justice, principles and aspects of social justice have been examined and the more viable and serviceable theory has been
identified. Social justice and the Constitution of India has been
dealt in the second chapter. Views of the framers of Constitution on
the subject and relevant Constitutional provisions and developments
have been identified conclusion reached therein is the social justice
and constitution of India envisions establishment of distributive
justice oriented, non-exploitative and egalitarian social order in
India.

The phrase “Socio-economic justice and removal of
inequality in Article 15 (4) and the term backward classes in
Article 16 (4) have not defined. To determine the backwardness of
the people for the purpose of Article 15 (5) and 16 (4).
Compensatory discrimination in favour of Backward classes of
citizens in the field of education is essential in an imbalanced socio-
economic order to ensure social justice to the under privileged
classes. Such important aspects as equality in law and abolition of
untouchability.

The forth chapter deals with the meaning attributed to, and
the unique role designed for, the concept of social justice by the
Supreme Court in its various decisions. The fifth chapter deals with the public interest litigation. With active assistance of the social activists and public litigators, the judiciary is promising innovative remedial attention for vindication of the government to welfare and relief of the oppressed. It is now widely believed that through announcement of new rights and entitlements the judiciary is slowly and steadily emerging as the people’s courts promising to wipe every team from every eye. Numerous public advocacy groups are proliferating to mobilize favourable judicial response on behalf of the victimized groups, bonded labourers, undertrial prisoners, inmates of homes for neglected girls, pavement dwellers threatened by relocation indigent accused denied free legal aid and many others. Alongside with the community activists few proactive justices also are engaged in inducing or inviting the bringing of peoples miseries before the courts, lok adalats and legal aid cells.

The sixth chapter deals with Nehru’s Ideas on social justice. In this chapter one important aspect of Nehru’s work is the uplift of the country’s tribal population. As a person closely involved in the work of tribal welfare I admire the sensitive and imaginative
approach adopted by Nehru to help these neglected sections join the main stream of national development, keeping intact their traditional values. He planned and implemented developmental schemes for the promotion of weaker sections. On women, Nehru had equally enlightened views. He was a staunch supporter of women’s education and firmly believed in the equality of men and women.

The last chapter, which is the seventh chapter, is the concluding chapter. In this chapter the ideas discussed in the preceding chapters have been summed up.

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was given to me. Infact my family boosted me in various ways to complete this work. I pay my sincere regards to every member of my family.

I can not over look the appreciable facilities and help extended by the staff members of library of JGSR, New Delhi, library of JNU, New Delhi, Maulana Azad library, AMU, Aligarh and Seminar, faculty of law, AMU, Aligarh.

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(Mohd. Ashraf Ali)
CHAPTER – I

SOCIAL JUSTICE : THE CONCEPTUAL FRAMEWORK
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SOCIAL JUSTICE: THE CONCEPTUAL FRAMEWORK

Justice

It has not been possible, as yet, to give an universal acceptable definition, and it has defined all attempts made by thinkers, jurists and sociologists etc. Harold Potter has rightly said that “most men think that they understand the meaning of justice but in fact their notions prove to be vague”. Generally this ends in the definition that what seems to be just to a just man. This type of definition merely begs the question as it nowhere informs as how to recognize or distinguish a just man from the other. In India ‘justice’ has always been associated with ‘Dharma’ a term which could not be properly and appropriately translated into other languages. U.C. Sarkar referred to four senses in which the term ‘Dharma’ has been used viz:–

(i) It means ‘religion’ in the category of ‘theology’,
(ii) It means ‘Virtue’ as oppose to ‘Vice’ in the category of ‘ethics’;
(iii) It means ‘law’ in the category of law; and
(iv) It means ‘justice’ and ‘duty’ in the category of one’s actions.

According to Hindu ‘Dharmayaya’ i.e. equity or justice was given precedence over ‘Dharma’ i.e. law- whenever there was any conflict between
them. Dharmanyya prevailed. Generally speaking there was no separation between law and religion, the terms ‘law’ and ‘justice’ were used as interchangeable. According to Aristotle's justice was either ‘distributive justice’ or ‘corrective justice’, the former required equal distribution among equals and the later applied wherein remedy was provided. This mention of ‘equal distribution among equals in the distributive justice represents to earliest manifestation of the modern concept of equality. This Aristotelian concept of ‘distributive justice’ was utilized by the House of Lords in England to invalidate an expensive welfare scheme which gave benefits to small section of people at the cost of other section of the people. The doctrine of precedents is based on this notion of ‘equality’ in the administration of justice, as it imports certainly and predictability to the law, but rigid adherence to it can sometimes result in ‘perpetuation of injustice’. Benjamin Cordozo has rightly administered a caution.

“.........adherence to precedence should be the rule ........
but ...... adherence to the precedent ........ ought to be in some degree relaxed .......... when a rule has been found to be inconsistent with social welfare, there should be less hesitation in frank avowal and full abandonment. That court best serves the law which recognizes that the rule of law grew up in a remote generation may serve another generation badly and it ought not to tie, in helpless submission, the hands of successions”.
The ‘distributive justice’ should be simple and free from technicalities of law and its administration the court should interpret these so as to distribute benefits to the largest number of persons and to confine the ‘harsh effect’ within the narrowest limits. In the field of corrective created by law. In the area which is not covered by any enactment, the courts have an authority to bridge up the gap and prevent the wickedness of many who disrupt the order of the society and the courts can, in the interest of justice, exercise superintendence over the offences contra bonus mores.6 When the justice is associated with morality it also acts as social ‘virtue’ which requires that in order to get respect and recognition individual must respects and recognize the similar rights in others. The term ‘justice’ has been assigned different meanings at different times. What was regarded as ‘justice’ in past may be treated as sheer ‘injustices’ to day, or what is regarded as ‘just’ in one society may be regarded as ‘unjust’ in another society. A further difficulty arises in reconciling the abstract notions of justice and its practical manifestation. The justice may be divine justice, moral justice but it will not be conformable to any set of standards and are not capable of practical application. When the state or society attempts to crystallize these abstract or vague notions of justice the resultant ruler are known as law. These rules may be fixed by statutory enactments or may be defined by judge made-law. Justice no doubt can be administered
without these fixed rules i.e. law, but such justices will change with every judge, Devlin. J. has referred to it when he observed.

"In the administration of justice choice always lies between the application of the fixed rules that are designed to be generally fair and to ensure uniformity of treatment, and the investigation in each case on its merits, leaving the result to the length of judge's foot".

The basic purpose of law is the quest for justice. Which is to be administered without passion as "when passion comes at the door, justice flies out of window". The 'justice' has been regarded by anarchists as merely a 'mask' to perpetuate the dominance of the weak by the strong. Communist regard 'law' as 'bourgeois' instrument for the domination of the proletariat by the capitalists. Inspite of this view regarding law even the communist nations have not been able to find a 'substitute' for 'law', rather on the contrary these nations have used the instrumentality of law more stringently than others. According to Paton, it is futile to hope or except that there will be no need of law when the communism is achieved, and he pointed it out with razor-sharp intellect when he remarked:-

"Even if no one covets his neighbour possessions, he may still covet his neighbour's wife, law may be change its function in a socialist state, but no community can exist without it".
For the purpose of the present study the term ‘justice’ shall, of necessity, be justice according to law. I would, therefore, define ‘justice’ as:

The fulfillment of the legitimate expectations of individual under existing laws and ensuring him the benefits promised therein and to afford him protection against any violation of his rights or against any encroachment on his rights.

To administered justice to an individual, firstly he shall be assured that he shall, whenever any violation by him is alleged, have the rights to fair, full and impartial adjudication; secondly he shall neither be discriminated nor any obstruction shall be placed on way to his progress in society and betterment of his position career and fortunes; and thirdly, he shall be entitled to full benefits of laws applicable to him. In areas other than which are covered by laws, the gap is supplied by the concept of natural justice which the Courts have used in the administration of justice.

Concept of Social Justice

Social Justice, as it is commonly understood is a quest for achieving justice for those who are oppressed, suppressed, crushed, exploited, discriminated, deprived and the disadvantaged. The exercise is not easy. It calls for new methodologies and strategies to bring the depressed and the deprived at par with other segments of society. Social justice goes beyond mere reciprocity
Social Justice: The Conceptual Framework

or reciprocal relationships between and among interacting human beings, either as individuals or groups. It also includes social, economic, professional and occupational relations. The purpose is to create an organically united and cohesive society with individual having an equal opportunity to grow and develop according to one’s own talents and abilities. However, when viewed comprehensively, it includes economic and political matters of society too. Thus social justice implies social equality, which in turn implies absence of special privileges on grounds of religion, caste, creed, equal opportunity to all in economic matters-right to employment and political equality which implies political rights. The preamble to the constitution of India embodies the true spirit and better of the term social justice. Social justice is not a new concept. We find a glimpses of it in the writings of almost all the philosophers commencing from Plato. According to Plato justice lies in doing one’s own work. He did not subscribe to notion of natural equality. Nature itself has created inequalities, some are bestowed with more qualities of head and heart than others. Therefore everyone is not fit for every type of work. The concept of egalitarian justice, thus entails the notion of just distribution, not equal distribution of benefits. Vlastor asserts, egalitarian justice has a direct stake in equalizing the distribution of those goods whose enjoyment constitute well
being. Human considered greatest happiness of the greatest number is the supreme moral end of political justice.

Social justice is dominated by three accounts of justice. There are the proprietarian account, the utilitarian account and the contractarian account. The first assimilates justice to legitimacy, the second to welfare and the third to fairness.

**Justice as Legitimacy**

Pre-supposes the existence of right and wrong, proper and impower. Its justice consists in its propriety in respect of assumed principles. This brand of justice owes its origin to the seventeenth century theory of natural rights (right to life, property and liberty) receiving a classic formulation in the work of John Locke in his two treaties of Government (1963). But the most powerful statement of it has been made by Robert Nozick in his Anarchy, state and utopia (1974). The leading proprietarian theme is that individuals have certain rights independently of the form of social organization under which they live and those rights put constraints on the institutional arrangement that could be made for individuals.
Justice as Welfare

Emerges from the idea of J. Bentham, J.S. Mill and Henry Sidywick following Bentham, the utilitarians have regarded natural rights as nonsense. They emphasized the notion of welfare, in particular, human welfare in the line with the pleasure or ‘happiness’. The conception of happiness is equivalent to the satisfaction of wants and desires. This want satisfaction approach to social justice present utilitarianism. It proposes to maximize aggregate happiness by often dealing people unevenly. It often justifies unequal allocation of social benefits.

Justice as Fairness

Identifies social justice as “fairness”. The concept comes directly from the contemporary American philosopher John Rawls (in his theory of Justice). Rawls proposed that all primary social goods – liberty and opportunity, income and wealth and the bases of self respect are to be distribute equally unless and unequal distribution of any or all these goods is to be advantage to the least favoured. He argued for arranging social and economic inequalities in a manner so that they work to the greatest benefit of the least advantaged members of the society. Here he qualifies his position and says that the concept of justice put out as optimal a character which serves people’s interest in some non – arbitrary way.
In his elaboration to the principle “fair equality of opportunity”. Rawl treats on difficult ground and concedes that equal opportunity is the principle of efficiency, since it is assumed that filling offices on the basis of ability and skill leads on the whole to more competent performance of the task attached to the office. In order to make his principle of justified equality” more recepable, he opines that justified inequalities might serve as incentive to effort and might have positive net effect. He however, adds that justified inequalities must not be continued by arbitrary contingencies or the relative balance of social forces. Rationality ought to be sole criterion concluding his argument he wrote “the soundness of theory of justices is shown as much as its consequences in the prima facie”.

On the basis of these three theories of justice, these emerge three principal criteria:

(1) To each according to his right
(2) To each according to his desert
(3) To each according to his need.

**Principles of Social Justice**

Liberty, Equality and Fraternity are the three basic principles of social justice. Each of them has been interpreted and re-interpreted by the social and political reformers, from time to time, with the principal object of
promoting the interests of the have-nots, the oppressed, suppressed and downtrodden sections of society to build up a social order free from oppression and exploitation in society, it would be proper to discuss each of these principles separately.

**Principles of Liberty**

According to L.T. Hobhouse “Common Good”, is the rational or ideal object in pursuance of which liberty is granted. Early liberal thinkers uphold “Laissez Faire” as an essential attribute of liberty. This meant non-interference by the state in economic activities to enable the market forces to operate freely. Thus early liberalism stood for negative liberty as “Absence of Restraint” that is absence of undue or arbitrary interference with individual action on the part of the government. Since this concept of liberty led to exploitation of working class and other vulnerable sections of society, the positive role to the state was assigned for sanctioning favourable conditions for the under-privileged sections, e.g. protection of the workers and other weaker sections and making provisions for their welfare including provisions for schools, hospitals, transport, housing etc. Liberty as positive concept comprises liberties or rights which are essential to the development of the individual and the perfection of national life for example liberty of thought and expression.
The negative and positive concept of liberty exists side by side in the present day society with varying emphasis on each under different system.

**Principles of Equality**

Equality is a very vital principle of social justice while it is a boon to the poor the oppressed and the down-trodden, it is dreaded by the rich and prosperous section of the society, because it can be stretched beyond the limits of justice. A Hobhouse has observed.

"Justice is a name to which every knee will bow. Equality is a word which may fear and detest".12

The problem of equality has baffled political thinkers and social reformers from the earliest time. Aristotle defined equality as treating equals equally and unequals unequally. The modern idea of equality on the contrary focuses attention on its substantive aspect and seeks correction of inequalities in so far as they are unjust and alterable according to prevailing social consciousness.

Law is the expression of the general will. It must be the same for all whether it protects or punishes. All citizens, being equal in its eyes, are equally eligible to all public dignities, places and employments according to their capacities and without any other distinction then that of their virtues and talents.
Mere formal equality is not enough for oppressed and exploited sections of the society which not only need to protection but in substance it requires removal of unjust and oppressive conditions which are capable of alteration. The principles of equality demands that we may concede to only such discrimination as is based on rational grounds what is rational depends on the level of prevailing social consciousness.

**Principles of Fraternity**

The ideal of fraternity is no less important than liberty and equality. According to Barker the principle of fraternity consists in distributing among members of the state the various rights which are conditions of personal development. He said all of us need liberty and equality for ourselves. All of us need collectively a common equipment for our common benefit such as communication, transport, sanitation, housing, medical service, development of forest, miner, electric-power etc., which go beyond the reach of private enterprise and meant for common benefit.¹³

The ideal of fraternity involves an emotion rather than principle of Government Barker prefers to call “Cooperation or Solidarity”. It is a kind of cohesion in the society which bring about emotional integration of the people within a state as a nation. Barker define fraternity with all ideals which
legitimates a modern welfare state. The principles of fraternity should not only transcend the limits of liberty but even of equality to provide a humanistic base for a social organization.

Social Justice is primarily concerned with the claims of underprivileged sections of society those who have been deprived of their rights, freedom and opportunities of development because of a defective social system. Fraternity of course denotes a sentiment, but, in association with liberty and equality, signifies the conditions which inspire a feeling of universal fellowship which mark an end of all conflict.

Problem of Social Justice

David Miller in his erudite article on the Ideological Backgrounds to Conceptions of Social Justice has identified the problem of social justice as that of the ‘principles which should be chosen to govern the distribution of wealth, prestige and other benefits among the members of society’. He has discerned three speciality criteria which have been evolved by various schools of thought to decide the issue. The first criterion insists on the principle of ‘protection of acknowledged rights. It corresponds to a model of society, which Miller has termed as ‘hierarchical order’. The chief advocate of this principle is David Hume. The second criterion subscribes to the principle of ‘distribution
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according to desert. The corresponding model of society in this case is that of ‘competitive market’. The chef exponent of this model is Herbert Spencer. Finally, the third criterion is characterized by the principle of ‘distribution’ according to need. This leads to the model of ‘solidaristic community’. Kropotkin may be regarded as pioneer of this model.

In identifying these speciality criteria Miller seems to have travelled from the sphere of social justice proper to the realm of the various concepts of mere justice by which conflicting claim are sought to be ‘justified’. The first two models, whatever their merit, could hardly be accepted as ones that approach the idea of social justice at all. The ‘hierarchical order’ demanding protection of acknowledged rights is, properly speaking, an antithesis of social justice, rather than a thesis thereof. D.D. Raphael has rightly observed that the term ‘social justice’ tends to issue from the mouths of reformers who are not satisfied with the prevailing system of distribution of rights. The very demand for protection of the existing rights emanates from a theory of origin of rights which are either based on a wrong logic (as in the case of Aristotle’s defence of slavery on the assumed inborn individual differences in the capacity to attain virtue) or on such grounds which are no longer tenable. A deeper analysis will show that the system of rights, alleged to be acknowledged rights, was evolved by a tiny class which managed to corner major portion of the resources of the
community, and forced the rest of the community to acknowledge this system by administering a strong dose of religion. The demand of social justice strikes at the very root of this system of so-called acknowledged rights.

The second model, namely, that of 'competitive market', is also inconsistent with the idea of social justice because such competition takes the existing disparities in opportunities and powers to compete for granted. It is ahead of the model of 'hierarchical order' in the sense that it adds an element of effort and desert for determining one's share in the advantages accruing from organized social life. But the element of desert is introduced so cleverly that it re-establishes the theory of the acknowledged rights in disguise. This may be proved by a reference to Locke’s defence of the right to property. Locke regards property as 'fruit of labour'. He builds up his theory with reference to 'manual labour' because man has absolute right on his hands and other parts of body by which he puts his labour. To this intellectual labour may also reasonably be added on the same ground. But with the changed circumstances, especially under the modern system of highly mechanized and capitalistic form of production, the extent of property that could really be described as fruit of one's labour is very difficult to determine. Here manipulative labour comes into play and the process of production leads to increasing control in fewer a fewer hands not only over the productive resources of the community but over the
lives of a large body of citizens, thus depriving them of their liberty, which was so much valued by Locke. Any such theory that acquiesces in the existing vast disparities in opportunities open to the different classes, and still regards the criterion of ‘distribution according to desert’ as fool-proof, is bound to fall to ground, when analysed from the point of view of social justice.

The third model, which insists on ‘distribution according to need’, no doubt represents a substantial advance in the direction of social justice, but it is by far an insufficient criterion if exclusively applied. The need can be adopted as the sole criterion of allocation only in a society in which there is abundant production and human beings have learnt to take only what they need, and to put their best without any temptation for a distinctive reward. Since such a society exists in idea only, not in the real world, an elaborate scheme must be worked out to meet the wider requirements of social justice.

Aspects of Justice

‘Social Justice’ is the concern of moral philosophy and jurisprudence on the one hand, and of political philosophy on the other. Accordingly it is necessary to distinguish this term from two sets of terminology, namely, that of moral philosophy and jurisprudence, such as, distributive justice, natural justice, and that of political philosophy, such as, welfare state, socialism, etc.
Moral Philosophy and Jurisprudence

In the realm of moral philosophy it is important, at the outset, to distinguish between formal and substantive justice. Thus in the formal sense, justice consists in the ordering of human relations in accordance with general principles applied impartially.\textsuperscript{17} It is called formal justice because it deals with the outer form. It simply suggests the mode of applying the rules and principles without indicating what the rulers should be. For instance, the statement that equals should be treated equally and unequals unequally, as suggested by Aristotle, throws no light on what is to be done by, to, or for equals and unequals. Moreover, equal and unequal are relative terms; there are no absolute standards by which they could be measured. People may be treated according to their merits or their needs, and formal justice simply insists that they should be treated in the same way in respect of their merits or needs. It does not inquire as to whether ‘merits’ or ‘needs’ constitute any valid criteria for treating persons equal or unequal. Similarly, Ulpian defines justice as ‘giving each man his due’. But this formula, too, does not help us to determine the standards to measure what is due to each man. Campbell, therefore, suggests that the doctrine of the form of justice requires to be supplemented by a doctrine of substance of justice.\textsuperscript{18} This leads us to the other important aspect, viz., substantive justice.
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The substantive justice, therefore, concentrates on the content and substance of justice. In other words, whereas formal justice belongs to the domain in application of the rules, the substantive justice deals with end of law itself. The judges and magistrates are generally concerned with the formal justice in deciding the cases before them, though with the increasing role of judiciary in social reconstruction, they might have to invoke the end of law also. The legislations, on the other hand, must essentially concern themselves with the substantive aspect of justice so that the laws enacted by them conform to the essence of justice. The problem of substantive justice is a complex one. Discovering substantive justice may call for determining absolute truth or absolute good, but in practice the ideal of justice will always be reflected in a system that a society has chosen for itself and the ideals that a nation has cherished. It is significant that social justice particularly belongs to the domain of substantive justice.

Another important set of terminology in the realm of moral philosophy consists in that of distributive, retributive and commutative justice. The traditional distinction between distributive, retributive (also called corrective, rectificatory or remedial) and commutative justice owes its origin to Aristotle, who suggested that the legislator should be concerned with the distributive justice whereas the judge should concern himself with the
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commutative justice. Political rights and goods should be apportioned according to distributive justice; punishments should be imposed and damages paid according to commutative justice. Distributive justice gives each person his proper position and due share in the political community, whereas commutative justice determines the portion of one sort of goods or services to be rendered in return for another sort in voluntary transaction of buying and selling, or letting and hiring. Corrective or rectificatory justice, which is again the concern of the judges, purports to correct a loss of position and rights involuntarily sustained in the course of transactions between individual members of the community. In short, the justice of transactions demands restoration of the status quo or its equivalent.

Some thinkers have pronounced a modern version of these important aspects of justice. Thus L.T. Hobhouse suggests that the distributive justice deals with apportionment as between members of a community, especially as considered from the point of view of needs, as it insists on 'equal satisfaction of equal needs of all members subject to the adequate maintenance of useful functions.' S.R. Lucas has pointed to a still another shade of the modern idea of distributive justice: 'Distributive justice in modern states is concerned with distribution of burdens more than of benefits. Taxes and military service are what the state is most concerned to share out... The one benefit which the state
may have available for sharing out among its citizens is participation in the process of decision-making. This is pre-eminently, although not exclusively, constituted by the right to vote in parliamentary elections. However, for a fuller idea of distributive justice, all the advantages accruing from organized social life must be taken into account, whether they consist in political rights or in such economic and social rights as the right to work, right to a reasonable standard of living, right to education, social security and other benefits. It would thus come close to the concept of social justice, although still it would not become synonymous of social justice.

Retributive justice, on the other hand, seeks by a mechanism of rewards and punishments to make each man share in the fruits of his action and bring home to him what he has done. The pure retributive theory, however, which makes a man the sole bearer of the consequences of his acts implies a quite impossible individualism.

Commutative justice, according to Hobhouse, deals particularly with economic reward or what has been termed as ‘the payment of service’, and regulates transaction between the individuals on the basis of ‘equal values’.

In any case these sub-divisions do not represent water-tight compartments and it is not easy to carry through them without over-lapping.
Jurisprudence it is customary to draw a distinction between legal justice and natural justice. Raphael observes that justice is a complex concept and that in the realm of law the term 'justice' is used to cover the whole field of principles and procedures that ought to be followed. The system of law as a whole is often called, in legal parlance, the system of justice.\(^{23}\) When justice is bestowed in accordance with the prevalent law, it may be termed as 'legal justice'. Thus legal justice determines the disputes in regard to legal rights, property rights and the rights of status between citizen and citizen, or the disputes between the citizen and the state. Legal justice, therefore, corresponds to formal justice.

When no specific rule may exist, the judges are expected to act according to their sense of justice, equity and good conscience. In other words, when the letter of law is found to be silent or inadequate, the spirit of law must be followed: 'Justice, equity and good conscience are captivating terms; but before a judge applies what may appear to him at first sight to be in accordance with justice, equity and good conscience, he must be careful to see that his views are based on sound general principles, and are not in conflict with the intentions of the legislation and with sound principles recognized by authority'.\(^{24}\) This leads to recognition of a ‘law behind laws’, the principles of which as usually described as natural justice. It is called natural justice because
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it derives its authority from the nature itself. Natural justice regards man as a rational being, endowed with the power of reasoning. Hence natural justice emanates from the dictates of reason. Being natural, it is also universal. It is, therefore, binding both on 'the bench' as well as on the legislative organ of the state; it organizes them and determines their respective jurisdictions. Thus it lies on the periphery of formal justice and substantive justice.

Natural justice seems to correspond to the concept of natural law of the seventeenth and eighteenth centuries originating from the stoic conception of jus-naturals. But, as Marshall has pointed out, in recent years it has acquired a restricted meaning and come to be used as a compendious phrase to describe certain rules of judicial procedure. In this context, he has enumerated two essential elements of natural justice, viz., (a) no man shall be judge of his own cause; and (b) both sides shall be hear, or *audi alteram partem*. Lucas has given a still more comprehensive definition of natural justice as applied to judicial procedure:

The rules of Natural Justice require that no man shall be judge in his own cause; that the judge shall hear both sides of the case; that the judge shall give full consideration to the case; that the judge shall exclude all irrelevant considerations from his mind while reaching a decision; that like cases shall be decided alike; that cases once settled shall not be reopened, though, according to some authorities, there shall be some right of appeal; that not
only shall justice be done but that it shall be seen to be done, that the judgement shall include not only the bare decision, but the reason which lead to it... 

Lawyers may recognize the principles of natural justice as a relatively small, though fundamental, part of the legal system, but in wider sense, natural justice constitutes the essence of justice. In this sense, it may come close to substantive justice and may be distinguished only from the remaining superstructure of law which is dependent on custom, precedent and enactment. If the sphere of natural justice is extended so as to afford special protection to the weaker party and impose social responsibility on the stronger, it may come close to the concept of social justice.

Political Philosophy

Coming to the do of political philosophy, it will be advisable, at the outset, to point to the usage of the terms social, economic and political justice. Broadly speaking, the terms ‘social justice’, ‘economic justice’, and ‘Political Justice’ are usually applied to elaborate what is compendiously described as social justice. In fact, social justice represents a comprehensive idea which operates throughout the social, economic and political spheres. Sometimes a comprehensive term ‘social, economic and political justice’ is applied, as in the Preamble to the Constitution of India, in order to ensure that the wider scope of
Social justice is not lost sight of. In terms of the modern system theory, social justice may be considered as an attribute of social system in the wider sense, in which associational, economic and political relations constitute respective sub-systems. Social justice in the restricted sense, which may be described as ‘associational justice’ with a view to distinguish it from the term ‘social justice’ in the wider sense, economic justice, and political justice, then, should be identified as the attributes of associational, economic and political sub-systems respectively. In order to make the whole system work properly, it is imperative that all the three sub-systems described here operate in such a manner that they support and strengthen the main system. In other words, the associational justice, the economic justice and political justice shall, taken together in a coordinated form, constitute and strengthen the social justice.

However, when we refer to the terms ‘economic justice’ and ‘political justice’ separately, we are either pointing to the application of the principle of social justice primarily and particularly in the economic and the political spheres respectively, or to the whole concept of social justice in the comprehensive sense. Thus, according to one opinion, economic justice consists in ‘the provision of equal opportunity to the citizens to acquire wealth and to use it for their living; it implies too that those persons who are disabled or old or unemployed, and, therefore, not in a position to acquire wealth should be
helped by society to live'. This definition is, however, subject to further scrutiny. Help for the helpless is more akin to humanitarianism than to the idea of justice. Justice in economic sphere must also put a question mark on the existing vast disparities of wealth, and seek to reform and reconstruct the whole system as to modes of acquiring wealth.

Similarly, political justice, according to the same authority, is 'essentially the right to participate in the control over conditions of one's own and others' living, i.e., political participation.' This definition, again, suffers from imperfection, political justice must confer, not only the right to participate freely in the election of political representatives, but also an equal opportunity to acquire and hold political office through constitutional means; provided that this opportunity is not rendered ineffective due to vast economic disparities or social inhibitions.

Economic factor is so important in society that a major area of social justice is concerned with restructuring of economic relations to make them more fair. Thus, according to a famous jurist 'in a more restricted sense, the requirements which are indicated as those of social justice are those which concern the distribution of economic wealth, the organization of work, and the remuneration of workers; requirements which, according to the traditional theory, belong to particular justice in one or the other of its two varieties
Similarly, when we speak of ‘economic growth with social justice’, our main concern remains the economic sphere of social life, and this expression becomes co-terminus with ‘economic justice’.

Sometimes the term ‘political justice’ is also applied in the comprehensive sense, although the modern trend is to use the term ‘social justice’ in such contexts. Godwin used the term ‘political justice’ to denote a moral principle whose object was ‘general good’, and which was especially invoked to evolve a genuine system of property. Otto Kirchheimer has conceived of ‘political justice’ as ‘the search for an ideal order in which all members will communicate and interact with the body politic to assume its highest perfection’.

In the present work the term ‘social justice’ will be used to denote the principle of just society in all its spheres – social, economic as well as political. In considering the sphere of social justice it would be convenient to discern the implications of social justice in national sphere on the one hand, and in international sphere on the other.

**International Sphere**

We may first consider the essentials of social justice in the international sphere, which must be indicated in a study dealing with the
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clear concept of social justice. Thereafter the requisites of social justice in the national sphere could be considered in greater detail since they pertain to our main field of investigation.

It is significant that a number of international institutions, e.g., United Nations Educational, Scientific and Cultural Organization (UNESCO) and International Labour Organization (ILO), etc. have included social justice among their objectives. In some respects the objects of social justice in the international sphere may coincide with those in the national sphere, e.g., in the matter of securing humane conditions of work for the labour, as sought by the International Labour Organization. Yet in broad perspective, social justice in the international sphere aims at bridging the gap between the advanced and the underdeveloped nations, as also securing their co-operation in maintaining a clean and peaceful atmosphere in the interest of the whole world. In the national sphere, on the other hand, the idea of social justice operates in very complex forms so much so that it is difficult to demonstrate or delimit the whole range of activities in which this ideal is likely to be invoked.

Securing social justice in the international sphere largely depends upon a voluntary effort of the nations, especially of the rich and powerful nations. Thus Gunnar Myrdal has insisted on the advanced nations to strive for welfare of the whole world. He has come out, as a result of inference from
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analysis, with the thesis that once the Welfare State has come into existence in the Western Countries, and once the under developed countries are becoming independent and are launching upon individual national economic policies in the interests of their national development, there is, as a matter of fact, no alternative to continued international economic disintegration, except to strive for a Welfare World. However, before proceeding to this lofty ideal, it is necessary to ensure that the strong nations have no right to establish their suzerainty over the weak nations; that the conflicting claims of different nations should be settled according to peaceful means under international law on fair terms and conditions so that no nation, whether endowed with rare natural resources or otherwise strong, will make use of its economic or political power to hold other nations to ransom. Social justice in international sphere, therefore, not only insists on maintaining just and honorable relations between nations, but also on the duty of the rich nations to share their rare possessions on reasonable terms with other nations who may be in need.

Keeping the atmosphere clean and free from pollution is also a problem of social justice in the international sphere since atmosphere transcends all national boundaries. The famous American Ecologist Professor Commoner, for instance, considers the problem of universal atmospheric pollution essentially as an enormous problem of social justice. Elimination of
war, if secured, will no doubt keep away one potential factor of atmospheric pollution. But there are other factors also. Nuclear tests must be banned in so far as they result into atmospheric pollution in any part of the territory inhabited by human beings. Besides, indiscreet dumping of factory wastes into sea or air should be stopped forthwith so as to preclude any environmental pollution. Initiative in this direction must come from the advanced nations themselves since such dangers largely.

**Concept of Welfare State**

The concept of social justice is closely related to that of the welfare state, although it will not be proper to treat them as co-terminus. Honor, for instance, points out that the development of welfare state is generally thought of as an application of the notion of social justice. In the Indian Constitution, too, the idea of welfare state is intertwined with that of social justice. In order to understand the distinction between social justice and welfare state. According to D.L. Hobman, the welfare state is a compromise between the two extremes of communism on the one hand, and unbridled individualism on the other, and as such, inspite of all its imperfections, it sets a pattern for any humane and progressive society. Historically, since the decline of laissez-faire doctrine the modern states have been showing greater concern with the welfare of the citizens, which is responsible for the emergence of the welfare state. According
to Robert M. Mac Iver, the welfare state pursues the goal of adequate provision of protection against want and insecurity and safeguarding the health and general well-being of the people. In this sense, all modern states are increasingly welfare states.\textsuperscript{39} Marsh has presented a still more comprehensive view of the welfare state: 'In looking at welfare states throughout the world it seems that there are at best some common basic aims. If for example, one looks at the Scandinavian countries, or New Zealand, Australia, or Britain, there it seems as though they all attempt :-

(a) to ensure the maintenance of employment so as to guarantee the right to live for most of us;

(b) to ensure the maintenance of a minimum income at all times;

(c) to ensure the right to learn; and

(d) the right to protection and community support when one is incapacitated physically or mentally.\textsuperscript{40}

It is significant that the welfare state strives to achieve these broad objectives by (a) regulation of activities of men and institutions, e.g., quality of food and sanitation, hours and conditions of work, and so on as also the matters affecting public morals, such as, quality of our entertainment (e.g., censorship of films and other media of mass communication), and (b) provision of certain implements and services for common use and for the benefit of the needy either
free of charge or at nominal fee, as also of immediate and effective help for
victims of accidents, natural calamities, like drought, flood, cyclones,
earthquake, fire, epidemics or war, mainly at the expense of the tax-payer.
Similarly, the welfare state concerns itself not only with protection of our
person, property and public order against possible offences but also with
maintenance of essential services and utilities (such as, water, electricity,
sewage disposal, fuel, transport and communication), sanitation and public
health, supply of essential commodities at reasonable rates; maintenance of
schools, libraries, hospitals, roads, play-grounds, community halls, picnic
spots, museums, art galleries and other archaeological treasures, etc. In short,
the welfare state simply diverts some money from possession of the richer class
and from the pocket of the ordinary consumer, usually according to a system of
progressive taxation, to common use, or for the benefit of the needy. It does not
seek to transform the whole of social order; it does not question the right of the
rich to hold and multiply their riches so long as they continue to pay taxes
according to law; nor does it challenge the vast economic disparities – the
disparities of wealth, income and levels of consumption, so long as nobody is
allowed of die of hunger, malnutrition or natural calamities. In other words, the
welfare state seeks to ensure welfare of the people without demanding
sweeping changes in the existing structure. Thus, by and large, it is an extension of the principle of the so-called liberal democracy.

**Wider Objectives**

Social justice, on the other hand, seeks to achieve still wider objectives through revision of the existing social order and a redistribution of rights to suit the current ideas of fairness, although measures of progressive taxation as prevalent in the welfare state are considered as a part of the scheme of social justice. The philosophy of welfare state and that of social justice co-incide in a large measure, but there is a difference of outlook. Broadly speaking, social justice insists on the claims of the poor and weaker sections of society to a fair share in the wealth of the society so that this wealth is distributed as a reward for the service rendered to the society, not on the basis of any privileges related to birth or status. The recipients of any benefits under this scheme are not required to compromise their freedom or dignity since these are extended to them as a matter of right, not as charity. Payment for service in this context is not accepted according to the existing rates and standards, but according to an objective criterion evolved on the basis of a fresh assessment of the value of their service. It rules out the existing system of extremely wide disparity in the rewards for the manual and intellectual labour on the one hand, and manipulative capacity and element of chance or speculation of the other. It
demands that the chances of birth and station shall not incapacitate men and women in developing their personalities. This idea was nicely expressed by Bakunin (1814-1876) in these words: 'Society must be so organized that all, man or woman, have the same chance to develop their faculties and use them in their work. To ensure this fully will doubtless take centuries; but history has set the problem and to ignore it now would be to accept our impotence.\textsuperscript{41}

It is significant that social justice seeks material compensation for any material loss and does not entertain such religious assurances that an earthly loss is a heavenly gain.

**Departure from Communism**

Social justice as a principle of government differs in its *modus operandi* from communism. In the history of socialist thought Proudhon (1809-1865) introduced the idea of social justice as an alternative for the charity on the part of the capitalists as preached by the earlier socialists Robert Owen and Saint Simon. For Saint Simon and many later socialists, the moral basis of socialism was not the ideal of justice, but rather the ideal of human brotherhood or love. Proudhon, on the contrary, pronounced that not love of others, but respect for their dignity as persons was the proper basis of morality. And the formula for morality was justice, defined as mutual respect for human dignity.
Thus Proudhon pleaded for transformation of the economic order to secure mutual co-operation of the workers, and subordinated political rights to economic rights. However Karl Marx (1818-1883), his contemporary, branded Proudhon and other earlier socialists as 'utopian' in contrast to his own philosophy which he termed as 'scientific socialism'. Marx went to the extent of deprecating social justice as it sought to ameliorate the conditions of workers which would cause industrial unrest to subside, and thus weaken the forces of revolution. It is significant that Lenin and other Russian revolutionaries at the turn of the century used the term 'economism' to denigrate the social democrats who relied on those trade-unionist movements which the working classes develop spontaneously in response to their living and working conditions and which tend to exhaust themselves in struggles for immediate economic and social improvements instead of advancing the cause of revolution.42

Inspite of this criticism, most of the progressive states have sought to secure social justice through constitutional method as a means of transformation of the social order. A large number of democratic countries of the world have adopted the policy of social justice as an instrument of eliminating the vast disparities in the social and economic status of their people. According to Carew Hunt, the conception of social justice evolved by the socialist movement, particularly in Britain, and generally accepted by a large number of
socialist countries, has been the outcome of three main demands on the part of the masses:

(a) for the establishment of a society in which the workers will be guaranteed not only the political rights they already possess, but also a degree of economic security, including latterly full employment, such as is thought unattainable under the ‘free market’ system of private enterprise (this has led to a great measure of state intervention in industry);

(b) for a ‘welfare state’ to be brought about by a large-scale extension of social services;

(c) for such a redistribution of income as is necessary to iron out class distinctions, and at the same time to enable the living standards of the wage-earners to be maintained and improved.\(^43\)

**Social Justice and Socialism**

Social justice and socialism, however, should not be treated as co-terminus. In the first place, socialism generally aims at or advocates the ownership and control of the means of production – capital, land, property, etc., by the community as a whole and their administration in the interests of all. That is why sometimes it is alleged that socialists in the West, or for that matter in India, have ceased to be socialists because they have begun to pay greater importance to social justice than to ownership and control of means of
production. The reason advanced here is that social justice is possible within the capitalistic economic framework.

This dilemma, in fact, arises from taking an extreme view of socialism and a very superficial view of social justice. G.D.H. Cole regards socialism as a movement as much as an idea, thought it is an idea as well as a movement. This idea, as nearly as it can be expressed in a sentence, is that the affairs of the community shall be so administered as to further the common interests of ordinary men and women by giving to everyone, as far as possible, an equal opportunity to live a satisfactory and rounded existence, coupled with a belief that such opportunity is incompatible with the essentially unequal private ownership of the means of production, and requires not merely collective control of the uses to which these can be put, but also their collective ownership and disinterested administration for the common benefit. This basic idea of socialism involves not only the socialization of the essential instruments of production, in the widest sense, but also the abolition of private incomes which allow some men to live without rendering – or having rendered – any kind of useful service to their fellows, and also the sweeping away of the forms of educational preference and monopoly which divide men into social classes. It involves, in effect, whatever is needful for the establishment of what socialists call a "classless society"; and in pursuance of this aim its votaries necessarily
look for support primarily, though not exclusively, to the working classes, who form the main body of the less privileged under the existing social order. A very large number of socialists strive to achieve these aims within the democratic framework in a slow and steady pace, without insisting on complete overthrow of the existing order in a single violent attempt.

On the other hand, pursuit of social justice does not end with concessions to the capitalistic economic framework. It could be feasible to establish a 'welfare state', with its limited objectives, within a capitalist system. But the quest for social justice would raise more fundamental questions: is there substantive equality of opportunity for all men and women, irrespective of their birth, station, or faith to develop their inherent faculties, and to lead a dignified life? Social justice further requires that there shall be no concentration of economic and political power which enables one class or group to control the lives of others. In short, social justice purports to convert formal liberty and formal equality into a real or substantive liberty and equality, fortified by the spirit of real fraternity. These conditions are enough to rule out any collusion between social justice and laissez-faire capitalism. In any case, social justice does not shed off democracy to achieve the objectives similar to those of socialism. It is significant that so many decisions of the United States Supreme
Court constitute the quintessence of social justice whereas that country does not profess socialism.

**Prevailing Confusion**

The concept of social justice is obscured due to the fact that even the advocates of extremely conflicting ideologies do not forget to pay tribute, or in some cases lip-service, to social justice. The champions of 'free enterprise', for instance, assert their exclusive claim to secure social justice on the ground (a) that their ideology is best suited to ensure maximum economic growth without which social justice is impossible, and (b) that it provides for unrestrained industrial expansion and consequent increase in job opportunities for the masses which are indispensable for, or even synonymous of, social justice. They altogether ignore or divert our attention from the consequent evils accompanying the concentration of economic power which defy social justice. On the other hand, the advocates of violent revolution claim that there can be no social justice unless you throw off the so-called democracy which allows the capitalists and exploiters to thrive under the garb of a fraudulent form of liberty. The protagonists of this method forget the evils of the wide-spread disaster and mass sufferings that are bound to accompany any violent revolution. In any case inevitability of an organized struggle for restoration of the rights of the underprivileged classes cannot be ruled out since the privileged classes cannot
be ruled out since the privileged classes will be instinctively determined to perpetuate their privileged position with ample resources at their disposal for securing it as also magnificent tactics to misguide the underprivileged by extending petty concessions to give an impression of their generosity and by preaching high-sounding pseudo-religious ideals. Class consciousness is, therefore, a primary condition of this struggle but the form of the struggle remains a debatable point.

This confusion is by no means new or unique. Similar confusion attaches to other social values like liberty, fraternity, democracy as well, which by themselves are devoid of any doctrinaire overtones. In fact social justice, too, cannot be tied with any particular doctrine or ideology: It represents a combination of and balancing between true forms of liberty, equality and fraternity, which will be examined in greater detail in the subsequent part of this work.

Another point of confusion about social justice is that it is invoked in so many and so widely different contexts that it becomes difficult to identify it with definite principles. We have already indicated the connotation of social justice in the international sphere. Thus when the President of the World Bank persuaded the members of the Bank to give more development loans to the underdeveloped nations, he invoked the need for social justice. When
somebody advocates slum clearance and provision of better housing, then too, social justice is invoked. Increases in wages of workers are conceded in the name of social justice. Welfare measures for Scheduled Castes and Scheduled Tribes are claimed to serve the cause of social justice. Laws securing certain rights for women or providing certain safeguards for minorities are passed in pursuance of the goal of social justice. Nationalization of banks, big business or industry is sought in a bid to ensure social justice. We also hear that the 'inflation' is the worst enemy of social justice. Servodaya leader Jayaprakash Narayan, speaking of the dacoit menace, remarked that the ultimate solution of the dacoit problem lay in providing social justice to the masses.\(^{46}\)

There is no doubt that the sphere of social justice is very wide and a reference to this term in all the above and other similar contexts is by no means irrelevant. But this should not be taken to suggest that social justice has no definite character. In all the above contexts it should not be difficult to discover a central idea. And that idea is to secure a better deal for the underprivileged groups or sections, or nations so that they could lead a more comfortable and more dignified life. Inflation and spiraling prices are considered enemy of social justice because they tell adversely on the living standards of the poor people. Inflation causes erosion of real wages, weakens purchasing power of the ordinary people, and thus deprives them of the necessities of life. Hence it
obstructs social justice. As for the relevance of social justice in the control of crime, it may be observed that the lack of social justice has been responsible for forcing many poor people to take to crime as the only means of their subsistence and survival, and this evil can be remedied only through establishment of social justice.

**References:**

2. Epochs in Hindu Legal History, p.19.
3. Robert V. Hopwood; 1925 A.C. 578. See also Taylor V. Munrow; 1960, AER 455.
5. Ibid.
6. Shah V. Director of public prosecutions; 1961 AER 446.
12. Ibid., p.422.
13. Ibid., pp.422-423.
16. W. Friedman has significantly observed: 'To Locke and the makers of the French and American Revolutions, to Bentham, Spencer and the whole earlier liberal movement, freedom of property or “estate” constituted a cardinal principle... the justification for this theory was, with all these thinkers, the mingling of man’s labour with an object; but the ideology persisted despite the increasing dissociation of property and labour... property has, in modern conditions, often become a means of control over other people’s labour and life. W. Friedman, Legal, Theory, Stevens and Sons, London, 1967, p.405.


22. Ibid., pp.144-145.


26. Ibid., pp.4 – 5.

27. J.R. Lucas, op. cit., p.130.

29. Ibid., pp.5-6.


35. Director of Centre for Biology and National Systems at Washington University, St. Louis, U.S.A.


37. Thus Article 38 reads: ‘The State shall strive 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 the institutions of the national life.

43. A Dictionary of the Social Sciences (compiled under the auspices of UNESCO), 1964, s.v. Socialism by R.N. Carew Hunt, p.672.
45. Eric P.W. da Costa, for instance, in is A.D. Shroff Memorial Lecture, 1972 (delivered on October 27, 1972), entitled 'Economic Growth with Social Justice: Challenge and Response', has dwelled on these points.
CHAPTER – II

SOCIAL JUSTICE : AND
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SOCIAL JUSTICE AND CONSTITUTION OF INDIA

15 August 1947 was a great day in the long and eventful history of our motherland. For, it was on that day that the British rule of India was terminated and political authority was transferred to the representatives of the Indian people. In a memorable speech on 15 August 1947 at zero hour, Nehru said: “Long years ago, we made a tryst with destiny and now the time comes when we shall redeem our pledge, not wholly or in full measure but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake of life and freedom. This is no time for petty and destructive criticism, no time for ill will or blaming others. We have to build the noble mansion of free India where all her children may dwelve”.

The attainment of Independence was not an end in itself. It was only the beginning of new struggle, the struggle to live and independent nation and at the same time to establish a democracy based upon the ideals of justice, liberty, equality and fraternity. The need of new Constitution forming the basic law of land for the realization of these ideals was paramount. Therefore one of the important task undertaken was the framing of a new Constitution. The
present Constitution of India is the result. It presents the political, economic and social ideals and aspirations of the vast majority of the Indian people.

No Constitution in the world is as comprehensive as ours. It has unique features. It is firmly based on the principles of equality and justice and prohibits discrimination of people on grounds of religion, race, caste, sex or place of birth. The fathers of our Constitution were keen to see that not only economic progress was achieved at a fast rate but also resources of the nation were distributed equitably. The new Constitution was inaugurated on 26 January 1950.

One of the basic principles stipulated in the Preamble of the Constitution of India is the concept of social justice. The preamble states, among others, that the people of India “have solemnly resolved to secure to all its citizens justice, social, economic and political”. This is the firm resolution of the people of this great country.

**View of the Constitution Maker on Social Justice**

Preamble of the Indian Constitution is an abridged version of the “Objectives Resolutions” moved by Jawaharlal Nehru in the Constituent Assembly on December 1946 and adopted by the Constituent Assembly on 22 January 1947 after much deliberation. The Preambular concept of social justice
has been from the relevant part of the Objectives Resolution. The views expressed by the Constitution makers on the socio-economic justice embodied in the Objectives Resolution would give an idea about the meaning of social justice. It is, therefore, necessary to refer to the Objectives Resolution and the Constituent Assembly debate on it.

The Objectives Resolution, from which the Preamble was chiseled out, states thus:

“This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality”.

The socio-economic-political justice stipulated in the Objectives Resolution received enthusiastic support from a large number of members of the House. The views expressed by them indicate the connotation of the concept of social justice. M.R. Masani supported this part of the Resolution relating to socio-economic justice on two grounds. It rejected the existing
social structure, promised social security and provided for equality of opportunity. It envisaged far reaching social changes through the mechanism of political democracy and individual liberty.

Alladi Krishnaswami Ayyar said that “the expression ‘justice, social, economic and political’ while not committing this country and the Assembly to any particular form of polity coming under any specific designation, is intended to emphasize the fundamental aim of every democratic state in the present day”. So, according to M.R. Masani, the concept of socio-economic justice not only connotes rejection of the existing social structure, which is manifestly unjust and oppressive but also heralds far reaching social changes or transformation have to be brought about through the mechanism of political democracy and guarantee of individual liberty. In other words, social transformation or just social order has to be achieved within the framework of political democracy and without jeopardising the individual liberty. But, according to Alladi Krishnaswami Ayyar, social justice is a fundamental aim of every democratic state in the present day irrespective of a designation it bears as to the nature of its polity. That is to say the social justice is a sine qua non for a true and purposive democratic state, particularly in India wherein the social stratification perpetrated for a long time resulted in an oppressive and exploitative social order.
Speaking on the Resolution, Dr. S. Radhakrishnan pointed out the responsibility of the Constituent Assembly “to effect a smooth and rapid transition from a state of serfdom to one of freedom”, referred to the socio-economic revolution contemplated in the Resolution and emphasized the need to make the material conditions and to safeguard the liberty of the human spirit. According to him, it was no good creating conditions of freedom without producing a sense of freedom. Another member, Seth Govind Das, said that “keeping in view the condition of the world and the plight of India, we can say that our Republic will be both democratic and socialist....if true peace is to be realized, it can only be realized through socialism. No other system can give us true peace”.

However, B. R. Ambedkar expressed his disappointment at the content of the Objective Resolution relating to socio-economic justice, for he expected in it a clear enunciation of the doctrine of socialism. He said that if the Objectives Resolution, which spoke socio-economic-political justice, had a reality behind it and sincerity, it should have made specific provisions to the effect that socio-economic justice would be achieved through nationalization of industry and land. Also he said that it would not be possible for any future government to achieve socio-economic justice unless its economy is a socialistic economy.
Another member, Vishwambar Dayal Tripathi, held a similar view and said that there should be a declaration before hand to the effect that the Constitution should not be framed without laying stress on socialism and the state created under it should not be established on a capitalistic basis. Obviously, according to them, everybody in the modern world, including staunch capitalists, swear by “social justice”, but its realization is possible in a socialistic state only. Hence they pleaded that socialism must be given due emphasis in the Objectives Resolution, which purported to lay the basic framework and principles of the Constitution of India.

There are a few other members who did not agree. In the opinion of M.R. Masani, the Constituent Assembly had no sufficient mandate to incorporate in the Constitution such economic policy of doctrinaire character. According to Alladi Krishnaswami Ayyar, the Constitution should not be rendered rigid by incorporating explicitly a particular economic doctrine, and that it should “contain the necessary elements of growth and adjustment needed for a progressive society”. Thus opposition to the use of the term “socialism” or “socialistic state” in the Objectives Resolution stemmed from the fear that use of such term or phrase in it might inject into the Constitution and undesirable rigidity.
Always as he was, Jawaharlal Nehru, the mover of the Objectives Resolution, was particular to avoid controversies. He said, “If, in accordance with my own desire, I had put in that we want a socialist state, we would have put in something which may be agreeable to many and may not be agreeable to some and we wanted this Resolution not to be controversial in regard to such matters. Therefore, we have laid down, not theoretical words or formula, but rather the content of the thing we desire”. Ultimately, the paragraph dealing with the socio-economic justice in the Objectives Resolution was approved without any change. Jawaharlal Nehru made very clear that he desired a socialist state, which would aid through its infrastructure the realization of the content and goal of social justice. He firmly believed that realization of its content, that is, full achievement of socio-economic justice, would eventually usher in a socialist state.

Emergency use of Social Justice

The debates in the Constituent Assembly makes it evident that the founding fathers made the social justice a predominant goal to be achieved. They gave broad hint on its connotation. Social justice, according to them, meant liberation of society from the existing social stratification, creation of a new and just social order, economic freedom with social equality and, in short, an egalitarian society, which is imbued with democratic ideals and wherein all
institutions are impressed with socio-economic justice. In furtherance of this great ideal of social justice they made ample provisions in the Directive Principles of State Policy, but the basic principle is reiterated in a significant provision\textsuperscript{10a} of the Constitution. It reads:

1. The State shall strive 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 the institutions of the national life.

2. The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations\textsuperscript{10b}.

Among all the duties imposed on the state, the one imposed by Article 38 is the basic duty, because it is in full and faithfull discharge of this basic duty lies the realisation of the goal of social justice set by the Preamble to the Constitution. Besides, Article 38 gives an indication of the lines in which the state should endeavour to reach the goal. It may be noted that clause (1) of the Article envisages a just social order encompassing all the three major fields of human activity, social economic and political and this is sought to be achieved by transforming institutions of the national life to that end.
Then, clause (2) which was introduced into the Constitution by the forty fourth amendment indicates the lines in which the state has to proceed to reach the goal of just social order. It mentions, in this connection, two functions, namely, (1) minimization of inequalities in income; and (2) elimination of social inequalities in status, facilities and opportunities. The second function has greater bearing on social justice. These two lines of approach have to be pursued vigorously to establish equality, economic and social, among individuals, groups of people residing in different areas and groups of people engaged in different vocations. Evidently article 38 of the Constitution is a sheet anchor of the concept of social justice and is the reservoir of a host of social welfare legislations that came into force later on. Other Directive Principles contained in Article 39, 39-A, 41, 42, 43, 43-A, 45 and 46 modalities to achieve the goal of the just social order envisioned in Article 38 of the Constitution.

Socialist Trend of Preamble

In 1976, Parliament introduced through Constitution (Forty second Amendment) Act, 1976, two words, namely, “Socialist Secular”, into the first paragraph of the Preamble. Since then the opening paragraph of the Preamble reads thus: “We the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic”. The Forty second
Amendment virtually spelt out the nature of the state and consequently, what is now contemplated is a socialist democratic republic of India.

One of the objectives of the forty second Amendment, as explained in the statement of objects and reasons appended to the Amendment Act, is to quicken the pace of socio-economic progress of the people. This objective has a great bearing on the newly introduced preambular expression "socialist". Introduction of the word into the Preamble became necessary because of two important factors, namely, (1) excessive concern shown by Supreme Court to Fundamental Rights vis-à-vis the socio-economic legislation, and (2) the new orientation in the juristic technique of the Supreme Court in interpreting the Constitution on lines of the Preambular mandate.

**Property & Social Justice-Basis for Constitution Makers**

It may be noted that after the commencement of the Constitution the states were anxious to usher in a new social order in terms of the Constitutional directives to the extent possible. The plethora of economic and agrarian reform laws met with stiff opposition by the affluent and propertied segments of the community and consequently had to pass the acid test of judicial scrutiny. The Bihar State Management of Estates and Tenures Act, 1949, was challenged before the Patna High Court in *Kameshwar Singh v. State of Bihar* on the
ground that the provision made therein offend against the Fundamental Rights guaranteed by Articles 14, 19 (1) (f) and 31.

The Patna High Court held that the impugned law was unconstitutional because it imposed restriction of the most far-reaching and drastic kind on the property right guaranteed by Article 19 (1) (f) and it could not fairly be said that those restrictions were reasonable. In Uttar Pradesh, the validity of the U.P. Zamindari Abolition and Land Reforms Act, 1951 was challenged in Surya Pal v. State of U.P., but was dismissed by the Allahabad High Court. The divergence of views expressed by the High Courts on the validity of socio-economic and agrarian reform legislation rendered their fate uncertain.

In order to put an end to such uncertainty regarding the validity of socio-economic legislation, Parliament enacted the Constitution (First Amendment) Act, 1951 and inserted two new Articles, viz., 31A and 31B and a new Schedule, viz., Schedule IX. Article 31A has immunized from attack under any of the Fundamental Rights in Part III of the Constitution all laws providing for the acquisition by the state of any estate or any rights therein or for the extinguishments or modification of any such rights. The scope of the Article is confined to "estates" defined in clause (2) (a) of the Article.
Article 31B has been inserted to save the specific Acts included in the Ninth Schedule of the Constitution from being declared unconstitutional by the courts. Ninth Schedule has been added to the Constitution, wherein a number of legislations have been specified.

A close scrutiny would show that they are intended to immunize socio-economic and agrarian reform laws from challenge under any of the specified Fundamental Rights. The Ninth Schedule served the same purpose, but was introduced as a measure of abundant caution.

The tide of challenge on the ground of violation of the rights of property could not be stopped. Subsequently another grave problem arose under Article 31 (2) regarding the compensation to be paid when property is acquired or requisitioned for public purpose. Article 31 (2) authorized the state “to take possession of” or to “acquire” any property for “public purposes” on payment of “compensation”. In this Article two important points involved are acquisition of property for “public purpose” and payment of “compensation” in cases of such acquisition.

Jawaharlal Nehru introduced Article 31 on the 10th September 1949 in the Constituent Assembly by way of Amendment for its incorporation in Part III of the Constitution. Explaining the significance of the Article, he said there
were two approaches to the right to property embodied therein. One was from the point of view of individual right to property and the other from the point of view of community’s interest in that property right and the Article made an attempt not only to avoid any conflict of interests but also to take into consideration both interests. Then, he said that there was no question of any expropriation without compensation so far as this Constitution was concerned and the law was clear enough regarding acquisition of property for public purpose, compensation to be paid in such cases and method of judging the compensation. Normally speaking, he said, this principle applied only to, what might be called, petty acquisition or acquisition of small bits of property or even relatively large bits of property, for instance, for the improvement of a town. But today the community had to deal with large schemes of social reform and social engineering which could hardly be considered from the point of view of the individual acquisition of a small bit of land or structure. Further he said, if the chosen representatives of the people sitting in the legislature passed such a social reform legislation which affected millions of people, it would not be possible to leave such a piece of legislation to widespread and continuous litigation in the Courts of law without damaging the future of millions of people and the foundation of the state itself. Obviously Jawaharlal laid stress on the implementation of large schemes of "social reform and social engineering" in
which cases question of payment of adequate compensation would not arise. In other words, where measures are taken to give effect to socio-economic justice schemes which will benefit the society as a whole, the state should not be burdened with the obligation of paying huge amount as compensation.

In fact, he dealt with this point very clearly when he said that it was left to Parliament to determine various aspects of it and there is no reference in this to any judiciary coming into the picture.

Jawaharlal Nehru had no doubt that judiciary’s role was nil on determining the quantum of compensation. He said “Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally the judiciary comes in to see if there has been a fraud on the Constitution or not. But, normally speaking, one presumes that any Parliament representing the entire community of nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community”. 30

In the changing concept of property and problems arising from such change in the concept the question of protecting individual right to property was
by no means simple and no legal argument of extreme subtlety would solve it unless the solution took into consideration the human aspect of the problem and also the changes that were taking place in the world.\[^{31}\]

In conclusion, he said, that the National Congress had laid down years ago that the Zamindari institution and big estate system in India must be abolished, which pledge would undoubtedly be honoured. Judiciary could not stand in judgement over the sovereign will of Parliament representing the entire community. The duty of the judiciary was only to see “in such matters that the representatives of the people did not go wrong”.\[^{32}\] Further, he said that in a detached atmosphere of the courts they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term. Therefore, if such a thing occurs, they should draw attention to that fact, but it is obvious that no court, no system of judiciary can function in the nature of a third House, as a kind of third House of correction. So, it is important that with this limitation the judiciary should function.\[^{33}\] These views convey the idea that the Constitutionality or unConstitutionality of the state act must be judged not from the extent of dents it makes on the right to property alone, but from over-all consideration of the Constitution and the extent to which it succeeds or fails to implement the socio-economic policies and ideals embodied in the
Constitution. In short, Article 31 (2) was designed mainly with a view to facilitating socio-economic policies and bringing a new social order envisioned in the Constitution.

Many members supported the objectives that lay behind the Article 31 (2). Holding that the House could not afford to ignore the social and functional character of property, Damodar Swarup Seth said that property was a social institution and like all other institutions, was subject to regulations and claim of common interest. Then, speaking on “compensation” he said when the institution of slavery was abolished in America, no compensation was paid to the slave-owners although many of them had paid hard cash when they purchased them. The doctrine of compensation as a condition of expropriation could not be accepted as a Gospel truth. In this connection he drew attention of the House to the death duty, which, he said, was a form of partial expropriation without compensation and it formed an essential feature of the financial system of many a progressive country in the world. It was impossible for the state to pay owners of property in all cases compensation at market value for the property requisitioned or acquired in times of emergency or for the purpose of socialization of big industries with a view of eliminating exploitation and promoting general economic welfare. What is more, even the suggestion to pay partial compensation in such cases, is viewed with certain amount of
disapproval, for, he thought that such payment would have no justification when general transformation of economic structure on socialist lines took place. What he could concede in such circumstances to persons with vested interests was a claim of an opportunity and a share on par with all other citizens of the state.37

The concept of compensation in the India’s Constitution has always been an object of controversy between advocates of social justice and protectors of individual liberties. This conflict of dogmas was seen reflected even from the debates between founding fathers. According to one argument, the word “compensation” by itself carried with it the connotation that it must be equivalent in money value of the property on the date of the acquisition. But, the second argument was to the effect that the mere word “compensation” and other phrases in the Article gave much freedom to the legislature in formulating the principles on which and the manner in which the compensation was to be determined. Alladi Krishnaswami Ayyar said that the omission of the word “just” in the Article was significant in that it showed that the language employed in the Article was not in pari materia with the language employed in corresponding provisions in the U.S. and Australian Constitutions, which stipulated acquisition of property on payment of “just compensation”. So, according to him, construction of the word “compensation” in Article 31 must
vary from the construction put by the American and Australian Courts on the expression "just compensation" found in their Constitutions. Proceeding further he said that the principles of compensation by their very nature could not be the same in every species of acquisition. In this connection he said that in formulating the principles, the Legislature must necessarily have regard to the nature of the property, the history and course of enjoyment, the large class of people affected by the legislation and so on.  

Law, according to Alladi, must serve as an instrument of social progress. Riding back to the road of ancient philosophies, Alladi tried to justify that the institution of property had a role to play in achieving a social purpose and it is not an end in itself.

Thus, the views of the majority in the Constituent Assembly on the right to property and compensation to be paid to persons affected by socio-economic and agrarian reforms were in consonance with their ideas on Constitutional goal of social justice. They firmly rejected concentration of wealth or consolidation of property in a few hands and resolutely looked forward for social justice oriented reforms in the agrarian and economic fields. They felt that in ushering in a new era of new social order with social justice the state should not be burdened with, or its efforts should not be hamstrung by, the obligation of paying huge compensation.
Declaration of Administration of Justice

Despite all emphatic views expressed by eminent members of the constituent Assembly, the history of the decisions of the courts in the post independence era shows sheer apathy and total disregard to the social justice content of the provisions relating to rights to property. Drawn between the claims for inalienable rights to property and the demands of social control over vested interest in property, more often than not courts took a stand on the former and made a conscious (or unconscious) attempt to perpetuate monopolistic interest on private property and insatiable thirst of man for amassing wealth. Obviously this trend led to a musical chair performance between the legislature enacting Amendments and after amendments to override the impact of judicial decision and trying to usher in an era of welfare and social justice and the judiciary finding out new interpretative techniques with emphasis on the individual rights to property to apply brakes on state’s quest for social justice.

The catena of decisions by the Supreme Court and the host of Amendments effected by Parliament show the most fascinating history of the Constitutional conflicts that free India has ever seen. The starting point of this game with the Patna decision in Kameshwar Singh and the first amendment to the Constitution has already been discussed early. The next chapter of the
story is opened by the decision of the Supreme Court in *State of West Bengal v. Mrs. Bela Banerjee*. The dispute arose in respect of the word “compensation”. Should compensation be only an amount determined by the executive or be an amount just equivalent to the market value of the property acquired? The words of the court are self explanatory. The court held that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner of the property appropriated. Such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of within the limits of this basic requirement or full indemnification of the expropriated owner. The Constitution allows free play to the legislative judgement as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected is a justiciable issue to be adjudicated by the court.

The observation of the Supreme Court was viewed by the states with great apprehension. They felt that it created a great impediment to socio-economic reforms and a drag in their march towards a better tomorrow – their dreamland where social justice and welfare are guaranteed. It would be difficult for states to get enough resources in the near future to give full indemnification
to the owners of the expropriated property when property is acquired and socio-economic reforms are introduced. Should social justice ideal of the Constitution remain in that event an unattainable goal? The representatives of the people thought that it should not. Quick was the reaction of Parliament which enacted in 1955 the Constitution (Fourth Amendment) Act and made suitable changes in Article 31 (2)\(^4\) and inserted a new Clause 2 (A)\(^5\) in Article 31 of the Constitution. These changes brought into existence two categories of deprivation of property. One is the compulsory acquisition and requisitioning of property by the state for public purpose, which could be done by law and law must provide for compensation or specify the principles of compensation. The second category of deprivation constitutes cases wherein the ownership or right to possession of property is not transferred to the state, and such cases are not deemed to provide for compulsory acquisition or requisitioning within the meaning of Article 31 (2). Besides, the amended provisions of Article 31 (2) expressly made the adequacy of compensation non-justiciable.

In Article 31A, the Fourth Amendment Act substituted a much inflated new clause for old clause (1) by which a wider range of laws, which extend from the field of land reforms to the field of industrial and commercial reforms were made immune from challenge before the courts. It is also declared that they shall not be deemed to be void on the ground that they are inconsistent
with, or take away or abridge any of the Fundamental Rights conferred by Article 14, 19 and 31 of the Constitution. Thus, as pointed out by Prof. Alexandrowicz, “this new category of laws which are made immune from judicial review extends from the field of land reform to the industrial and commercial fields”.

It must be remembered that all these changes were made keeping in view the goal of social justice. Subsequently, a lacuna or deficiency in Article 31A was brought to the fore by the Supreme Court in Kunhikoman v. State of Kerala, wherein Kerala Agrarian Relations Act of 1961 was impugned in so far as it related to ryotwari lands on the ground that it violated the right to property of the ryotwari pattadars and the law was not protected by Article 31A because the definition of “estate” given in the said Article did not cover ryotwari lands. The Supreme Court accepted the contention and quashed the law in so far as it applied to ryotwari lands. Consequently, the ryotwari pattadars escaped from the clutches of the land reform law and ceiling limits imposed by it.

In order to plug the loophole found in Article 31A, to remove impediments to land reforms and to save several land reform legislations, which were in imminent danger of being challenged before the Court after the decision

The Seventeenth Amendment incorporated three provisions – (1) compensation at market value for acquisition of a land from cultivator who held lands within the ceiling limits of the land,\(^49\) (2) inclusion of *ryotwari* and agricultural lands under the concept of ‘estate’ immune from judicial challenge\(^50\) and (3) Stuffing the Ninth Schedule with more laws.\(^50a\)

A number of writ petitions were filed before the Supreme Court challenging the validity of the Seventeenth Amendment Act, which came up for discussion in *Sajjan Singh v. State of Rajasthan*.\(^51\) But the Court approved the previous stand taken in *Sankari Prasad v. Union of India*\(^52\) – That the power to amend the Constitution includes power to amend Fundamental Rights. The Court rejected the plea of the petitioners to review its *Sankari Prasad* decision. Consequently, the validity of the 17\(^{th}\) Amendment Act was upheld.

Subsequently, the land owners made a second attempt to challenge the validity of the Seventeenth Amendment Act before the Supreme Court in *Golaknath v. State of Punjab*.\(^53\) The Supreme Court, delivering its six to five judgement in this case, overruled its earlier decisions in *Sankari Prasad and Sajjan Singh* cases and held (1) that the power of Parliament to amend the
Constitution was derived from Articles 245, 246 and 248 (from the residuary legislative field) which deal with the ordinary legislative powers of parliament and not from Article 368; and (ii) that Constitution amendment was “law” within the meaning of Article 13 (2) of the Constitution, and, therefore, if a Constitution amendment took away or abridged Fundamental Rights it was void. But, the court applied the doctrine of “prospective overruling” and said that its decision would have only “prospective operation”. Consequently, the Seventeenth Amendment and earlier amendments to Part III of the Constitution continued to be valid, but any future amendment to Fundamental Rights would be invalid. Commenting on this decision a learned author has said that the decision has sufficient potentialities to effect adversely socio-economic measures in future. If the Supreme Court in future adopts, as in the past, a narrow and restrictive interpretation on the provisions relating to property right with little or no consideration for society benefiting or structure transforming socio-economic legislative measures Parliament will not be in a position to remove the impediment and to facilitate the speedy implementation of the socio-economic reforms by amending suitably the provisions relating to Fundamental Rights.

Subsequently, parliament passed two amendments to remove the difficulties created by the Golaknath decision. First is the Constitution (Twenty
Fourth Amendment) Act, which made necessary modification in Article 368 and 13 to make clear inter alia, that notwithstanding anything in the Constitution, Parliament may in exercise of constituent power amend any provision of the Constitution\cite{62} and nothing in Article 13 shall apply to any amendment made under Article 13.\cite{63} The second is the Constitution (Twentyfifth Amendment) Act, which incorporated a new Article 31C. This new Article said, among others, that notwithstanding anything contained in Article 13, no law giving effect to the policy of the state towards securing the principles laid down in clauses (b) and (c) of Article 39\cite{64} shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 or 31.\cite{65} This was done because Parliament felt that an uninterrupted implementation of the crucial provisions of clauses (b) and (c) of Article 39 in Part IV of the Constitution was necessary for the realisation of social justice.

After the Golaknath decision, a new and definite trend in the technique of interpretation of the Constitution with the help of Preamble emerged. Prior to that decision, the position of the Preamble as an aid to construe the provisions of the Constitution was in a nebulous stage. This was mainly due to the fact that the Indian Courts were influenced by the views of Prof. Willoughby and story and the earlier decisions of American and English
Courts. Prof. Willoughby was of the view that the value of the Preamble to the Constitution for purposes of construction was similar to that given to the Preamble of an ordinary statute and in that he said that the preamble “may not be relied upon for giving to the body of the instrument a meaning other than that which its language plainly imports, but may be resorted to in cases of ambiguity, when the intention of the framers does not clearly and definitely appear”.66 The great commentator, story, said that “the Preamble of a statute is a key to open the mind of the makers as to the mischiefs which are to be remedied, and the objects which are to be accomplished by the provisions of the statute”.67 A similar view was expressed by the American judiciary in Jacobson v. Massachusetts68 wherein a proposition was made to the effect that although the Preamble indicated the general purposes for which the people ordained and established the Constitution, it had never been regarded as the source of any substantive power conferred on the government or any of its departments. The English Courts had no difficulty in subscribing to the above mentioned views, because they were not troubled by an obligation to interpret written Constitution established by the people. So, in Powell v. Kempton Parke Company69 it was clearly stated that the rules of interpretation propounded by the judiciary did not permit the Preamble to qualify specific provisions. In other
words, the courts laid down a principle that general words should not be allowed to control the specific stipulations (generalia specialibus non derogant).

The aforesaid views influenced the thinking of the Indian judiciary right up to the year 1967. As a matter of fact, the Preamble to the Indian Constitution is not of an ordinary run, for it is an abridged version of the “Objectives Resolution” adopted by the Constituent Assembly of India on the basis of which Constitution of India was raised subsequently. Naturally, therefore, prime importance has been attached to it. Nehru commending strongly the “Objectives Resolution” to the House Jawaharlal Nehru said: “It seeks very feebly to tell the world of what we have thought or dreamt for so long, and what we now hope to achieve in the near future. It is in that spirit that I venture to place this Resolution before the house and it is that spirit that I trust the house will receive it. And may I sir, also with all respect, suggest to you and to the house that, when the comes for the passing of this resolution let it be not done in the formal way be the raising of hands but much more solemnly, by all of us standing up and thus taking this pledge anew”. At the final stage, that is when the “Objectives Resolution” was transformed and put as Preamble to the Constitution, the eminent lawyer, Alladi Krishnaswami Ayyar said that “so far as the Preamble is concerned, though in an ordinary statute we do not attach any importance to the Preamble, all importance has to be attached to the
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Preamble in a Constitutional statute. Despite these facts, the Indian judiciary has not been quite clear at the initial stage as to which principle of interpretation has to be adopted regarding the use of Preamble in construing the specific provisions of the Constitution. Consequently, in a few cases the judiciary adopted the traditional and old views expressed by Prof. Willoughby and others and in a few other cases it attached much importance to the Preamble in deciding Constitutional issues.

In the first important Constitutional case, namely A.K. Gopalan v. State of Madras, Justice Patanjali Sastri said: "There can be no doubt that the people of India have in exercise of their sovereign will, as expressed in the Preamble, adopted the democratic ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality." Proceeding further, he said that "this has been translated into positive law in Part III of the Indian Constitution, and I agree that in construing these provisions the high purpose and spirit of the Preamble as well as the Constitutional significance of a declaration of Fundamental Rights should be borne in mind. This, however, is not to say that the language of the provisions should be stretched to square with this or that Constitutional theory in disregard of the cardinal rule of interpretation of any enactment, Constitutional or other, that its spirit no less than its intendment
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should be collected primarily from the natural meaning of the words used". 74 In other words, Mr. Justice Patanjali Sastri refused to countenance the view that the Preamble or the Preambular concepts could be allowed to give meaning and contents to the provisions in Part III of the Constitution which might differ from what was apparent from the language of the Article therein.

However a different note has been struck by Chief Justice Mahajan, in Behram Khurshid Pesikaka v. State of Bombay75 when he said: “We think that the rights described as Fundamental Rights are a necessary consequence of the declaration in the Preamble that people of India have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice, social, economic and political; liberty of thought expression, belief, faith and worship; equality of status and of opportunity”. 76 Proceeding further, he said: “These Fundamental Rights have not been put in the Constitution merely for individual benefit, though ultimately they come into operation in considering individual rights. They have been put there as a matter of public policy and the doctrine of waiver can have no application to provisions of law which have been enacted as a matter of Constitutional policy”. 77 Here, Preamble has been used as an aid in construing the position of Fundamental Rights and the doctrine of waiver of Fundamental Rights has been rejected.
A similar attitude is evident in *In re Kerala Education Bill 1957*. In this case main question was whether the Kerala Education Bill enacted in furtherance of certain Directive Principles violated Fundamental Rights embodied in Articles 14, 15, 30 etc. Dealing with this question Chief Justice S.R. Das described the Preamble as “the inspiring and nobly expressed Preamble to our Constitution” and said that one of the most cherished objects of our Constitution embodied in the Preamble is “to secure to all its citizens the liberty of thought, expression, belief, faith and worship. Nothing provokes and stimulates thought and expression in people more than education. It is education that clarifies our belief and faith and helps to strengthen our spirit of worship. To implement and fortify these supreme purposes set forth in the Preamble, Part III of our Constitution has provided for us certain Fundamental Rights”. Thus, in this case some attempt has been made to use the Preamble in construing the provisions relating to Fundamental Rights in Part III of the Constitution.

But, subsequently in 1960 a different view was expressed by the Supreme Court in *In re Berubari Union and Exchange of Enclaves*. In this case, dealing directly with the question as to how far the Preamble aids the construction of the Constitution, Justice Gajendragadkar said: “There is no doubt that the declaration made by the people of India in exercise of their sovereign will in the Preamble to the Constitution is, in the words of story, a
key to open the mind of the makers' which may show the general purposes for
which they made the several provisions of the Constitution; but nevertheless the
preamble is not a part of the Constitution, and as Willoughby has observed
about the preamble to the American Constitution, it has never been regarded as
the source of any substantive power conferred on the Government of the United
States, or any of its departments. Such powers embrace only those expressly
granted in the body of the Constitution and such as may be implied from those
so granted".82 Then he opined that “it may perhaps be arguable that if the terms
used in any of the articles in the Constitution are ambiguous or are capable of
two meanings, in interpreting them some assistance may be sought in the
objectives enshrined in the Preamble".83 Needless to say that this view is old as
the one expressed by Prof. Willoughby. Consequently, by this decision the
Preamble has been relegated to the background and its utility as a tool to
interpret specific provisions of the Constitution has been put under much cloud.
What is worse, the statement in the decision that “the Preamble is not a part of
the Constitution” has created much confusion in themind of the people. Those
who watched closely the proceedings in the Constituent Assembly and
understood that the Constitution was framed on the basis of the “objectives
resolution” which was later abridged and put as Preamble to the Constitution
might have read it with surprise and perhaps with certain amount of amusement.84

However, a definite departure from the position adopted in the In re Berubari Union and Exchange of Enclaves has been made in golaknath v. State of Punjab.85 In latter case, Chief Justice Subba Rao who delivered the majority opinion, has said that the scope and position of Fundamental Rights cannot be appreciated unless we have a conspectus of the Constitution, its objects and its machinery to achieve those objects. In this connection he has pointed out that “the objective sought to be achieved by the Constitution is declared in sonorous terms in its Preamble”86 and it, according to him, “contains in a nutshell its ideals and its aspirations. The Preamble is not a platitude but the mode of its realisation is worked out in detail in the Constitution”.87

Subsequently, the above view received strong support in Kesavananda Bharati v. State of Kerala.88 In this case, Chief justice Sikri, struck distinction between construction of an ordinary statute and interpretation of a Constitution and said that in the case of the former Preamble could be used only if language is not plain and clear. but in the case of the latter, as opined by Alladi Krishnaswami Ayyar, all importance has to be attached to the Preamble in a Constitution.89 Besides, he felt that Preamble to the Indian Constitution has an unique position. In this connection the learned Chief Justice stated “I may
here trace the history of the shaping of the preamble because this would show that the Preamble was in conformity with the Constitution as it was finally accepted. Not only was the Constitution framed in the light of the Preamble but the Preamble was ultimately settled in the light of the Constitution." Then, tracing the history of the shaping of the Preamble, he concluded thus, "It seems to me that the Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble." The Supreme Court strongly reiterated in this case the proposition that all importance must be attached to the Preamble and it must be taken as an aid to interpret the Constitution, because the Constitution must always conform to and exude "the grand and noble vision" expressed in the Preamble.

Naturally, therefore, Parliament felt that since the Preamble to the Constitution had been finally recognised as a tool to interpret the Constitution, it must necessarily indicate guidelines regarding the framework within which "the grand and noble vision" of the Preamble has to be realised and the nature of state which has to emerge and establish strongly on the realisation of such "grand and noble vision" of the Preamble. Besides, as pointed out earlier, Parliament was alarmed by the undue concern shown by the Court to right to property vis-à-vis the socio-economic legislation and agrarian reforms. So it felt
the need to indicate not only the type of socio-economic framework within which “the grand and noble vision” of the Preamble has to be realised but also the complexion of the state which must come into being firmly on the realisation of the said “grand and noble vision” of the Preamble. Therefore, by the Constitution (forty second Amendment) Act, Parliament introduced the word “socialist” into the Preamble to make it clear that people of this country intended, among others, to establish solemnly a sovereign democratic “socialist” republic.

The foregoing analysis would show that one of the grand and noble visions expressed in the Preamble is “social justice” and it is expected to march forward hand in hand with “economic and political justice” towards the goal of “a new social order” wherein social, economic and political justice would inform all the institution of national life. Apart from that the introduction of the word “socialist” into the Preamble made abundantly clear that social justice, measures must be such as to strengthen the base of the socialist state and egalitarian social order.

At this stage it may be convenient to state the main implications of the Preambular concept of social justice. First, it heralds, as explained by M.R. Masani, far reaching social changes or transformation within the democratic framework. It also eventually means removal of social-stratification and
exploitative social order. Second, it connotes, as pointed out by Dr. S. Radhakrishnan, a "transition from state of serfdom to one of freedom". Third, it envisages a just social order encompassing all the three field of human activity, namely the social, economic and political fields. This is sought to be achieved as is evident from the specific provisions, particularly in Part IV of the Constitution of India, by transforming all the institutions of national life to that end.

Finally, it envisages now not merely the contents of socialism but also its format or what may be called its infrastructure. That is to say, it has to be realised within the framework of socialist state to strengthen the true egalitarian social order. In other words, the Preambular social justice envisions establishment of a distributive justice-oriented, non-exploitative and egalitarian social order within the socialist democratic republic of India.

References:

1. For the text, see B. Shiva Rao, The Framing of India's Constitution, vol. II, pp.3-4.
2. Id., p.138.
4. Ibid., p.257.
7. C.A.D., vol. II-III, p.292. The reasons he pointed out is as follows:

Since the body, in which the pose and authority would be vested, could interpret the term "Justice" in its own way, it would be possible that in future date if the power was passed on to the capitalists they might interpret in their own way which would be detrimental to the interests of a large bulk of the people.


10. Ibid., p.60.

10a. Article 38.

10b. This clause was introduced by Constitution (Forty Fourth Amendment) Act, 1978.

11. The State shall, in particular direct its policy towards securing-

a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

d) that there is equal pay for equal work for both men and women;

e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
12. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

13. The state shall, within the limits of its economic capacity and development, make effective provision securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

14. The state shall make provision for securing just and human conditions of work and for maternity relief.

15. The state shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life, full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

16. The state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings establishments or other organizations engaged in any industry.

17. The state shall endeavour to provide, within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years.

18. 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.


20. The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

21. Article 19 (1) (f) states “All citizens shall have the right to acquire, hold and dispose of property”. This Provision has been deleted by the Constitution (Forty Fourth Amendment) Act, 1978.

22. Article 31 states: “(1) No person shall be deprived of his property save by authority of law”.

“(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given”.

23. A.I.R., 1951, All 674.

24. Article 31A states “(1) Notwithstanding anything in the foregoing provisions of this part, no law providing for the acquisition by the state of any estate or of any rights therein or for the extinguishments or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this part.
25. Article 31A (2) states: “In this Article- (a) “The expression ‘estate’ shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any jagir, inam or muafii or other similar grant.

“(b) The expression ‘rights’ in relation to an estate, shall include any rights vesting on a proprietor, sub-proprietor, under proprietor, tenure-holder or other intermediary, and any rights or privileges in respect of land revenue”.

26. Article 31B states: “Without prejudice to the generality of the provisions contained in Article 31A none of the Acts and Regulations specified in the Ninth Schedule nor any one of the provisions thereof shall be deemed to be void, or even to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force”.

27. Supra., f.n. 22.
29. Ibid.
30. Id., p.1193.
31. Id., pp.1194-95, Nehru said that the concept of property changed from the earlier conception of “property in human beings”, which reflected in the institution of slavery in olden days, to the modern conception of “property in a bundle of papers”, which consisted of securities,
promissory notes, etc. In addition to this there was another change in the modern time and that was, according to him, the “property in shares” in a joint stock company. This, he said, led to concentration of wealth more and more in a limited number of hands. The result was that a few persons with a monopoly over capital could crush small shop-keepers out of existence, their method of business and, in fact, they could do so without giving the slightest compensation.

32. Ibid., p. 1195.
33. Ibid., p. 1195-96.
36. Ibid.
37. Ibid.
39. Id., p. 1274, He said “Our ancients never regarded the institution of property as an end in itself. Property exists for dharma, Dharma and the duty which the individual owes to society from the whole basis of social frame work. Dharma is the law of social well-being and varies from Yuga to Yuga. Capitalism as it is practiced in the west came in the wake of the Industrial Revolution and is alien to the root idea of our civilization. The sole end of property is Yagna and to serve a social purpose, an idea which forms the essential note of Mahatma Gandhi’s life and teachings”.
For the views of the minority in the Constituent Assembly, Particularly views expressed by Thakur Das Bhargava, see the debate that took place on 10th September 1949.

Supra, nn.19-26.

The impugned Act, the West Bengal Land Development and Planning Act of 1948, provided for the acquisition of and development of land for public purpose, viz., for the settlement of immigrants who had migrated into West Bengal due to Communal disturbances in East Bengal. The impugned legislation had limited the compensation to market value of the land on 31st December, 1946, no matter when the land was acquired. So, the Constitutionality of the quantum of compensation stipulated in the aforesaid Act was challenged in this case.


Article 31 (2) after amendment by Fourth Amendment Act reads as follows: "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

The new Clause (2A) of Article 31 inserted by the Fourth Amendment Act provides "where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to
provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property”.

46. The provisions of Article 31A after the Fourth Amendment Act read as follows: “(1) Notwithstanding anything contained in Article 13, no law providing for – (a) the acquisition by the state of any estate... shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31.

47. *Constitutional Developments in India*, (1957) p.94.


49. The new proviso added to Article 31A (1) by the Seventeenth Amendment, 1964 read thus: “Provided further that where any law makes any provision for the acquisition by the state of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the state to acquire any portion of such and as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than market value thereof”.

50. Clause (2) (a) of Article 31A as amended by the Seventeenth Amendment Act reads as follows “(a) the expression ‘estate’ shall in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include:

i) any jagir inam or muafi or other similar grant and in the states of Madras and Kerala, any Janmam right;
ii) any land held under ryotwari settlement;

iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural laborers and village artisans”.

50a. Putting Kerala Agrarian Relations Act into bracket of Nineth Schedule saved not only the law from the awkward situation created by Kunhikoman. But also the face of the state committed to bring agrarian reforms.

54. Article 245 States: “(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a state may make laws for the whole or any part of the state”.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation”.

55. Article 246 States: “(1) Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in list I in the Seventh Schedule (in this Constitution referred to as the ‘Union List’).

(2) Notwithstanding anything in Clause (3) Parliament and, subject to clause (1) the Legislature of any state, have power to make laws with respect to any of the matters enumerated in list III in the seventh schedule (in this Constitution referred to as the concurrent list).

(3) Subject to clauses (1) and (2) Legislature of any state has exclusive power to make laws for such state or any part thereof
with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as ‘State List’).

(4) Parliament has power to make laws with respect to any matter for Union Territories notwithstanding that such matter is a matter enumerated in the ‘State List’.

56. Article 248 States: “(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent list and state list."

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those lists.

58. Ibid., at p. 1658 and 1669.
59. Ibid., p.1669.
60. Ibid.
62. Refer to Clause (1) of Article 368.
63. Refer to Clause (3) of Article 368 and Clause (4) of Article 13.
64. Article 39 (b) States : “that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment”.

65. The Constitution (Forty Fourth Amendment) Act deleted Article 31 from Part III and consequently from Article 31C.
68. 197, U.S. 11.
69. (1899) A.C. 143, at 157.
73. Id., p.72.
74. Ibid.
76. Id., at p.146.
77. Ibid.
79. Id., at p.965.
80. Ibid.
82. Id., at p.856.
83. Ibid.
84. The view that "the Preamble is not a part of the Constitution" has been rejected by the Supreme Court in A.I.R., 1973, S.C. 1461.
86. Id., at p.1655.
87. Ibid.
89. Id., at pp.1502-1503.
90. Ibid., at p.1501.
91. Ibid., at p.1506.
CHAPTER – III

SOCIO-ECONOMIC JUSTICE AND REMOVAL OF INEQUALITY
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The Context of National Movement

The dreams and aspiration of the national movement round an echo in the historic Objective Resolution moved by Jawaharlal Nehru on 13th December 1946 and adopted by the Constituent Assembly on 22nd January, 1947. It was India’s Charter of liberty & development, whose philosophical formulations were later incorporated into the Preamble and Directive Principles of State Policy of the Constitution. The Preamble to the Constitution of free India remains the beautifully worded prologue. It generates a hope of creating a new identity in this ancient land. The Preamble is basic mantra of our democratic Dharna.

The message of Socio-economic justice has been translated into the clauses of the Fundamental Rights and the Directive Principles of State Policy of the Constitution and lateral into several other Acts of the Parliament. Commenting on the dynamic nature of the Directive Principles of State Policy, Ivor Jenning say “those directives are embodied in the Constitution, with a view to evolving a society marked by humanism, tolerance and unity.
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It was for the first time in the in the 45th session of the Congress, held in Karachi 29 March, 1931, that a resolution on Fundamental Rights was adopted. Granville Austin calls it "a declaration of rights and a humanitarian socialist manifesto". Jawaharlal Nehru considered it as a "short step in a socialist direction by advocating nationalization of key industries and services and various measures to lesson the burden on the poor". The 47th session of the Congress held at Calcutta April 1933, adopted a comprehensive resolution on "Fundamental Rights and Duties and Economic Programme". In 1945, under the chairmanship of Sir Tej Bahadur Sapru, an unofficial committee examined the entire question on Fundamental Rights, for in corporation, in the future Constitution of India. It made a distinction, for the first time, between civil rights, which can be enforced through law Courts and social and economic rights, which cannot be enforced though Courts and, therefore, would involve positive action like new legislation and transformation of the social and economic environment. The committee recommended that the future Constitution of India must include both the classes of Fundamental Rights justifiable and non-justifiable.

It was in this background that the Constituent incorporated Part III as Fundamental Rights, that are justiciable and Part IV Directives Principles of
State Policy, that are non-justiciable but, as the Constitution enjoins, would remain “nevertheless fundamental in the governance of the country.

Implications of Social Justice

During discussion in the Constituent Assembly on the contents of the Objectives Resolution, two different trends of opinions emerged on the issue of socio-economic justice. B.R. Ambedkar, chairman of the drafting committee, said “I do not understand how it could be possible for any future government which believes in doing justice, socially, economically and politically, unless its economy is a socialist economy”. He pleaded for the acceptance and incorporation of the concept of socialism. On the other hand, Mino Masani argued that no purpose would be served if an economic policy of doctrinaire character was incorporated. Alladi Krishna Swami Ayyer suggested that the Constitution should not be made rigid by incorporating a particular economic policy, on the contrary, it should “contain the necessary element of growth and adjustment needed for a progressive society”. Jawaharlal Nehru said that while he personally would prefer to use the term ‘socialist State’ but it might become controversial. He added “therefore, we have laid down, not theoretical would and formulae but rather the content of thing we desire” with this explanation the phrase ‘socio-economic justice’ was accepted. There was near unanimity that ‘socio-economic justice employs the rejection of the existing social structure
and social status quo. Social changes were to be brought about through the working of political democracy respecting individual’s right and liberties. The Republic India was expected to be democratic in form but socialist in its objectives of socio-economic change. Dr. Radha Krishnan said that the Objectives Resolution was intended to effect a smooth and rapid transition from a State of serfdom to the State of freedom.

**Directive Principles of State Policy and Social Justice**

The DPSP has three main categories, namely socialistic, Gandhian and liberal democratic. In their humanistic and welfare thrust, the categories sometimes overlap each other. The socialistic principles direct the State to provide for adequate means of livelihood to all citizens; distribution of material resources for common good or all; avoidance of concentration of wealth and means of production in the hands of few; right to work; equal pay for equal work to both men and women; living wages for all workers, protection of workers, especially children; humane conditions of work and maternity relief; right to education and public assistance, etc. The Gandhian provisions direct the State to organise village Panchayats; promote cottage industries in rural areas; provide economic and educational upliftment to Scheduled Castes, Scheduled Tribes and weaker sections of the population; introduce prohibition of drugs and liquor; protect animal wealth and ban cow slaughter. The liberal democratic
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Articles direct the State to provide free and compulsory education for children upto 14 years of age; introduce uniform civil code; separate the judiciary from the executive; organise agriculture and animal husbandry on modern lines; protect historical monuments and promote international peace. In their totality these directives constitute an agenda of comprehensive social revolution.

Removal of Inequality

The essence of social justice as the goal of planned development means removal in inequality. Socio-economic inequality in India is a heritage of long history. India is the world classic unequal society from time immemorial. Inequality in India's past was sanctified by the rigid caste system that had ordained professions by the accident of birth in a given family or Jat.

The Preamble to the Constitution of India assures to all citizens, Justice, social, economic and political; Liberty of Status and of opportunity and promotion among them all, fraternity assuring the dignity of the individual and unity of the nation. The spirit represented in the Preamble is further enshrined in the chapter on Fundamental Rights and Directive principles of State Policy, the purpose of which 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 the institutions of the national life. The
42\textsuperscript{nd} Amendment Act by incorporating the word "socialist" in the Preamble has strengthened the Constitutional ethics and social and economic justice.

Democracy as it is well known is not only a form of government but with focus on human rights and human dignity in turn implies rule of law, equality and liberty and freedom from oppression, exploitation and arbitrary interference. The Constitution of India recognises and seeks to realise the various components of social justice Article 14 guarantees to every person "equality before the law or equal protection of the laws within the territory of India". Article 15 (1) prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. In the same view Article 16 (1) provide equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. By Article 17 "untouchability" the age old practice has been done away with all its manifestations. The enforcement of any disability arising out of untouchability has been declared an offence in accordance with law. A similar provision has also been incorporated in the Indian Penal Code. Article 46 constitutes the heart and soul of social justice. It provides that the State shall promote with special care the educational and economic interests of the weaker sections of the society, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. The
interests of the weaker sections of society are further safeguarded under Article 335. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the union or of a State.

Provision for a Commission

Article-340

1. The president may by order appoint a commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally Backward Classes within the territory of India and the difficulties under which the labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such commission shall define the procedure to be followed by the commission.

2. A commission so appointed shall investigate the matters referred to them and present to the president a report setting out the facts as found by them and making such recommendations as think proper.
3. The president shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each house of parliament.

Article 341

1. The president may with, respect to any State or Union territory, and where it is State consultation with Governor ............ Thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory as the case may be.

2. Parliament may be law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe, or part of a group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The clause (1) of Article 15 directs the State not to discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth or any of them. Clause (2) prohibits citizens as well as the State from making such discrimination with regard to access to shops, hostels etc. and all places of public entertainment, of public resort, wells, tanks, road etc. clause (1) of Article 15 mentions the prohibited grounds in any matter which is exclusively within the control of the State. The clause (2) prohibits both the State and the
private individual, who so ever is in the control of the above mentioned places. Clause (3) empowers the State to make special provisions for the protection of women and children. Clause (4) which was added by the Constitution (1st Amendment) Act, 1951, enables the State to make special provisions for the protection of the interests of the Backward Classes of citizens and is, therefore, an exception to Article 15 and 29 (2) of the Constitution.

By clause (1) of the Article 15 the State is prohibited to discriminate between citizens on grounds only of religion, race, caste, sex, place of birth or any of them. The word 'discrimination' means to make an adverse distinction or to distinguish unfavourable from others. If a law makes discrimination on any of the above grounds it can be declared invalid. Thus in State of Rajasthan Vs Pratap Singh, the Supreme Court invalidated a notification under the Police Act of 1951 which declared certain areas as disturbed and made the inhabitants of those areas to bear the cost of additional police station there but exempted all Harijans, and Muslims. The exemption was given on the basis only of 'caste' or 'religion' and hence was contrary to Article 15 (1).

Article 15 (2) is a specific application of the genera prohibition contained in Article 15 (1) Article 15 (2) declares that no citizen shall be subjected to any disability, restriction or condition on grounds only of religion, race, caste, place of birth or any of them with regard to (a) access to shops,
public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, baths, roads and places of public resort, maintained wholly or partly out of State funds or dedicated to the use of the genera public. A place of 'public resort' means place which are frequented by the public like public park, a public road, a public bus, ferry, public urinal or railway a hospital, etc.

It is to noted that while clause (1) of Article 15 prohibits discrimination by the State; clause (2) prohibits both the State and the private individuals from making any discrimination. The object of Article 15 (2) is to be eradicate the abuse of the Hindu social system and to herald a United Nation. The Madras Removal of Civil Disabilities Act punishes social disabilities. No, law, custom or usage could authorize any person to prevent any Harijans or person belonging to the sections from having access to the public places mentioned in the Act.

Special Provision for Advancement of Backward Classes

Article 15 (4) is an exception to clauses (1) and (2) of Article 15. It was added by the Constitution (1st Amendment), Act 1951 as a result of the decision of the Supreme Court in State of Madras Vs Champakam dorairajan. The brief fact of the case were that the Madras Government had reserved sets in State Medical and Engineering Colleges for different communities on the basis
of religion, race and caste. The State defended the law on the ground that they were purported to promote social justice for all sections of the people as required by Article 46 of the Directive Principles of State Policy. The Supreme Court held the law void because it classified students on the basis of caste and religion. The Directive Principles of State Policy cannot override the Fundamental Rights. In another case an order requisitioning land for the construction of a Harijan Colony was held to void under Article 15 (1). To modify the effect of these two decisions, Article 15 was amended by the Constitution (1st Amendment) Act 1951. Under this clause the State is empowered to make special provisions for advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes and Scheduled Tribes. After the amendment it would be possible for the State to put up Harijan Colony in order to advance the interest of the Backward Classes.

A major difficulty raised by Article 15 (4) is regarding the determination of who are ‘socially and educationally Backward Classes’. This is not a simple matter as sociological and economic considerations come into play in evolving proper criteria to designate ‘Backward Classes’, it leaves the matter to the State to specify backward classes, but the Court can go into the question whether the criteria used by the State for the purpose is relevant. The question of defining Backward Classes has been considered by the Supreme
Court in a number of cases. On the whole, the Court’s approach has been that State resources are limited protection to one group affects the Constitutional rights of other citizens to demand equal opportunity, and efficiency and public interest have to be maintained in public services because it is implicit in the very idea of reservation that a meritorious person is being preferred to a more meritorious person. The Court also seeks to guard against the perpetuation of the caste system in India and the inclusion of economically well off strata in domain of Backward Classes. From the several judicial pronouncements concerning the definition of Backward Classes, several propositions emerge. First, the backwardness envisaged by Article 15 (4) is both social and educational, meaning thereby that a class to be identified as backward should be both socially and educationally backward. Secondly, poverty alone cannot be the test of backwardness in India because by and large people are poor and, therefore, a large sections of population would fall under the backward category and thus the whole object of reservation would be frustrated. Thirdly backwardness should be comparable (though not exactly not exactly similar) to Scheduled Castes and Scheduled Tribes. Fourthly, ‘caste’ may be relevant factor to define backwardness, but it cannot be the sole or even the dominant criterion. If classification for social backwardness were to based solely on caste, it amounts to perpetuation of caste system in the Indian society. Fifthly,
poverty, occupation, place of habitation etc. definitely contribute to backwardness and such factors cannot be ignored. Sixthly, backwardness may be defined without any reference to caste. As the Supreme Court has emphasised Article 15 (4) "does not speak of castes, but only speaks of classes", and that 'caste' and 'class' are not synonymous.

In M.R. Balaji Vs State of Mysore, the Mysore Government, issued an order under Article 15 (4) reserving seats in the Medical and Engineering Colleges in the State as follows: Backward and more Backward Classes 50 percent, Scheduled Castes and Scheduled Tribes 18 percent. Thus 68 percent of the seats available in the colleges were reserved and only 32 percent was made available to the merit pool. Backward and more Backward Classes were designated on the basis of 'caste' and 'communities'. The Supreme Court declared the order bad. The defect in the Mysore order was that it was based solely on caste without regard to other relevant factors and this was not permissible under Article 15 (4). The Court held that the State was not justified in including in the list of Backward Classes all those castes of Backward Classes all those castes or communities whose average of student population per thousand was slightly above or very near or just below the State average can be regarded as backward else it would be inconsistent with Article 15 (4).
Court declared that the special provision should be less than 50 percent depending upon the prevailing circumstances in each case.

An order saying that family whose income was less than Rs.1200 per year, and which followed such occupations as agriculture petty business, inferior services, crafts etc. would be treated as ‘backward was declared to be valid’. Here are two factors, economic condition and profession, were taken into account to define backwardness, but caste was ignored for the purpose. In Balaji, the Supreme Court had mentioned case as one of the relevant for determing social backwardness. The decision of the Supreme Court in Balaji was challenged in Chitralekha on the ground that caste had been completely ignored for purposes of reservation. The Supreme Court ruled that though caste is a relevant factor in ascertaining the backwardness of a class, there is nothing to preclude the authority concerned from determing special backwardness of a group of citizens if it can do so without reference to caste.⁷

In Both Balaji and Chitralekha the Court did not consider caste as the decisive factor in determing social backwardness of a community. However, subsequently the Supreme Court had revised its earlier decisions and admitted that there are numerous castes in the country which are socially and educationally and it is imperative for the State to protect their interests. A caste is a ‘class’ of citizens and, therefore, if an entire caste is found to be socially
and educationally backward and its inclusion would not violate Article 15 (1). However when backwardness is defined apart from caste, that other factors should also be like socio-economic and educational backwardness. On the basis the Court upheld a Madras order defining Backward Classes with reference to castes and other factors. Looking at the history as to how the list had come to be formulated, the Court felt satisfied that caste was not taken as the sole basis of backwardness; the main criterion for inclusion in the list was social and educational backwardness of the castes based on their occupations. Castes were only compendious indication of the classes of people found to be socially and educational backward.

Clause (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds only of religion, race, caste, sex, descent, place of birth or residence. Clause 3, 4, and 5 of Article 16 are the three exceptions to this general rule of equality of opportunity. It is to be noted that under Article 16 guarantee against discrimination is limited to employment and appointment under the State. Article 15, however, is more general and comprehensive and deals with all cases of discrimination which do not fall under Article 16. Article 16 embodies
the particular application of general rule of equality laid down in Article 14 with special reference for appointment and employment under the State.\(^9\)

Article 16 guarantees equality of opportunity in matters of appointment in State services. It does not, however, prevent the State from prescribing the necessary qualifications and selective tests for recruitment to Government services. The qualifications prescribed may beside mental excellence, include physical fitness, sense of discipline, moral integrity, loyalty to the State etc. where appointment requires technical knowledge, technical qualification may be prescribed. The character and antecedents of candidates may be taken into consideration for appointments in government services.\(^{10}\) The selective test, of course cannot be arbitrary. It must be reasonable and have nexus between qualifications and the nature of job and duties.

**Reservation for Backward Classes**

Article 16 (4) empowers the State to make special provision for the reservation appointments of posts in favour of any backward class of citizens which in the opinion of the State are not adequately represented in the services under the State. Thus Article 16 (4) applies only if two conditions are satisfied: (1) the class of citizens is socially and educationally backward and that the said
class is not adequately represented in the service of the State. The second test cannot be the sole criterion.  

The expression “Backward Class” in Article 16 (4) has been used in the same sense as in Article 15 (4). The Supreme Court has considered the measuring and scope of the expression in a number of cases. From these pronouncements the following propositions emerge.

1. Article 15 (4) and 16 (4) speak of ‘classes’ not ‘caste’.

2. ‘Caste’ by itself cannot be the determining factor of backwardness, though it may be one amongst several factors. So reservation can be made in favour of “Backward Class” and “Backward Castes”. ‘Caste’ and Classes’ are different expression.

3. The Backward Classes in the matters of backwardness resemble the Scheduled Castes and Schedule Tribes.

4. The backwardness must be both social and educational and not either social or educational.

5. Social backwardness is the result of poverty. But poverty by itself is not determining factor of social backwardness poverty becomes relevant only in the context of social backwardness.

6. Reservation should not be excessive

7. Reservation cannot be made at the cost of efficiency of administration (Article 355).
Mandal Case

The scope and extent of Article 16 (4) has been examined thoroughly by the Supreme Court in the historic case of *Indira Sawhrey Vs Union of India*, popularly known as Mandal case.¹²

The Union Government headed by Prime Minister V.P. Singh issued the Office Memoranda (called O.M.) on August 13, 1990, reserving 27 percent seats for the Backward Classes in government services on the basis of the recommendations of the Mandal Commission. A writ petition on behalf of the Supreme Court Bar Association was filed challenging the validity of the Office Memoranda and for staying its operation. In her petition, Ms. Indhira Sawhney, submitted that the Mandal Commission Report (called M.C.R.) and the office Memorandum of August 13, 1990, and September 25, 1991, were unconstitutional, illegal and void for the following reasons.¹³

a) The identification of Backward Classes and the reservation of jobs in services under the State have been made by a mere executive order.

b) The identification has been based on indicators which themselves contribute irrelevant criteria and the weightage given are arbitrary and unreasonable and do not disclose any classification which bears a reasonable nexus to the object of the classification and is the violative of Article 14 of the Constitution.
c) That the M.C.R. is based on conjectures and surmises because no report of the Technical Advisory Committee or of the Panel of Experts has been filed nor can the same be found from a persual of the expects has been filed more can the same be found from a persual of report.

The petition further submitted that the identification of 3,743 castes apart from being unconstitutional is also erroneous on the face of it since the Anthropological Survey of India has given figures of 1,130 as castes which could not be traced. The result, therefore follows that the other remaining castes are non-existent either on the ground of not being traceable or on the ground of being synonymous, sub groups etc.

The five Judge Bench of the Court stayed the operation of the O.M. till the final disposal of the case on October 1, 1990, again the Union Government headed Sri P.V. Narsimha Rao issued another office Memoranda on September 25, 1991 but made two changes in the O.M. of earlier order issued on August 13, 1990 by adding economic criterion in providing reservations to proper sections of Scheduled Castes and Schedule Tribes in the 27 percent quote and reserved another 10 percent of vacancies for other commercially Backward sections of higher castes.

The five judge bench referred the matter to a special Constitution bench of 9 judges in view of the importance of the matters so as to finally settle
the legal position relating to reservations as in several earlier judgements, the Supreme Court has not been very consistent. Despite several adjournments, the union government failed to elaborate the economic criterion speak out in the office memorandum of September 25, 1991.

The nine judge Constitution bench of the Supreme Court by six-three majority (Justice B.P. Jeevan Reddy, C.J. M.H. Kania, M.N. Venkatachaliah, A.M. Ahmadi with S.R. Pandian and S.B. Sawant) concurring by separate judgements held that the decision of the Union government to reserve 27 percent government jobs for Backward Classes provided socially advanced persons-creamy layer among them eliminated, it is only confined to initial appointments shall not exceed 50 percent. The Court accordingly partially held the two impugned notifications (O.M.) dated August 13, 1990 and September 25, 1991 as valid and enforceable but subject to the conditions indicated in the decision that socially advanced persons - creamy layer - among Backward Classes are excluded. However, the Court struck down the O.M. of Sri P.V. Narsimha Rao’s government reserving 10 percent government jobs for economically Backward Classes among higher classes. The majority also held that the reservation should not exceed 50 percent. While 50 percent shall be the rule but it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and people. The Court
did not express any opinion on the correction or adequacy of the Mandal Report. In their dissenting judgement by Justice T.K. Thommen Kuldeep Singh and R.M. Sahai, they struck down the two Office Memoranda’s issued by the Union government as unconstitutional. It held also that the Mandal Report is unconstitutional and recommended for the appointment of another commission for identifying the socially and educationally Backward Classes of citizens.¹⁴

Justice Thommen held that whenever and wherever poverty and backwardness are identified it is the Constitutional responsibility of the State to initiate economic and other measures to ameliorate the conditions of the people residing in those regions. He said that poverty which is the ultimate result of inequalities and which is the immediate cause and effect of backwardness has to be eradicated not merely by reservation but by free medical aid, free elementary education, scholarships for higher education and other financial support, free housing self employment and settlement schemes, effective implementation of land reforms and strict and impartial operation of the law enforcing machinery.

Nani A. Palkiwala is of the view that the judgement of the Supreme Court in the Mandal Report will review casteism, which the Constitution intended to end. According to him future historians of the Indian republic will regard 1992 as one of the saddest year in the history of our jurisprudence. This is the year in which Supreme Court, by a majority, ensured a fresh lease of life
to the canker of casteism for a long and indefinite future. Over the last thousand years, the greatest curse of casteism, a justice Kuldeep Singh has pointed out in his minority judgement. Historians agree that why foreign invaders the Afghans the Turks, the Mughals succeeded in subjugating the country was because casteism divided Indian society and assigned military duties to one caste only.\textsuperscript{15}

He further stated that the decision of the Court will promote at the cost of merit, generating frustration and to making the confusion worst one direct fall out of the decision in Article 16 (4) which for all practical purposes has been virtually rewritten by substituting caste by class. The crucial point is that under the majority judgement of the Supreme Court it is the members belonging to certain castes only, who are eligible to be considered for reservations. When you are left with are still the members of certain castes only. The sections of society which fall outside those designated castes do not qualify for reservations, however socially and educationally backward they may be.

It is disputed that 50 years of independence have changed the social, educational and economic landscape beyond recognition. There are crores and crores of forward individuals in Backward Castes. By making caste, the essential conditions, the majority judgements have-
a) Included for reservation all members of Backward Castes who do not belong to the creamy layer, and

b) Excluded all members of forward castes, however backward and deserving.

Such a classification patently discriminate against those who do not belong to these castes which are listed as backward resulting in social injustice.

A Backward Class may be given benefit of Article 15 (4) or Article 16 (4), but the class must consist of a homogeneous group – the element of homogenity should be backwardness characterising the class. In other words, the link or the thread holding the class together should be the backwardness of the members. Such a link or thread can never be supplied by caste. Excluding the creamy layer of the caste would not get rid of the vice that only link, or the thread binding the benefited class together is caste. In other words a classification may be justified on the ground that it is a Backward ‘Class’ but never on the ground that it is Backward Caste. This principle was precisely enunciated by the Constitution bench in Triloki Nath,16 Pradeep Tandon,17 Jayashree,18 Akhil Bhartiya Soshit.19 The judgements were cited before the Supreme Court and referred to in the majority judgement without disapproval, but they are inexplicably overlooked.
Socio-Economic Justice and the Removal of Inequality

The majority judgement did not pause to consider the reasons why for all the past decades the Union government had not made reservations on caste basis in areas of employment admissions and promotions. The practice of mentioning caste in service record was discontinued by the government of India by 1951. The last census records to proceed on caste basis are those of 1931 which though hopelessly obsolete, were relied upon by the Mandal Commission because they were the latest census records to proceed on caste basis.

Impact of the Mandal Case

The State of Gujrat who become the first to formally accept the Supreme Court verdict on Mandal Commission recommendations, providing for reservations in government jobs for Other Backward Communities (OBCs). The professional institutions, such as Engineering and Medical Colleges, will now have 17 percent more reserved seats.  

The Chief Minister of Uttar Pradesh Mulayam Singh Yadav was presented results of Science/Maths teachers selected 497 posts by the Chairman of the U.P. Subordinate Services Selection Commission. The list contains results of 304 selected candidates belonging to the Backward Classes and 80 to the Schedule Caste. It may be recalled that this is the first result of the subordinate services selection Commission after the acceptance of the Mandal Commission Report by the State.
The Chief Minister of Madhya Pradesh, Mr. Digvijay Singh did not lay behind and that 36 percent of the jobs besides being reserved for the Scheduled Castes/Scheduled Tribes, only 14 percent could be reserved for the Backward Classes. The benefits of job reservations would be constantly monitored by the State government.²²

The Chief Minister of Bihar Laloo Prasad Yadav, announced 50 percent reservation for the backward communities in the judicial services to ensure justice for the oppressed and the downtrodden. The backward communities would also be given reservation in the Medical and Engineering Institutions in order to improve their social status. In his zeal for social justice for the oppressed and downtrodden, 30 percent of the seats were reserved for the Scheduled Castes and Schedule Tribes in the Panchayat election.

Criticizing the creamy layer concept in the reservation policy, Mr. Yadav alleged that it was a conspiracy to weaken the backwards. The Chief Minister demanded reservation for the backwards in the Assembly and Parliamentary Constituencies the Scheduled Castes and Scheduled Tribes reservation.²³

The left front government in west Bengal which had formed a commission to identify Other Backward Classes (OBCs) only after a Supreme
Court directive finally accepted the caste reality by announcing five percent reservation in government jobs for the OBCs, with this, 33 percent of the government jobs now come under reservation, 22 percent for Scheduled Tribes having already been kept apart.24

The Delhi Chief Minister Mr. Madanlal Khurana stated that his government was going ahead with the implementation of the scheme for Delhi Transport Corporation (DTC) bus passes to college students Scheduled Castes and Tribes, economically weaker sections and Backward Classes from August 1, 1994 as it had been approved by the planning commission.25

Mr. Moily's Government in Karnataka by announcing hike in reservations to 80 percent for jobs and education in the State. The 80 percent reservation quota, the highest for any State in the country, came about following the decision to hike reservation for the vikkaliga and lingayat communities the two most dominant groups in Karnataka of the total reservation package the Scheduled Castes and Tribes have been retained at 23 percent, while the quota for the Backward Classes was increased to 57 percent from the earlier 50 percent. The hike is meant to substantially benefit the domenant vikkaliga and lingayat communities, the urban sections of which had hitherto been excluded from the ambit of reservation.26
The Tamil Nadu Assembly has passed a bill for continuation of 69 percent reservation in the State in jobs and educational institutions. 30 percent seats will be reserved for the Backward Classes, 20 percent for the most backward and devotified communities, 18 percent for Scheduled Castes and one percent for Scheduled Tribes.

The bill comes from in the wake of the Supreme Court order which States that reservation should not exceed 50 percent. To become a law legislation would have to get the assent of the president of India and the State governor, under Article 31 (c) of the Constitution. The State government has been urging the Union to amend the Constitution to ensure the continuation of the present quantum of reservation.

The Bhartiya Janta Party (BJP), the main opposition party in the centre, expressed the view that all the States, barring Tamil Nadu and Karnataka, should stick to the Supreme Court’s ruling in the Mandal Case that reservations for the various categories should not exceed 50 percent. The party is in favour of making an exception in the case of Tamil Nadu and Karnataka “since these two States have had reservations exceeding 50 percent for a long a time”. In BJP’s view, it would be a problem for these two States to curtail their extent of reservation now. Given this backdrop, the BJP has favoured Presidential assent to the Tamil Nadu Assembly’s unanimous resolution and
legislation in support of continuation of the 60 percent reservation in the State for Backward Classes, Scheduled Castes and Scheduled Tribes. The BJP viewpoint was put across by senior and opposition leader in the Lok Sabha, Atal Bihari Vajpayee at the meeting of political parties convened by Home Minister S.B. Chaun to discuss the issue arising out of Tamil Nadu's Supreme Court demand and its likely implication for other States.

Briefing newsmen, BJP Spokesman Mr. Krishanlal Sharma said that Mr. Vajpayee, at the meeting, quoted B.R. Ambedkar to the effect that reservations should be of a "minority nature", that is, they should not exceed 50 percent in the interest of equality of opportunity. Having said that Vajpayee conceded that the State of Tamil Nadu and Karnataka were on a different footing. It would not be easy for them to bring down and reservations to less than 50 percent now. As such, the Tamil Nadu legislation for continuing with the 69 percent reservation should be forwarded to the president for assent.

Mr. Vajpayee, according to the party spokesman, put forth the view that all other states, which do not have reservations in excess of 50 percent right now, should conform to the Supreme Court's pronouncement that the out limit of 50 percent should be adhered to.
Caste and Politics

The influence of caste is writ large on our policies and programmes. No political party has had the courage to take a stand against caste based reservations in government jobs. The reaction of various parties is reflected of the extent to which they are steeped in outdated concepts and out of the tune with the new India that is struggling to emerge. At a time when the entire thrust, is towards individual enterprise and effort, no policy of reservations, however comprehensive and inclusive it seeks to be, can have legitimacy in the eyes of large sections of the educated class. Reservations for Scheduled Castes and Tribes are possibly an exception, though there has been considerable desiate on how effective they have really been in serving the needs of the deserving classes.

More than the actual jobs in government and public sector units, what is at stake is the unity and integrity of society. The government’s reservation scheme is an admission that the problems of deprivation are not confined to any caste duster and that the country’s economic, social and educational problems affect all groups irrespective of their castes status. If poor Brahmans, Kshatriyas, Vaishyas as well as Backward Castes, Scheduled Castes and Scheduled Tribes all qualify for reservations, precisely which castes should be excluded from the scheme.
Mr. R.P. Singh in his Article “Identification of Backward Classes”\textsuperscript{30} has pointed out the practical problems involved in the identification of Backward Classes in the absence of data relating to the number of the Backward Classes and their present social and educational backwardness. The lists of other Backward Classes prepared by the Centre and some of the States are not based on any well-defined criteria to measure their social and educational backwardness.

The present system of reservation benefits people belonging to certain arbitrarily listed castes and places them on a superior level irrespective of the present social and educational status of individuals of that castes. Sons and daughters of officer working in the government or private sector, judges, ministers and economically better off persons get the benefit of reservation as economic criterion is not considered. Persons belonging to the so-called forward castes are discriminated against even they are better in terms of merit than those belonging to the Backward Classes. There persons are treated as second class citizens and are being oppressed by the government under the pretext of providing “social justice”.\textsuperscript{31}

Is there any alternative to caste based reservations? The alternative is to provide for reservation to the individuals who are socially and educationally backward. The suggested alternative may put an end to the arbitrary
classification of population into “Backward Class” and “others”. When there is no classification of populations, all persons are treated alike, caste is no longer the basis for dividing the people. Enumeration of one’s caste at the time of admission to school is not necessary as it tends to create caste consciousness among children. The accident of one’s birth in a particular caste should not be the sole criterion for enjoying State benefits. Social justice to be more meaningful requires a rational definition as to include the most vulnerable sections of society in terms of education and poverty rather than caste alone on the social, educational and economic status of individuals should govern the reservation policy. It is only than that equality envisaged by Article 15 (1) and 16 (1) and (2) of our Constitution can be fostered. Abolition of arbitrary classification of population on the basis of “caste” is necessary for the survival of our democracy, establishment of social justice and promotion of rule of law. There wrong in amending the Constitution to meet the requirements of social justice fully.

If reservations are based on the social, educational and economic backwardness of individuals, all deserving persons will benefit irrespective of caste and differences based on caste will gradually disappear over a period of time. A rational scientific criterion based on socio-economic factors is a desideratum where every citizen should be able to enjoy the benefits of
reservation irrespective of their religion, caste, community or language. There is no need to prepare State lists or central lists of Backward Classes. The political parties should come forward to deliver the reservation policy from caste reservation for backward persons will help the person who really deserve such help. There will be no difficulty in identifying the Backward Classes. The press and the intelligents can also contribute towards their the eradication of caste based reservations and helping the cause of to national integration.

Abolition of Untouchability

Before the commencement of the Constitution of India, a number of provinces and princely States enacted laws for eradication of untouchability. To achieve equality in all segments and classes of society may social reform movements were launched. Under the leadership of Gandhi, movements were launched for amelioration of the poor and downtrodden. Historically, it is proved that on the eve of independence, there were twenty seven enactments enacted by provinces and princely governed States for doing away with social disabilities of a class of Hindu known as the untouchables. To illustrate religious tolerance, wisdom and Statesmanship the Maharaja of Tanjore’s proclamation captioned “Temple entry proclamation” issued in 1936, (relevant content) can be reproduced.
“Profoundly convinced of the truth and validity of our religion believing that it is based on divine guidance and on an all comprehending toleration, knowing that in its practice it has, through out the centuries adapted itself the needs of changing of time, solicitous that none of our Hindu subjects should by reason of birth or caste or community be denied the consolation and solace of the Hindu faith, we have decided and hereby declare, or dain and command that subject to such rules and condition as laid down for preserving proper atmosphere and maintaining their rituals and observances, there should henceforth be no restrictions on any Hindu by birth or religion on entering or worship at the temples controlled by us and our government”.

The Constituent Assembly Debate reveal that B.R. Ambedkar played an important role for the restoration of human dignity of the untouchables. Explaining, the concept of ‘social Democracy’, he stressed in the Constituent Assembly that it is a way of life which recognizes liberty, equality and fraternity which are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty can not be divorced from equality which cannot be divorced from fraternity. It was largely due to his efforts that numerous Constitutional safeguards to eradicate this social evil was incorporated in the Constitution.35 article 17 of the Constitution of India
abolishes “untouchability” and forbids its practice in any form. The enforcement of any disability arising out of untouchability is to be an offence punishable in accordance with law. It does not stop with a mere declaration but announces that this forbidden ‘untouchability’ is not to be hence forth be practiced in any form.

The most important point in this regard, however is that ‘untouchability is neither defined in the Constitution nor in the Act. The Mysore High Court has however, held that the term is not to be understood in its literal or grammatical sense but to be understood as the ‘practice as it had developed historically’ in this country. Understood in this sense, it is a product of the Hindu caste system according to which particular section amongst the Hindus had been looked down as untouchables by the other sections of the society. A literal construction of the term would include persons who are treated as untouchables either temporarily or otherwise for various reasons, such as suffering from infections diseases or on account of social observance such as, are associated with birth or death or on account of boycott resulting from caste or other dispute. In either caste such person can claim the protection or benefit either of Article 17 or of the 1955 Act.36

In exercise of the powers conferred by Article 35 Parliament has enacted the untouchability (Offences) Act, 1955. The Act was amended by the
untouchability (Offences) Amendment Act 1976, in order to make the law more stringent so as to eradicate the practice of untouchability from the society. It has now been renamed as, the Protection of Civil Rights Act, 1955. The expression 'civil right' is defined as any right accruing to be a person by reason of the abolition of untouchability by Article 17 of the Constitution. Under the Amended Act any discrimination on the ground of untouchability will be considered an offence. It imposes a duty on public servants to investigate such offences. It provides that if a public servant willfully neglects the investigation of any offence punishable under this Act, he shall be deemed to have abetted an offence punishable under this Act. The Protection of Civil Rights Act prescribes punishment which may be extend to imprisonment upto six months and also with a fine which may be extend to five hundred rupees or both for any one enforcing, on the ground of untouchability religious disabilities like – preventing any person from entering any place of public worship or from worshipping or offering prayers there in (section 3) or social disabilities like (section 7), access to any shop, public restaurants, hotels or places of public entertainment (section 4) and refusing to admit persons to hospitals (section 5) and refusing to sell goods or rendered services to any person (section 6) or for other offences, arising out of 'untouchability' (section 7). This provision was further elaborated by the Supreme Court in the Asiad Project worker’s case.
wherein it was held that the Fundamental Right under Article 17 is available against private individuals and it is the Constitutional duty of the State to take necessary steps to see that these Fundamental Rights are not violated.

It should be noted that Article 15 (2) also helps in the eradication of untouchability. Thus on the grounds of untouchability no person can be denied access to shops, public restaurants, hotels and places of entertainment or the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

In compliance with the directive incorporated in Article 46, Parliament has passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989 which came into force on January 30, 1999. The object of the act is to protect the weaker sections from the Atrocities committee by the other sections of society. Also there is provision of special Court for speedy trial of the cases of Atrocities committed on Scheduled Castes and Scheduled Tribes by the rest of section of the society. It provides stringent provision as it leaves no discretion to the Court regarding imposition of the punishment.38

The ends of justice pre-suppose equality of social status for the Scheduled Castes and Scheduled Tribes and it cannot be achieved through legal
norms or instruments only. It is a known fact that untouchability has been declared an offence punishable under law since 1955. Nevertheless, it is prevalent till date in one form or other. To check the atrocities, legal remedies are avoidable. It is a established fact that mere punitive actions are not sufficient for the social transformation. The prime need of the hour is to change the outlook of the people by ways and means other than laws. The Scheduled Castes and Scheduled Tribes are backward people and their backwardness (socially, educationally and economically) is never in doubt. They deserve special treatment and the government is Constitutionally empowered to make special provisions for their uplift. ‘Protective discrimination’ can certainly be used in their favour.

The compulsions of social justice also wrant such as action. But in the process, other persons who are equally backward economically and educationally but who do not fall under these categories, equally deserve concessions for the States. It is only than that social justice can be established, else the policies of reservation has the tendency of creating permanent vested interests to derive economic, educational and political mileage but of it which in fact, can be exploited and has been exploited by almost every political party, to gain votes. And in such a situation can break dis-contention and frustration. Offen it is stressed that the popularity of education amongst the Scheduled
Castes and Scheduled Tribes has caused considerable awareness amongst them. And often asserted they have themselves, which has invited sharp reactions amongst the upper classes. Therefore is to strike a just balance between the interests of the Scheduled Castes and Backward Classes and those of the upper classes. It is the duty of the State to safeguard the diverse interests of society without jeopardizing the Constitutional safeguards. Equal or more or less equal development of all segments of society is essential.

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23. The Hindustan Times (July 1, 1994, New Delhi) p.7.


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31. Ibid.

33. Ibid.


35. Devarajjah V. Padman, AIR, 1958, Mys. 84.

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CHAPTER – IV

JUDICIAL RESPONSE TO SOCIAL JUSTICE
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JUDICIAL RESPONSE TO SOCIAL JUSTICE

The judiciary is expected to play a crucial role under the Constitution and is the last resort of the common man for seeking justice. Where his legal rights are infringed. It is now necessary to know how the judiciary viewed this concept embodied in the Constitution. “ Judges are keenly aware”, said Justice V.R. Krishna Iyer, “of some of the social dimensions of the problem and the need to interpret the Constitution as a social document. The Indian Constitution is a great social document, hierarchical society into a modern, egalitarian democracy”. It is therefore interesting to analyse the judicial perspectives of social justice in interpreting this revolutionary “social document”, the Constitution of India.

It may be noted that at the initial stage of Constitutional development in India Judiciary did not evince much interest in referring to the Preamble or to the Preambular concept of social justice while interpreting the specific provisions of the Constitution. Later, however, the initial stance of indifference changed and the judiciary increasingly relied on the concept of socio-economic justice to solve many knotty social and economic problems that came before the Supreme Court.
Social Justice: Contrast to Refrain of Fundamental Rights

In *Behram Khurshid V. Bombay State* \(^2\) one of the issues before the Supreme Court was whether an individual could waive his Fundamental Rights. In fact, in the United States the doctrine of waiver of rights was enunciated by some American Judges in construing the American Constitution. This was done on the simple reason that since the rights were reserved by the people to themselves, they might at anytime on their own volition waive them. But Chief Justice Mahajan rejected the doctrine of waiver of Fundamental Rights because, according to him, it had no relevancy in construing the Fundamental Rights conferred by Part III of the Constitution of India. In this connection he said “we think that the rights described as Fundamental Rights are a necessary consequence of the declaration in the Preamble that the people of India have solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens justice social economic and political; liberty of thought, expression belief, faith and worship; equality of status and opportunity”. \(^3\) Proceeding further he stated that the Fundamental Rights have not been put in the Constitution merely for individual benefit, though ultimately they come into operation in considering individual rights. They have been put there as a matter of public policy and the doctrine of waiver can have no
application to provisions of law which have been enacted as a matter of Constitutional policy.\(^4\)

Evidently, there is a deeper meaning in rejecting the American doctrine of waiver of Fundamental Rights and the clear linking of Fundamental Rights as a matter of public or Constitutional policy, with such preambular concepts as socio-economic justice. India is a country wherein very large section of the society is economically weak. So, incredibly very large number of people are not aware of their Fundamental Rights and even among those who are faintly aware of the rights are not in a position to reach the citadel of justice to exercise those rights. Added to this, if the doctrine of waiver is read into the Indian Constitution, the weaker sections of the Indian Society may lose many of the precious rights by their default. In that event important rights stipulated in Article –15, 16 (4), 17 and 23 of the Constitution would become meaningless rights to the weaker sections. Thus social justice would remain a glittering and unattainable goal. As a matter of fact, similar view was expressed by Justice K. Subba Rao in slightly different strain in \textit{Basheshar Nath V. I.T. Commissioner}.\(^5\) Rejecting the doctrine of waiver he said that while it is true that the judgments of the Supreme Court of the United States are of great assistance to this Court in elucidating and solving the difficult problems that arise from time to time, it is equally necessary to keep in mind the fact that the
decisions are given in the context of a direct social, economic and political set up, and therefore great care should be bestowed in applying those decisions to cases arising in India with different social, economic and political conditions.6

Justice Subba Rao further said that if the doctrine of waiver is engrailed to the said fundamental principles, it will mean that a citizen can agree to be discriminated. When one realizes the unequal position occupied by the state and private citizen, particularly in India where illiteracy is rampant, it is easy to visualize that in a conflict between the state and a citizen, the latter may, by fear of force or hope of preferment, give up his right. It is said that in such a case coercion or influence can be established in a Court of law but in practice it will be well-high impossible to do so. The same reasoning will apply to Articles 15 and 16, Article 17 illustrates the evil repercussion of the doctrine of waiver in its impact on the Fundamental Rights.7

In other words, the doctrine of waiver, which is easily applicable in an affluent society like America, will spell disaster to the social justice if it is given effect to in a socially and economically imbalanced society like India. In short, concept of social justice is antithetic to the doctrine of waiver of Fundamental Rights.
Social Justice Leads to Dynamic Socialism

In an interesting case the Supreme Court discussed the concept of socialism, which spells social justice in the economic field, in relation to State’s power to carry on trade and business to the exclusion, complete or partial, of citizens as provided in Article 19 (6) (ii) of the Constitution. This was done in Akdasi Padhan V. State of Orissa wherein the Orissa Kendu Leaves (Control of Trade) Act of 1961, which created a state monopoly in the trade of Kendu leaves, was challenged on the ground that it imposed severe restriction on the Fundamental Rights of the petitioner guaranteed by Article 19 (i) (g). Dealing with this point Justice Gajendragadkar said that in attempting to construe Article 19 (6) which enables the state to nationalize industry or establish a monopoly in trade it must be borne in mind that a literal construction may not be quite appropriate. In interpreting such a provision, one should bear in mind the political or the economic philosophy underlying the provisions in question, and that would necessarily involve the adoption of a liberal and not a literal and mechanical approach to the problem.

The doctrine of state ownership is the result of the rise of philosophy of socialism. Pointing to the difference in approach to state ownership, Justice Gajendragadkar said that to the socialist, nationalization or state ownership is a
matter of principle and its justification is the general notion of social welfare. To the rationalist, nationalization or state ownership is a matter of expediency dominated by consideration of economic efficiency and increased output of production. This latter view supported nationalization only when it appeared clear that state ownership would be more efficient, more economical and more productive. The former approach was not very much influenced by these considerations, and treated it as a matter of principle that all important and nation building industries should come under state control. The first approach is doctrinaire, while the second is pragmatic. The first proceeds on the general ground that all national wealth and means of producing it should come under national control, while the second supports nationalization only on grounds of efficiency and increased output.\textsuperscript{9}

Proceeding further the judge referred to the amendment made to Article 19 (6) and said Article 19 (6) (ii) clearly shows that there is no limit placed on the power of the state in respect of the creation of state monopoly. In other words, the theory underlying the amendment in so far as it relates to the concept of state monopoly, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which socialism accepts.
Subsequently in another case, *Excel Wear V. Union of India* the Supreme Court referred to the aforesaid proposition and said that the difference between the doctrinaire approach and the pragmatic one may enable the Courts to lean more and more in favour of nationalization and state ownership of an industry. This is particularly so after the addition of the word ‘Socialist’ in the Preamble of the Constitution. But the private ownership of an industry still continues and is recognized. It plays a very dominant role in our economic structure. In such a situation it becomes difficult to realize in full the ideals of socialism. The Court pointed out that in a state undertaking, the government being the owner, it may not be difficult to protect the labour even by spending out of the public exchequer. But in a private sector obviously the problems are entirely different. On the one hand the private industry is entangled in the question of management and on the other it must get some return out of this business. Besides the fact remains that private entrepreneurship contributes substantially to the growth of the national economy by formation of more and more capital. In this situation Court asks, does it stand to reason that by such rigorous provisions like those contained in the impugned sections all these interests should be completely or substantially ignored? The question posed are suggestive of the answers.
It may be noted that this view was expressed by the Supreme Court in *Excel Wear* case in response to two rival contentions advanced in the case. On behalf of the employers it was contended that the right to close down the business is an integral part of the right to carry on the business guaranteed under Article 19 (1) (g) of the Constitution of India. The impugned law, namely section 25-0 (1) and (2) of the Industrial Disputes Act, 1947, which gives a discretion to the appropriate government to grant or not to grant permission for a closure of an industrial undertaking, imposes a restriction on the said fundamental right which is highly unreasonable, excessive and arbitrary. It is not a restriction but almost amounts to the destruction or negation of that right.

The restriction imposed is manifestly beyond the permissible bounds of clause (6) of Article 19 of the Constitution. On the other hand, the opposite contention was that restrictions by the impugned law are quite reasonable and justified to put a stop to the unfair labour practice and for the welfare for the workmen. It is a progressive legislation for the protection of weaker section of the society. Further, it was submitted that in view of the high philosophies of jurisprudence in relation to the social and welfare legislations, as expounded by renowned jurists and judges abroad, that the action of the closing down a business is no right all in any sense of the term. It was in the context of these two extreme positions taken by the parties, the Supreme Court expressed its above
mentioned views and effectively conveyed the idea that socialism, which spells social justice, must maintain a just balance between several interest, which are allowed to contend against each other in a society.

It is interesting to note that both Akdasi Padhan and Excel Wear subtly equated socialism, through the medium of welfare concept, with social justice. This is evident from the fact that in the former case the concept of socialism, as explained by the Court, tries to find its justification in the ‘notion of social welfare’, and in the latter case the Court clearly said that ‘principles of socialism and social justice’ cannot ignore, with impunity, interests of different sections of the society. Akdasi Padhan lays stress on doctrinaire aspect of socialism or social justice. But Excel Wear ruling does not deny it, but it lays emphasis on the dynamic content of socialism and social justice. In other words, socialism or social justice is not a static concept indicating a single and only one recipe to all social situations; it is a dynamic philosophy, which has a dynamic role in a mixed economy, for it must maintain a just balance between interests of several sectors or sections which are allowed to function as integral part of the society. In short, social justice, according to the Supreme Court, is doctrinaire in its approach but dynamic in its content and efficacy.
Social Justice Renders Processual Justice into a Versatile Use-tool

The Supreme Court took an opportunity in *Municipal Council, Ratlam V. vardhichand*\(^\text{15}\) to discuss the concept of social justice, speaking approvingly about a Magistrate’s order made under section 133 of the Code of Criminal Procedure directing the appellant in this case to bring about abatement of public nuisance. Justice Krishna Iyer tried to find a new social justice content in the Constitution. He said, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapons of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a Magistrate under Section 133, Criminal Procedure Code. In the exercise of such power, the judiciary must be informed by broader principle of access to justice necessitated by the conditions of developing countries and obliged by Article 38 of the Constitution.\(^\text{16}\) This, according to justice Krishna Iyer, is the “processual branch” of the Indian public law.\(^\text{17}\) In this connection, he says that the new attitude of procedural justice reflects what Prof. Adolf Homburger has called “a radical change in the hierarchy of values served by civil procedure”. Then ‘social justice’, i.e., with finding procedures which are conductive to the pursuit and protection of the rights of ordinary people”.\(^\text{18}\)
Thus, according to the Supreme Court, as explained by Justice Krishna Iyer, the social justice imparted by the Constitution has rendered the remedial weapon into a versatile use-tool. It also means, finding or picking procedures which are conducive to the pursuit and protection of the rights of the ordinary people. In other words, the social justice, which ensures access to justice to common man, does not render the procedural justice an ineffective vehicle of justice by putting on it a saddle bag of stifling technicalities. That is to say, if procedural justice is denied to common man on technical grounds, the procedural justice ceases to be a versatile use-weapon; and access to justice becomes an ineffective concept and consequently the social justice may remain an unattainable goal. The judiciary has clearly conveyed the idea that the Constitution does not give scope for such a stalemate.

Egalitarian Social Order

Of recently, there is a rising tide of judicial activism for rendering justice flowing into different channels of gender justice, worker justice, minorities justice, *dalit* justice and equal justice. A host of decisions by the highest Court of the land bear testimony to this trend.

*S.P. Gupta V. Union of India;*¹⁹ is one of those landmark cases in this time. The Supreme Court, while discussing the independence of the
judiciary, explained the role of the judiciary in realizing the Constitutional goal of social justice. Justice Bhagwati explained as to what the true function of the judiciary should be in a country like India which is marching along the road to social justice with the banner of democracy and the rule of law. According to him, our Constitution is not a non-aligned rational charter but a document of social revolution. He says that the Constitution casts an obligation on every instrumentality including the judiciary to transform the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life and there will be equality of status and opportunity for all. Justice Bhagwati went on. “The judiciary has therefore a socio-economic destination and a creative function. It has to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man. It cannot remain to act merely as an umpire but it must be functionally involved in the goal of socio-economic justice”.

There is an obvious contrast between the activist role of the judiciary and the passive role of the judiciary. According to justice Bhagwati, the former is necessary for the Indian Society, which is ‘pulsating with urges of gender justice, worker justice, minorities justice, dalit justice and equal justice between chronic unequals’. As he said in the battle between those who are socially or
economically unequal, the judicial process may prove disastrous from the point of view of social justice, if the judge is merely passive or negative. They should adopt a positive and creative approach. Judges cannot remain mere bystanders or spectators. They must become active participants in the judicial process ready to use law in the service of social justice thorough a pro-active goal-oriented approach. But, Justice Bhagwati, advocated for judicial cadres who share the fighting faith of the Constitution and who are imbued with the Constitutional values.

Laying stress on the necessity of a judiciary which is in tune with the social philosophy of the Constitution, he observes, that the country must have "judges who are prepared to fashion new tools, forge new methods, innovate new strategies and evolve a new jurisprudence, who are judicial statesmen with a social vision and a creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability, not to any party in power nor to the opposition nor to the classes which are vociferous but to the half hungry millions of India who are continually denied their basic human rights. We need judges who are alive to the socio-economic realities of Indian life, who are anxious to wipe every tear from every eye, who have faith in the Constitutional values and who are ready to use law as an instrument for achieving the Constitutional objectives."
The role of the judiciary in reaching the Constitutional goal of social justice described by Justice Bhagwati has been supported by justice Desai, who pleaded for co-operation of the Executive, Legislature and Judiciary in striving to achieve this ideal. In this co-operative venture the judiciary has to be inspired by the values enshrined in the Constitution. This inspiration is necessary, if rule of law is to run akin to rule of life and a feudal society is to be transformed into an egalitarian society by the rule of law. Proceeding further he said, “the judiciary must keep pace with the changing moves of the day, its decision must be informed by values enshrined in the Constitution, the goals set forth in the fundamental law of the land, peoples yearning desire for a chance for the better and promised millennium. An activist role in furtherance of the same is a sine qua non for the judiciary”.  

In this case, the Supreme Court explained in clear terms two matters, one relating to the meaning of the term ‘social justice’ and the second regarding the role of the judiciary in realizing the social justice. As indicated by the Court, the social justice envisages a socio-economic revolution and transformation of the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life. Further, it connotes gender justice, worker justice, minorities justice, *dalit* justice and equal justice between chronic unequal. Besides, it means an egalitarian social order. Apart
from indicating the meaning of the term 'social justice', the Court laid repeated emphasis on the activist role of the judiciary in realizing the aforesaid Constitutional goal of social justice.

**Rule of Interpretation Making Social Justice a Vibrant Concept**

Can drivers working in two public establishments given two grades of pay and perks? If they are thus treated differently will it not be a violation of the concept of social justice so meticulously guarded under the Constitution? In *Randhir Singh V. Union of India,* the Supreme Court had to meet this problem. The Court laid down the proposition that the Fundamental Rights must be construed in the light of the Preamble and the Directive Principles of State Policy. In this case the Court, while discussing the principle of “equal pay for equal work”, has said that the directive principle of “equal pay for equal work for both men and women” stipulated in Article 39 (d) of the Constitution “means equal pay for equal work for every one and as between the sexes. Directive principles, as has been pointed out in some of the judgements of this Court have to be read into the Fundamental Rights as a matter of interpretation”.

Proceeding further the Court pointed out that “the Preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word
“Socialist” must mean something. Even if it does not mean “To each according to his need’, it must at least mean ‘equal pay for equal work’.

Finally, the Court declared that construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), the principle ‘equal pay for equal work’ is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

The principle laid down has far reaching significance. The principle of “equal pay for equal work” is part of the concept of “social justice” enshrined in the Preamble. Here that principle has been rightly construed to be the part of the word “socialist” embodied in the Preamble. So, to the extent the “social justice” looks forward to the creation of an egalitarian society, wherein the “equal pay for equal work” is assured for every one and as between the sexes, it also looks forward to the creation of Socialist Republic of India. Since the concept of social justice pervades many of the provisions of Directive Principles of State Policy, the rule of interpretation that the Fundamental Rights must be construed in the light of the Preamble and Directive Principles has transformed the social justice into a very vibrant concept in the Constitution.

As a matter of fact, the two ideas, namely, (1) social justice means egalitarian social order, and (2) social justice pervades many directive
principles, have been brought out clearly by Justice Bhagvati in his dissenting opinion in *Minerva Mills Ltd. V. Union of India*. Referring to the views of Granville Austin, he said that it is in the Directive principles that we find the clearest statement of the socio-economic revolution. The Directive Principles aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from fulfilling their best selves. The Fundamental Rights are no doubt important and valuable in a democracy. But how can there be real democracy without social and economic justice to the common man? Creation of socio-economic conditions in which there can be social and economic justice is the objective of Directive Principles which nourish the roots of our democracy, make it a real participatory democracy and fertilise the static provisions of the Fundamental Rights. Then Justice Bhagwati observes, "the Directive Principles, therefore, impose an obligation on the state to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality, not only for a few privileged persons but for the entire people of the country." The above views of Justice Bhagwati have been examined in a subsequent case. It was in *Sanjeev Coke Mfg. Co. V. M/S Bharat Coking Coal*
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This was done. The case relates to the issue on the validity of nationalization of the coke oven plants belonging to the petitioners. Justice Chinnappa Reddy said that Justice Bhagwati was at great pains to point out that the broad egalitarian principle of social and economic justice for all was implicit in every Directive Principle, and therefore, a law designed to promote a Directive Principle even if it came into conflict with the formalistic and doctrinaire view of equality before the law, would most certainly advance the broader egalitarian principle and the desirable Constitutional goal of social and economic justice for all. Justice Reddy continued, “If the law was aimed at the broader egalitarianism of the Directive Principles, Article 31-C protected the law from needless, unending and rancorous debate on the question whether the law contravened Article 14’s concept of equality before the law”. Thus it is clearly conveyed that “social justice” means egalitarian social order and egalitarianism is implicit in the Directive Principles. The dynamic Directive Principles, in which the social justice, that is, egalitarianism, is implicit, energies the static provisions of the Fundamental Rights. It is, therefore, appropriate to conclude that the Fundamental Rights must be interpreted in the light of the social justice concept which is enshrined in the Preamble and implicit in the Directive Principles.
Social Justice: Signature Tune of the Constitution

Another important case, wherein the Supreme Court discussed the concept of social justice, is *People's Union for Democratic Rights V. Union of India.* This case is also known as *Asiad Workers*’ case. This is a writ petition brought by way of public interest litigation in order to ensure observance of labour laws in relation to workmen employed in the construction work of various projects connected with the Asian Games. In this case, while discussing the role and importance of public interest litigation, Justice Bhagawati refers to reality of the Indian situation. Large number of men, women and children who constitute the bulk of our population are today living a sub-human existence. Abject poverty, has broken their back and sapped their moral fiber. They have no faith in the existing social and economic system. According to Justice Bhagwati the only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realize the economic, social and cultural rights. He further says that this task is to be carried by the Legislature and the Executive. But the judiciary can play a role when it has to decide cases coming in public interest litigation. Justice Bhagwati seems to hold that the public interest litigation is a co-operative or collaborative effort on the part of the people, public authorities and the Court to
secure observance of the Constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. Then Justice Bhagwati said: "The time has now come when the Courts must become the Courts for the poor and struggling masses of this country. They must shed their characters as upholders of the established order and status quo. They must be sensitized to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realization must come to them that social justice is the signature tune of our Constitution, and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realization of the Constitutional goals".

The aforesaid pronouncements of the Supreme Court in the 'Asiad Workers' case clearly convey an idea that social justice enshrined in the Constitution urges unmistakably remaking of material conditions and restructuring of social and economic order in order to enable the vast masses of the Indian society, which remained for generations a vulnerable sections of the society, to realise the economic, social and cultural rights and to realize the Constitutional goals. In other words, as explained by Justice Bhagwati, social justice envisages a socio-economic revolution by restructuring socio-economic
order, and remaking material conditions to bring into existence a new social order of lasting value to all. The Court, therefore, has rightly described the social justice as “the signature tune of our Constitution”. Similar views have been expressed by Justice Bhagwati in *Bandhva Mukti Morcha V. Union of India*, wherein once again he lays emphasis on the need “to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice, which is the signature tune of our Constitution”.

**Social Justice Stems from Social Morality and Abhors Economic Exploitation**

An interesting discussion on social justice has taken place in *D.S. Akara V. Union of India*. Question raised in this case was whether the date of retirement was a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specific date. Would differential treatment to pensioners related to the date of retirement quo the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14? The Court has answered the question and said that if the pensioners form a class, their pension computation cannot be by different formula affording unequal treatment solely on the ground
that some retired earlier and some retired later. In this connection the Court has
referred to Directive Principles and the Preamble. It has pointed out that Article
41 obligates the state to provide, among others, assistance in cases of
unemployment, old age, sickness and disablement, and in other cases of
undeserved want. Then it referred to the phrase “Socialist Republic” in the
Preamble and said that “principle aim of a socialist state is to eliminate
inequality in income and status and standards of life. The basic frame work of
socialism is to provide a decent standard of life to the working people and
especially provide security from cradle to grave. This amongst others on
economic side envisaged economic equality and equitable distribution of
income”.

Old age pension aims at providing an economic security to those who
have rendered unto society what they were capable of doing when they were
fully equipped with their mental and physical prowess. At old age the state shall
ensure a reasonably decent standard of life, medical aid, freedom from want,
freedom from fear and the enjoyable leisure, relieving the boredom and the
humility of dependence. The Court said that, “Article 41 aims this and contains
the characteristics of a socialist state”.
The Court has pointed out that the liberalized pension scheme is good, but the arbitrary selection of the criteria for eligibility for the benefits of the scheme dividing the pensioners on the basis of a specified date is bad. Hence the Court opined that the illegal provision relating to the arbitrary selection of criteria for the eligibility for the benefits of liberalized pension must be severed from the scheme and the liberalized scheme of pension be given effect to. But then, it has been pointed out that rule of severance always cuts down the scope of legislation but can never enlarge it and in the present case the scheme as it stands would not cover pensioners such as the petitioners and if by severance an attempt is made to include them in the scheme it is not cutting down the class or the scope but enlarge the ambit of the scheme which is impermissible even under the doctrine of sever ability. Further, it is pointed out that there is no precedent so far where the Court has included some category within the scope of provision of law to maintain its Constitutionality. Saying that the absence of precedent need not deter them the Court held that every new norm of socio-economic justice and every new measure of Social Justice commenced for the first time at some point of history. If at that time it is rejected as being without a precedent, the law as an instrument of social engineering would have long since been dead and no tears would have been shed. To be pragmatic is not to be unconstitutional. In its onward march law as
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an institution usher in socio-economic justice. In fact, social security in old age commended itself in earlier stages as a moral concept but in course of time it acquired legal connotation.\(^3\) According to the Court, socio-economic justice stems from the social morality coupled with abhorrence for economic exploitation and the advancing society converts in course of time moral or ethical code into enforceable legal formulations.\(^5\)

The views expressed in *Nekara* case clearly show that socialist state envisaged in the Preamble and the social justice enshrined in the Preamble and Directive Principles include social security measures to provide assistance in cases of unemployment, old age, sickness and disablement and other cases of undeserved want. The social justice, according to the Court, means 'equitable distribution of national cake'. That is to say, the judiciary has laid stress on the distributive justice aspect of the social justice. Besides, according to the Judiciary the concept of social justice stemmed from the concept of social morality and eventually become an enforceable legal concept and it abhors economic exploitation. In other words, it envisages a society sans exploitation.

The foregoing analysis of the judicial pronouncement would show that the judiciary discussed all aspects of the concept of social justice enshrined in the Constitution and explained its various connotations and its importance.
First it said that the concept of social justice is antithetic to doctrine of waiver of Fundamental Rights. Second, social justice, according to the judiciary, is socialism with a doctrinaire approach, for its goal is to bring national wealth and means of production under national control to subserve the common good. At the same time, it is explained that in a mixed economy, interests of private enterprise cannot be stifled unjustly. So, necessarily a just balance must be maintained between conflicting interest. So viewed, socialism becomes more dynamic than doctrinaire. Therefore, as indicated by the judiciary, social justice is dynamic socialism which aims at a just socio-economic order. Third, the judiciary is of the opinion that concern with social justice means concern with finding procedures which are conducive to the pursuit and protection of the rights of ordinary people. In short, social justice orientation imparted to procedures by the Constitution has made them remedial weapons of versatile use. Consequently, procedures are freed from stifling technicalities and access to justice has become a meaningful concept to common man. Fourth, the concept of social justice, envisages creation of a new human order and an egalitarian society, wherein gender justice, worker justice, minorities justice, 
[dalit] justice and equal justice among the chronic unequals are assured to all. An activist role in furtherance of the concept is a Constitutional responsibility of the judiciary. Fifth, the dynamic Directive Principles energies the static...
provisions of Fundamental Rights. So, when the judiciary said that the Fundamental Rights must be construed in the light of Directive Principles and the Preamble, it virtually conveyed the idea that the Fundamental Rights must be interpreted in the light of the Social Justice. This rule of interpretation has made the social justice a vibrant concept in the Indian Constitutional jurisprudence. Sixth, the unique position of the social justice as a Constitutional goal has been conveyed by the judiciary when it described the concept as the signature tune of our Constitution. Finally socio-economic justice stemmed from the social morality and then became an enforceable legal formula and it abhors economic exploitation. Besides, the Court has not only said that comprehensive social security schemes are within the ambit of social justice concept but also laid stress on the distributive justice aspect of the concept. Thus, meanings attributed to, and the unique role designed for, the concept of social justice enshrined in the Constitution by the judiciary in its various decisions have made the social justice a multi-dimensional vibrant concept of far reaching importance.

References:

3. Id., at p.146.
4. Ibid.
5. AIR, 1959, S.C. 149.
7. Id., at p.181.
9. Id., p.1053.
10. Id., pp.1053-1054.
12. The Court noted, "Most of the industries are owned by limited companies in which a number of shareholders, both big and small, hold the shares. There are creditors and depositors and various other persons connected with or having dealings with the undertaking. Does the socialism go to the extent of not looking to the interests of all such person’s Id., p.36.
13. Id., p.36.
14. Section 25-0 (1) and (2) of the Industrial Disputes Act, 1947, stated as follows. "25-0 (1) An employer who intends to close down an undertaking of an industrial establishment to which this chapter applies shall in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be
served simultaneously on the representatives of the workmen in the prescribed manner.

Provided that nothing in this Subsection shall apply to be undertaking set up for the construction of building, bridges, roads, canals, dams or for other construction works.

Where an application for permission has been made under sub-section (1) the appropriate government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reason stated by the employer the interest of the general public and all other relevant factors, by order and for reason to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and workmen”.

17. Id., p.1628.
18. Id., p.1628.
19. Id., p.1629.
21. Id., p.196.
22. Ibid.
23. Id., p.197.
24. Ibid.
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25. Ibid.
26. Ibid.
27. Id., p. 445.
28. Id., p. 446.
29. AIR, 1982, S.C. 879. The petitioner in this case is a Driver constable in Delhi police force under the Delhi Administration. His demand is that his scale of pay of other drivers in the service of the Delhi Administration for the discharges the same duties as the rest of the driver in other offices.
30. Id., p. 881.
31. Id., p. 882.
32. Ibid.
34. Id., p.1847, Granville Austin, the Indian Constitution, Corner stone of a Nation, p.51.
35. Ibid.
36. Ibid.
38. Id., pp.249-250.
40. Id., p.1477.
41. Ibid.
42. Ibid.
43. Id., pp. 1477-1478.

44. Id., p. 1478.


46. Id., p. 811.


48. Ibid., pp. 138-139.

49. Ibid., p. 139.

50. Id., pp. 141-142.

51. Id., p. 142.
CHAPTER V

PUBLIC INTEREST LITIGATION: A POST NEHRU PHENOMENON
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Growth of the Concept

‘Public Interest Law’ has been an uniquely American development. It has been defined in many ways.¹ The Council for public Interest Law set up the Ford Foundation in U.S.A., in its Report, has opted for a broad definition.

Public Interest Law is the name that has recently been given to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in recognition that the ordinary market places for legal services fail to provide such services to significant interests. Such groups and interest include the poor, environmentalists, consumers, social and ethnic minorities, and others.

The thrust of Public Interest Litigation in USA has been to ensure that citizens whose lines may be affected by the government policies. Courts and administrative agencies that shape, implement, or enforce policies should be open and accessible to the views of those citizens who may be affected by such actions and decisions.²
Before 1969, the handful of major Public Interest Litigation centers in operation handled issues relating to civil rights, civil liberties, and problems of the poor. Blacks, poor people, and dissidents were their chief clientele, and law suits were their principal political tool. By the end of 1975, the universe of Public Interest Litigation had expanded so that its spectrum of issues had came to include consumer protection, environmental protection and land and energy use, tax reform, occupational health and safety, health care, media access, corporate responsibility, education reform, employment benefits, and manpower training. Its range of clients embraced ordinary citizens, factory, farm and mine workers, women children, the elderly prisoners, and mentally impaired. And the tool it employs now include administrative agency actions, investigative research reports, arbitration and negotiation, public education campaigns, and lobbying.  

Development of Public Interest Litigation in India has thus evidently been different from that USA in certain aspects. But I cannot quite see as how calling it social action litigation instead of Public Interest Litigation, as Prof. Upendra Baxi does, and which expression also seems to have been adopted by justice Bhagwati, makes any essential difference in the basic content and philosophy of Public Interest Litigation.
Prof. Upendra Baxi observes, Public Interest Litigation activism has instead of generating pressures for structural changes in law and society ended up servicing the much exposed ideology of interest group pluralism and legal liberalism and relying on Trubek he “observes that indeed, public advocacy programmes have tended to enhance the literacy of processes that may not really change”. Similarly, Public Interest Litigation activism is, despite the affluent society, unable to overcome problems of resources, both in terms of person power and finances. Critiques of Public Interest Litigation activism raise doubts concerning its overall impact as regards both mode of decision making and the short and long-term results achieved.

The precise date when Public Interest Litigation was initiated cannot be pinpointed. However, the turning point was sometime in 1978 when Supreme Court took cognizance of the letters written by Charles Sobraj and Sunil Batra from their prison complaining about the torture to which they fallow prisoners were subjected. The Court treated the letters as writ petitions and proceeded to engine into the conditions of the prisoners and adjucate accordingly. The Courts has been started taking notice of articles published in newspapers drawing attention to the plight of undertrial languishing in prisons for years together. Ms. Kapila Hingorani (Advocate), filed a writ on behalf of 29,000 Bihar undertrials prisoners through its interim orders. Since then, the
range of Public Interest Litigation has spread from release of bonded labourers, to child labour, to Nari Neketan to street hawkers, to environmental issues. It may be pointed out that it was justice Bhagwati who created a climate for Public Interest Litigation. In a memorable judgement Justice Krishna Iyer stated that it would be unjust to send a person to jail when he is unable to pay his debt due to extreme poverty and illness in the family.

**Role of Public Interest Litigation in Imparting Social Justice**

Until the emergence of Public Interest Litigation, justice was a remote reality for our illiterate, underprivileged and exploited masses. This has been largely due to three major difficulties:

1. Lack of awareness of their legal right,
2. Lack of assertiveness due to a lowly socio-economic status; and
3. Lack of a legal machinery to give them legal aid.

The re-interpretation of the concept of Locus standi by Supreme Court has removed one of the major hurdles facing the poor and has paved the way for easy access to Courts of justice. According to the traditional interpretation only a person who has suffered the legal wrong himself can have encourage to the Court of law for relief. The new position is that if a legal wrong is done to a person or a class of persons who, by reasons of poverty or
disability cannot approach a Court of law for justice, it is open to any public spirited individual or a social action group to file a petition on his or their behalf. This new approach to bring justice to the poor and the oppressed it is hoped, will give meaning to the constitutional objectives of socio-economic justice for all.

Public Interest Litigation has been used for various types of reliefs for undertrial prisoners in jail, amelioration of the conditions of detention in protective homes for women, for medical check up of remained home inmates, prohibition of traffic in women and relief for their victims, for the release of bonded labour, enforcement of other laws e.g. full and direct payment of wages to workers or prohibiting the employment of children in construction work, acquisition of cycle rickshaws by licensed rickshaw pullers, relief against custodial violence to women prisoners while in police lock-up, for environmental protection and the like. Thus, it is essential by directed towards governmental lawlessness.

The actions are as much against the non-performance of constitutional and statutory obligations, as against misperformance. Its thrust has essentially been to benefit the poor, uneducated, disabled or helpless persons, who put for the Public Interest Litigation would never have their rights
vindicated, poverty or any other disability is the hallmark of entitlement to relief under Public Interest Litigation in India.

1) Worker's Exploitation

Asiad construction case, Ram Kumar Misra V. State of Bihar, resulted in the payment of less than minimum wages to the workers. Here the Court stressed the Central Government to ensure observance of various social welfare and labour laws enacted by the Parliament for the purpose of securing to the workmen a life a basic human dignity, in compliance with the Directive Principles of State Policy.

2) Eviction of Gadular Farmers

A writ petition was filed in the Supreme Court against the state of Tamil Nadu by a local advocate, M.J. Cherian, on behalf of the poor farmers of Gadular who have been cultivating their lands for several years.

The petitioner alleged that persons who had for many years been cultivating the land were sought to be summarily evicted without adhering to the principles of natural justice contained in the State Forest Act. It was stated
in the petition that the forest officers and the police were committing atrocities on Gadular Farmers.

The Supreme Court by an interim order, stopped the destruction of crops and forcible eviction of farmers. the Court finally ordered that the claims of the farmers for grant of pattas to the lands in question should be re-examined by a competent authority. Those farmers whose claims were not substantiated ultimately could make representation on humanitarian and compassionate ground. The Court also ordered the State Government to consider their case sympathetically.

3) The Sewa Case in 1982

Ela Bhatt, General secretary of SEWA, alongwith three female vegetable vendors, also members of SEWA, filed a petition in the Supreme Court challenging certain provisions of the Bombay Provincial Municipal Corporation Act, 1949. Manak Chowk Market, the fruit and vegetable vendors or ‘topiwalis’. These poor ‘topiwalas’ had to sit on the footpath to carry on their business of selling vegetables which was their only means of livelihood. They were harassed by Municipal Corporation of Ahmedabad by refusing to license the hawkers and forcing them to vacate the footpath with the help of police, the municipal corporation also collected fines of Rs.150 per week ‘expenses’
towards the removal of encroachers. The Supreme Court issued an interim order restraining the Municipal Corporation from evicting the vegetable vendors and from recovering any penalties from them. In its verdict of September 1984, the Supreme Court directed the Municipal Corporation to accommodate 218 male vendors, the associate members of SEWA, on the newly constructed terrace of Manak Chowk market.

4) Undertrial Prisoners

In Hussainara Khatoon and others (I) V. Home Secretary, Bihar, the Supreme Court allowed the standing to Mr. Kapila Hingorani, an advocate, who filed it on the basis of a series of articles in 'The Indian Express, exposing the plight of Bihar undertrial prisoners. These undertrials included men, women and children who were behind the bars for period ranging from three to ten years, without their trial having been commenced so far. The Supreme Court held the 'right to a speedy trial', a Fundamental Right implicit in Article 21 of the Constitution. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable fair or just. For this reason, the court ordered the release of the undertrial prisoners. The same has been reiterated in many cases subsequently decided by the Court.
5) **Dehumanised Jails**

In Bhagalpur Blinding Case, Bhagwati J. issued directions to the government to provide medical aid and legal representation to the victims of police blinding. He also directed the government to punish the police who committed the act of blinding the undertrials. A legal correspondent of 'The Statesman' brought to the notice of the Court the inhumane conditions of 'Naxalite' prisoners in the Madras Jail.

6) **Women**

In *Arun Shorie V. State*, three journalists after an expose of a thriving market in which women brought and sold as chattelés filed a writ demanding prohibition of this practice and immediate relief for the victims. The court, through interim directions, provided relief by ordering the payment of compensation to them. *Sheela Barse V. State of Maharashtra*, exposed the ill treatment and custodial violence to women prisoners in police lock-up in the Bombay city.

7) **The Case of Bonded Labourers**

In one of the cases forty of the bonded labourers working in Pichola in Bhiwani district described in a deter to the Supreme Court the miserable
conditions in which they were living. They wrote: “We are all Adhivasi Bhils, with great difficulty we are given wages from Rs.3 to 5 a day which is just enough for our food rations. Drinking water is supplied once in three or four days. Our huts are worse than those used for keeping animals. We want to go away from here now itself but our master and his goondas tell us that we cannot leave unless we pay back them loan which is Rs.2000 to Rs.8000 per family. Our master enters our huts and molests our young daughters and also deals them up. Please save us”.

Swami Agnivesh, chairman of the Bandhua Mukti Morcha forwarded this letter to the Supreme Court. A division bench headed by justice P.N. Bhagwati appointed two commissioners Mr. Jose Verghese, Advocate Supreme Court and a journalist to enquire into the conditions of these labourers and report to the Court. The expenses of the commissioners were met by the committee for implementing legal Aid Schemes. Through the interim orders of the Court several groups of bonded labourers were released from the contractors.

In another case Bandhua Mukti Morcha V. Union of India, a letter addressed to justice Bhagwati relating the deplorable conditions of bonded labourers working at two stone quarries at Faridabad was admitted a writ
petition. The Court appointed two advocates, and Patwardhan of ITI to carry out a socio-legal investigation in the matter. On the basis of the report, the Supreme Court while freeing the bonded labourers upheld the claim of the petitioners that stone quarries may come under the definition of mines, under the mines act and that all workers should be entitled to all benefits acquiring these under various other beneficial legislation.

In the case of Neerja Chaudhari V. State of M.P., a writ petition was filed by a journalist in the form of letter to the Supreme Court complaining that about 135 bonded labourers within the meaning of Bonded Labour System (Abolition) Act, 1976, working in the stone quarries of Faridabad, had been released by the Supreme Court’s order and had been brought back to M.P. with a promise of rehabilitation by the Chief Minister, but had not been rehabilitated even after six months of their release and were living in conditions to dire poverty. Giving suitable directions of the state of M.P. for proper implementation of the Bonded Labour Act, the Supreme Court observed, “It is plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated. Freedom from bondage without effective rehabilitation would frustrate the entire purpose of the Act, for in that even, the
freed labourers will slide back into bondage again to keep body and soul together”.

Chattisgarh case: This is a case of blatant exploitation of the poor Harizans and the tribals by rich landlords in the Chattisgarh region. The labourers called ‘Kamiyas’ were bonded labourers who had taken an initial loan of Rs.20,300 from the landlord. The landlord extracted nearly 18 hours of work per day and paid about one kilogram of paddy to each in return. This the ‘Kamiyas’ were forced to work for basic subsistence. Under the circumstances they were forced to take further loans from the landlords. Debts thus accumulated passed on from one generation to another. The secretary of Chattisgarh Krishak Mazdoor Sangh filed a writ petition in the Supreme Court through a civil rights advocate on behalf of the ‘Kamiyas’. The Court appointed a commission to enquire into the conditions of the ‘Kamiyas’. As soon as the news of writ petition spread far and wide, the landlords, with active help of government officials and police, started harassing and assaulting the CKMS activists and the ‘Kamiya’ leaders. Supplementary writ petition were filed praying for police protection to the CKMS representatives. The report of the commission established beyond doubt that the Kamiyas were bonded labourers. A further reign of terror was unleashed on the poor labourers after the departure of the commissioner. The Supreme Court appointed one-man commission and
passed an interim order directing the state government to take immediate step to release and rehabilitate the bonded labourers identified by the first commission. A rehabilitation plan was formulated and implemented with the help of CKMS workers.

8) Child Welfare

In Sheela Barse V. Union of India, a petition for release of children below 16 years detained in jails was admitted in the Court. The Court regretted that despite provisions, there are still a large number of children in different jails in the country. It is no answer on the part of the state to say that it has not got enough number of remand houses or observation homes or other places where children can be kept. On no account should the children be kept in jails if state government has not sufficient accommodation in its remand homes. They should be released on bail. More significantly, the Court had stipulated that all young offenders should be tried and either acquitted or convicted within nine months of the filing of the complaint if the charge attracts punishments of less than seven years imprisonment. This was the first time the Supreme Court had set a time limit for a criminal trial.

Subsequently to the directions of the Court, the union governments has recently ordered all states governments to release within a month children under 16 held illegally in jails.
9) **Sanjit Roy V. State of Rajasthan**

The Public works Department of the state of Rajasthan was constructing the Madanganj Hamara road close to village Tilonia as part of famine relief work. A large number of workers, employed on a daily wages were required to put in a fixed amount of working failing which their wage, fixed at Rs. 7 per day, was proportionately reduced. The petitioner filed a public interest litigation under Article 32 before the Supreme Court Challenging the non payment of minimum wages to famine relief workers. The petitioner contended that due to wage policy followed by the PWD workmen were being paid much less than the minimum wage of Rs. 7 per day. The Rajasthan government contended that since the construction work of Madanganj Hamara road was a famine relief work, the Minimum Wages Act, 1964. The petitioner challenged the validity of the exemption Act. The Court, relying on the Asiad case judgement, held that if anything less than minimum wages is being paid to any workers, it is a violation of his Fundamental Right under Article 23. The Court held minimum wages is not fixed on piece rate basis and so a stipulation that a particular minimum wage payable would be proportionately reduced if the workers turns out less work, cannot be sustained. In such a case, the employer may take disciplinary action against him best he cannot pay him anything less than minimum wag. The Exemption Act, in so far as it excludes
the applicability of the Minimum Wage Act, 1984, was held constitutionally valid.

10 Nulakapetta People’s Struggle for Safe Environment

About 350 families of Ilaiyan labourers and artisans living in Nulakapetta, a village situated 7 km. to the west of Vijayawada created legal history when they won a Public Interest Litigation case against a powerful contractor, had acquired a licence to excavate mind around the village. The people had already been exposed dangers caused by mine quarrying. There were a number of pits on account of quarrying done earlier. During the monsoon season these pits were filled with water and caused greater danger to life. The villagers, supported by the mines who were running the Adult literary centre in the village, decided to approach all concerned government officials. A report of the villagers plight appeared in the Indian Express.

A Public Interest Litigation petition on the basis of report was admitted by the Supreme Court in 1983. The Supreme Court issued a stay order restraining the contractor from further excavation. The expert committee appointed to look into the matter, submitted their reports in January 1984. On January 1, 1985 the Supreme Court passed an order in favour of the people.
References:

2. Ibid., pp.7-8.


CHAPTER VI

NEHRU'S IDEAS ON SOCIAL JUSTICE
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NEHRU’S IDEAS ON SOCIAL JUSTICE

Historical Background

The Indian National Congress was founded in December 1885. The Indian desire for civil rights was implicit in its formation. Indians wanted the same rights and privileges that British masters enjoyed, in India and that Britons had among themselves in England. In the early years of its formation, it asked for increasing Indian participation in political affairs of the country. Speaking from the Congress platform, Surendra Nath Banerji, a leader in Bengal claimed that Indians, as born British subjects, were entitled to the same rights and privileges as were guaranteed to the English by their own Constitution. He said that they were determined to have such rights through Constitutional means. Perhaps the earliest demand for recognition of fundamental rights commenced with the Constitution of Indian Bill 1895 probably issued under the inspiration of Lokmanya Tilak and described as the Home Rule Bill by Annie Besant. A glimpse of the rights and directives may be found in the bill itself. Article 15 of the Bill, interalia, contained the rights of free speech and expression. The Bill also had provisions guaranteeing free state education and compulsory primary education.
A series of congress resolutions were passed between 1917 and 1919 which repealed the demand for civil rights and equal status with those of Englishmen. The resolution of 1917 called for equal terms and conditions in bearing arms, for a wider application of the system of Indians to claim that no less than one half of the jurors could be their own countrymen. A further resolution stated with the emphatic opinion that Parliament should pass a statute guaranteeing the Civil Rights of his Majesty’s Indian subjects, which would contain provisions relating to equality before the law, a free press, free speech etc. The Statute more over lay down the political power belonged to the Indian people in the same manner as to any people or nation in the British Empire.

The demand for equality, for self government exemplified not only the well known desire for negative freedom, but also that aspect of positive freedom so respectively.

The major development was the drafting of Mrs. Annie Besant’s Commonwealth of India Bill of 1925, which was adopted at the National Convention and presented to the House of Commons by Mr. Lansbury and it sought to achieve for India self governing Dominion status except for Foreign and Defence Affairs. This Bill for the first time contained an Article relating to the grant of fundamental rights. Article 4 of the bill was entitled as “Declaration of Rights”, contained the following provisions.
Liberty of person and security of his dwelling and property; freedom of conscience and the free profession and practice of religion; free expression of opinion and the right of assembly peacefully and without arms and of forming association or unions; justice and the like; equality before the law, irrespective of considerations of nationality, and equality of the sexes.

Article 8 of the Bill, the substance of which was approved by Indian National Congress enumerated, interalia, provision for education standing that “all persons in Commonwealth of India have the right to free elementary education and such right shall be enforceable soon as due arrangements shall have been made by the competent authority”.

In November 1927, just two years after the presentation of the Bill, an Indian Statutory Commission was appointed under Sir John Simon to examine whether Indians were fit for being entrusted with a further installment of responsible government. The Commission was appointed to the study the possibility of Constitutional reforms in India.

On 17 May, 1927, at the Bombay Session of the Congress, Motilal Nehru moved a resolution for India in consultation with elected members of the Central and provincial Legislatures and leaders of political parties, based on declaration of rights, a Swaraj Constitution to give momentum to the fight for
Swaraj, that is, self-government. In its introduction, it was said that the declaration of rights of Indian against others and of Indians themselves as against their government must indeed form the most important features of the Constitution. Its preamble declared Swaraj as the inherent and inalienable right of the people of India. The Constitution was welcomed all over the country and endorsed by the Nehru Committee in 1928.

In compliance with the directions contained in the Congress Resolution of 1927 the Working Committee of the congress convened an all parties Conference to draft a Swaraj Constitution for India. It represented the views of Muslims, Hindus, orthodoxy-Brahmins and non-Brahmins, labour and liberals. The Conference appointed a small Committee with Motilal Nehru as its Chairman and seven other members, “to determine the principles of the constitution for India”. The report of the Committee which known as the Nehru report was based on the principles of Dominion Status with full responsible government on the parliamentary pattern. It contained an explanation of its draft Constitution, that the first concern of Indians was to secure the fundamental rights that had been denied to them and which are not to be withdrawn in any circumstances. The recommendations made in the Report Contained a number of fundamental rights1. The report interalia, contained rights of personal liberty, freedom of conscience and the free profession and practice of religion
subject of public order and morality, the right to free expression of opinion, as well as right to assemble peacefully without arms and right of equality. It also enumerated certain social and economic rights. For example, right of free elementary education without any distinction of caste or creed in matter of admissions into any educational institution maintained or aided by the state and such rights shall be enforceable as soon as due arrangements shall have been made by competent authority; freedom of combination for the maintenance and improvement of labour and economic conditions was guaranteed to every one and of all occupation; maintenance of health and fitness for work of all citizens, securing a living wage for every worker, protection of motherhood, infirmity and unemployment. This Constitution was hailed by the Congress as a great contribution towards the solution of Indian political and communal problems. The fundamental rights of the Nehru Report were reminiscent of those of the American and post-war-European Constitution and were in several cases word for word from the rights listed in the common wealth of India Bill. Several clause had however, a more particular Indian origin such as, no breach of contract of service or abatement thereof shall be made criminal offence, which related directly to the forced labour. The rights of Nehru Report were a close precursor of the fundamental rights of the Constitution. At present ten out of the nineteen subclauses reappeared materially unchanged, and three are
included in the directive principles. With the passage of time the demand for declaration of fundamental rights in the future Constitution of India gained impetus at the hands of political leaders. The Indian Central Committee appointed by the Indian legislatures towards the end of 1928 also supported the inclusion of fundamental rights in the proposed government of India. Act. The report was presented to the British but unfortunately, the Commission did not support the general demand for the enumeration and guaranteeing of fundamental rights in the Constitution of India. The Commission merely observed, “many of those who come before us have urged that the Indian Constitution should have contained defined guarantees for rights of the individuals …… And a declaration of equal rights of all citizens……. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective. As nothing concrete came out of the Report, at the historic session of Lahore of 1929, of which Jawahar Lal Nehru was made the president, it gave voice to the new militant spirit and passed a resolution declaring Purna Swaraj to be the Congress objective. The Congress resolution of 1929 also emphasized the theme of socio-economic reconstruction when it declared. “The great poverty and misery of the Indian people are due, not only to foreign exploitation in India but also the economic structure of the society,
which the alien rulers support. In order therefore, to remove this poverty and misery and to ameliorate the conditions of the Indian masses, it is essential to make revolutionary changes in the present economic and social structure of society and to remove the gross inequalities”. December 31, 1929 was hoisted the newly adopted tricolour flag of freedom and January 26 was fixed as the first Independence Day, which was to be celebrated every year with the people taking the pledge that it was a crime against man to submit any longer to British rule. The inalienable right of the Indian people to have freedom and equality was asserted. It was said that the British Government not only deprived the people of India of their freedom but based itself on the exploitation of masses and ruined them economically, culturally and spiritually. Subsequently in all the three sessions of the Indian round Table Conference, efforts for the inclusion of a chapter on fundamental rights in the Constitutional document for India were made.3

The Indian National Congress passed a historic resolution on the declaration of fundamental rights at its forty-fifty session held at Karachi on 29 march, 1931. It was stated in the resolution that the Congress was of the opinion that with a view to enabling to the masses, political freedom must include real economic freedom of the starving millions. The Congress therefore, declared that any Constitution to be agreed to all on its behalf should provide, or enable
that Swaraj Government to provide, for fundamental rights and duties and economic and social programme. Subsequently, the resolution was modified in the all India Congress Committee meeting held at Bombay on August 6, 1931. The modified version of the resolution was finally adopted under the title Fundamental Rights and Duties and Economic Programme at the 47th Session of the Indian National Congress held at Calcutta on April, 19334. There were in all Seventeen Articles in this resolution, divided into four heads first fundamental rights and duties, which inter-alia stated that the culture, language and script of the minorities and of the linguistic areas shall be protected, the state shall provide for children free and compulsory primary education.

Second, labour which inter-alia provided that the organisation of the economic life must conform to the principles of justice, to the end that it may secure a decent standard of living; the state would safeguard the interests of industrial workers, and especially adequate provisions for leave during maternity period; children of school going age shall not be employed on the mines and factories.

Third tenure and rent and revenue would be reformed and an equitable adjustment made of burden on agricultural land, immediately giving relief to the small peasantry by a substantial reduction of existing agricultural land, immediately giving relief to the small revenue paid by them and in case of uneconomic holdings, exempting them from rents, so long as necessary, with
such relief as might be just and necessary, to holder of small estates affected by such exemption or reduction in rest, and to the same ends imposing a graded tax on net income from and above a reasonable minimum. Fourth, economic and social programme, which inter-alia, stated that the state shall protect indigenous cloth and foreign yarn from, the country; intoxicating drinks and drugs shall be totally prohibited, except for medical purpose; the state own and control key industries and services, mineral resources, railways, waterways, shipping and other means of public transport, relief of agricultural indebtedness and control of usury-direct and indirect. It is evident from the provisions of Karachi resolution that they reflected that we today call Fundamental Rights and Directive Principles of State Policy. Then there was no separation. It might perhaps have been thought that all these had to constitute an integral whole to bring about social revolution in India. The Karachi resolution was emphatic met only on the state’s negative obligation but also on its positive obligation provide its people with economic and social conditions in which their negative revolution would have vital share in shaping India’s future Constitution and the fact become the spiritual and in some cases the direct antecedents of the Directive Principles” there was an explicit pledge to end exploitation and secure real, several individuals and organisations responded to the questionnaire and some of them
worked out of the details of Fundamental Rights which they wanted to include in the future Constitution of India. One of such proposals came from all India Depressed Class League which in its memorandum submitted a detailed list of Fundamental Rights including the social and economic rights. An other suggestion came from Professor Vankataramaiah who drew a fine distinction between the civil and economic rights. He pleaded for the incorporation of the two sets of right in the Constitution; the former being enforceable in a court of law and the latter not. He also gave reason for the distinction between the sets of rights the difficulty involved in respect of non-justiciable rights and the utility of social economic rights in the Constitutional set up. Prof. Venkataramaiah in his memorandum on the question of Fundamental Rights observed, “Civil rights are of a justifiable character and they can ought to be enforced through Courts because they involve positive action in the form of new legislature measures, administrative organization, accumulation of large financial resources and perhaps the total transformation in some cases of the economic system in the country. These can be accomplished economic freedom.” Granville Austin characterized the resolution as both “a declaration of right and a humanitarian socialist manifesto. Michael Edwards characterizes it a title differently by saying that it was not a particularly revolutionary document. But even with its cautions approach and its watered down socialism. It was to be a milestone on
the road of India's political development. It led after independence to the endorsement by Congress of national economic planning and the socialist pattern of society as the natural fulfillment of the legacy. Nehru liked the resolution because it represented a new outlook in the congress and took a short step in a socialist direction by advocating nationalization of key industries and services and various measures to lesson the burden on the poor and increase it on the rich.

The subject of Fundamental Right and its incorporation in the future Constitution of India was discussed at length by the Sapru Committee in 1945 with Sir Tej Bahadur Sapru as its Chairman. Various associations; group and individuals sent their views on the desirability of India with right of writ remedy in case of violation of these rights and the machinery that could be suggested for the enforcement of those Fundamental Rights which were not justifiable. It was here that the separation of right started first of all through decrees issued by the Courts. This does not, however, mean that rights not justiciable and ineffective as their incorporation in the Constitution serves no purpose. It only means that while for enforcing some right we have to look to other political institutions. Thus anticipating the inclusion of non-justiciable economic and social rights in the framework of the Constitution in India, the Sapru Committee in 1945 considered the suggestions received, from various
quarters on the subject of Fundamental Rights and reached on the following
conclusion first, protection of minority rights was absolutely necessary second,
there was a need for laying down adequate and appropriate standards for
legislative and administrative actions and the Courts. Third, that the justiciable
and non-justiceable Fundamental Rights be discussed and pleaded for
incorporation in the future Constitution. Finally, the Sapru committee in its
Constitutional proposals recommended that a declaration of Fundamental
Rights in Indian Constitution was absolutely necessary. It envisaged that
Fundamental Right had to be of two classes – one justiciable and the other non-
justiciable. The Committee reconciled the British view of sovereignty of
parliament with that view that in a federal structure the judiciary was supreme
and the final proctor and guardian of the Constitution. It, however, did not
suggest how best the division could be made. It left the whole question to be
decided by the Constitution making body with the observation that though the
task was by no means impossible, the proposals of the Sapru Committee, were
definitely significant advancement on earlier proposals because it classified
these rights into two main categories, justiciable and non-justiciable; the former
being enforceable whereas the later were not and recommended the inclusion of
the later in the Constitution finally Constituent Assembly drafted the
Constitution.
Nehru's Ideas on Social Justice

Preamble of the Indian constitution is an abridged Version of the "Objectives Resolution" moved by Jawaharlal Nehru in the Constituent Assembly on the 13th December, 1946 and adopted by the Constituent Assembly on 22nd January 1947 after much deliberation. The concept of social justice has been taken from the relevant part of the Objective Resolution. The views expressed by the Constitution makers on the socio-economic justice embodied in the Objectives Resolution would give an idea about the meaning of social justice.

Nehru's View on Scheduled Castes and Scheduled Tribes

Jawaharlal Nehru was very much concerned for the Indian masses afflicted with poverty. He said in his speech at Madras: I am visiting Harijan Institutions and quarters in the city so that I may get some idea of the conditions of Harijans in Madras. I think of this problem not as a Harijan problem, but as the problem of the poor, downtrodden, unemployed, landless labourers in India. We ought to know that, at present, the biggest problem of Indian poverty is the poverty of the Indian masses and the problem of Indian employment is the unemployment not only of the masses but also of the middle classes. The Harijan problem is really a part of these problems. Therefore, if we try to solve these problems, we can solve the Harijan question also.9
He did not appreciate the idea of groups of people being segregated. In this context, he stated, “I do not understand nor do I appreciate the idea of groups of people being kept apart. We must remove all these barriers so that there may be no group in India which, by its work, economic position or name, is supposed to belong to an inferior group. Therefore, the problem is not that of uplifting this man or that man, but of establishing in India equality so that every single person in India, man or woman, may have the fullest opportunity for growth”.

For Nehru, social justice meant removal of economic injustice which the individual in a society was compelled to suffer. On the achievement of independence the national leadership took up the task of framing the Constitution being inspired by the concepts of equality and social justice. So our Constitution made special provisions for the advancement of Scheduled Castes and Scheduled Tribes.

Nehru stated in the Constituent Assembly, “Because there are great differences in India it becomes incumbent upon us, not only from humanitarian reasons but from the standpoint of fulfillment of democracy, to raise up those people who are low down in the social, economic and other levels to bring to them every opportunity of growth and progress, national and
otherwise. That has been the general accepted policy of this country and it is the accepted policy of this country and it is the accepted policy of this government. Now, in pursuance of that policy, certain reservation of seats was granted, for instance, to the scheduled castes. 12 The doctrine of "protective discrimination" was provided in the Constitution whereby reservations have been conceded to the persons of Schedules Castes and Scheduled Tribes in matters of admission to educational institutions and recruitment to public services.

The speech delivered by Nehru in the Constituent Assembly has bearing on this aspect. Nehru has said, "Various Scholarships and educational amenities etc. have been granted and no doubt will be granted still more, not only to the scheduled castes but also to other backward groups in the country".

There are tribal people and others who require every help. It is no good for us to say that we have given a vote to the member of a tribal folk and we have done our duty to him, having for hundreds and thousands of years not done out duty to him, by giving him a vote we consider ourselves absolved of all other duty. Therefore, we have to think always in terms of raising the level of all those who have been denied opportunities in the part. I do not personally think myself that the best way to do that on the political plan is reservation of seats and the rest. I think the best way, and the more basic and fundamental
way, is to advance them rapidly in the economic and educational spheres and then they will stand on their feet.\textsuperscript{13}

As a member of the Constituent Assembly Nehru was assiduously associated with the providing of safeguards for the Backward Classes which included Scheduled Castes and Scheduled Tribes. Provisions were incorporated in the Constitution for ensuring the proper working of the Constitutional safeguards in the matter. Article 338 of the Constitution clearly ordains that it is the duty of the special officer to investigate all matters relating to safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and report to the President upon the operation of these safeguards at such internals as the President shall cause all such reports to be laid before each house of parliament. Article 340 of the Constitution stipulates that the president may by order appoint a Commission consisting of such person as he thinks fit to investigate into the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendation as to the steps that should be taken by the Union or any state to remove such difficulties, and to improve their conditions and as to the grants which should be made for the purpose by the Union or any state and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission. The Constitution
has prescribed protection and safeguards for the Scheduled Castes, Scheduled Tribes and Other Backward Classes, either specially or by way of general rights of citizens with the aim of promoting their educational and economics interests, and of removing some social disabilities they were subject to. In the Scheduled Tribe Conference, Nehru observed, "I have found in the tribal people many qualities which I do not find in the people of the plains and the cities and many other parts of India and these qualities attracted me. I am not at all sure which way of living is better, our or theirs. But in some ways I am quite certain theirs is better. If that is so, then it is absolute presumption for any of us to approach this problem with an air of superiority, to tell them how to behave or what to do and what not to do and try to make them a second rate copy of ourselves. The approach to the tribal people should be one of learning from them and having learnt, to try to help and cooperate. There is a great deal to learn from them, especially in the frontier areas. They are extremely disciplined people, often much more democratic than most other in India without a constitution and the rest, they function democratically and carry out the decisions made by their elders or their own representatives almost without exception."  

The Constitution of India is based on the ideals of justice, liberty, equality and fraternity. As such it has endeavoured to do away with caste
politics prevalent under British administration by abolishing untouchability and prohibitory discrimination on various grounds, introducing universal adult franchise, terminating separate electorates and ensuring liberty of thought, expression, faith, belief and worship. India is a secular, democratic and socialist state permitting no room for the politics of caste and communalism. Nehru was clear on this score when he said, “I am sure that to think of tribal and non-tribals as people qualitatively different is wrong. Take the description in our Constitution of the Scheduled Caste. As you know, it is rather arbitrary Government, after consideration, decide whether a particular caste is a Scheduled Caste or not. It is not possible to draw hard and fast time that is why we aim ultimately at removal of all these appellations, decriptions and names which ideologically and physically separate the people as the depressed classes, the Harijans, the Scheduled Castes, Scheduled Tribes, and so on. Differences in customs and ways will continue to remain, because they are due to geography and climate. But this barrier of so and so belonging Scheduled Caste should go”.15

On the initiative of Nehru, the then President had appointed a Backward Classes Commission to equire into the conditions of socially and educationally backward classes and the difficulties under which they laboured, and to make recommendations as to steps which should be taken by the Centre
and states to remove those difficulties to improve their conditions. Another noteworthy feature is that during the time of Nehru, the Centre had passed the Untouchability Offences Act 1955 which has made the offence cognizable and punishable under law, uniformly throughout the territory of India. The evil of untouchability is intrinsically woven in the social fabric to such an extent that legislation is not only the answer.

Nehru was committed for the development through planning to help India in overcoming her disadvantages and realize her opportunities. He was one of the principal architects of five year plans which were initiated in India since 1951-52. The main objective of the First Five Year Plan was to bring about all-round balanced development which would ensure a rising national income and a steady improvement in the living standards over a period of time. In December 1954 Parliament declared that the broad objectives of economic policy should be to achieve the “Socialist pattern of Society”. Under the socialist pattern of society, the basic criteria for determining the lines of advance would be social gain and greater equality of opportunities for all, socialism means that the principal means of production should not be in private hands; and it means a large measure of equality.
The Second Five Year Plan (1956-57 to 1960-61), under the chairmanship of Nehru, sought to promote a pattern of development which would lead to the establishment of a socialist society in India. Particularly it stressed that the benefits of economic development should accrue more to the relatively less privileged sections of society, and there should be a progressive reduction in the concentration of incomes, wealth and economic power. Broadly the second five year plan aimed at the creation of a welfare state.

The main aim of the third five year plan was to secure a marked advance towards a self-sustaining growth. Some of the objectives pertained to the establishment of greater equality of opportunity and utilization of the men power resources of the country to the fullest extent. Nehru had urged upon the guaranteeing of equality of opportunity to the vulnerable section of the society.

Nehru desired the development of backward classes in various ways. He insisted on communications, medical facilities, education and better agriculture to ameliorate the lot of the Scheduled Castes and Scheduled Tribes. These are to be pursued on the basis of some fundamental principles. These principles are that (1) the people should develop along the line of their own genius and we should not impose anything on them, (2) the tribal rights in land and forests should be respected, (3) we should try to train and build up a team
of their own people to do the work of administration and development, (4) we should not over administer or overwhelm them with innumerable schemes and (5) we should judge results, not by statistics or the amount of money spend, but by the quality of human character that is evolved.

Nehru’s mind was impregnated with the deep pathos of human lives. He felt for the sorrows of others. He was a great humanist of the kind rarely seen in the present day world. According to Rabindra Nath Tagore, “Nehru was a person greater than his deeds and truer than his surroundings.”

Nehru’s View on Women

Man and woman are the two basic components of our society. The family and the social structures rest on these supports. In fact, they are like two wheels of a cart without, either of whom no progress is possible, the one is incomplete without the other. Here I want to focus some points on which Pandit Jawaharlal Nehru had a great contribution in solving the problems of women for their development.

Jawaharlal Nehru was one of the greatest figures of our generation, an outstanding statesman whose services to the cause of human freedom are unforgettable. As a fighter for freedom he was illustrious, as a maker of modern India his services were unparalleled. His life and work have had a profound
influence on our mental make up, social structure and intellectual development. He had a soft corner for the children and profound sympathy for Indian women who were a depressed class of our society. He had meticulously investigated their problems and had carefully designed plans for their improvement.

Firstly Nehru had said that female section should not be too womanish. He had preferred to lay stress on more fundamental matters affecting women that their participation in the legislatures and the local bodies of our country. He had quoted the famous Saying of a French writer to this effect that if you want to judge the culture and civilization of a people you can find that out by the status and condition of the women of the country. You need not look around to see what the man are about if you find that the women of that country are cultured and civilized and highly advanced in the various walks of life. If the women are backward. That nation is backward that is, in his opinion a very important way of judging a nation’s advancement.

Nehru had considered the following problems of women. “What is the condition of the women? What are the women doing? What opening and opportunities have they got and what disabilities are they labouring under?” If we will consider the matter from that point of view, the women will certainly
Nehru's Ideas on Social Justice

go up and a result of which the whole nation will advance. If the women will be backward, it is quite impossible for a nation to go ahead. Therefore, Nehru had addressed the nation to work for the benefit of women who, according to him, have for a long time been the depressed classes in India and in the world. He said, “we have to remove the bars and to give equal opportunity, equal privileges to both men and women in order to build an advance nation”.

India has rich cultural heritage of its own from point of view of women. There are many things in our past history which are praiseworthy and for which we can take legitimate pride. But that is a bad habit, all the same, to be looking back all the time. According to Nehru, “we cannot live on tradition alone. Nor can we live on the reputation acquired by ancient heroes and heroines, quite apart from the fact that we cannot entirely apply those examples to modern conditions. Conditions change” further he addes, “we may take inspiration from the good qualities that the ancient heroes and heroines possessed, we cannot exactly copy everything that might have been done in those times because times have utterly changed”.

Nehru had tried his best to cultivate patriotism among the female section of our country. He had analyzed the matter of India’s freedom movement from various angles and focused on the points where the female sex
should work. Here he added, “It become necessary for the women of India to
take their full part in the struggle for political freedom.”26 As a result of this,
according to him, they would gain a position in the public life of the country
from which it would not be possible to remove them. Further, he mentioned that
the 1930 Civil Disobedience Movement played an extra-ordinary and
outstanding part in putting an end to that system of seclusion of women. They
came out from their houses when their men folk were in prison, they took the
lead in the great movement, they played their part; they showed quite extra-
ordinary powers of organization, discipline and enterprice. That kind of thing
sent up our women folk in the estimation of net our country at large but of other
people in other parts of the world how had been in the habit of saying that
Indian women were slaves and incapable of doing anything. They were
surprised and astounded at the change they saw. Therefore, women should take
the fullest part in the political struggle for freedom, political and economic. He
advised the female sex to fight till the goal is achieved and in no time they
should show their slightest retardation. In the language of Nehru, “You will
have, if you want to compact it, to go on with all your strength all the time
because the moment you sit down the inertia overwhelms you and puts on end
to your work.”27
Nehru was content to observe that women's movement were rising up, trying for the removal of various disabilities and seeking representation of women in all political bodies. It is essential that women should have a voice because they will not only be helpful but also reasonable sensible and peaceful. Nehru had also agreed to the fact that women should take part in the various bodies and committees, political and other in the country. In this connection he said, "I would welcome more and more women occupying prominent positions in committees and boards and its executives". Nehru was unhappy to declare that there were not very many women at that time occupying seats of authority in the Congress party. That may be due to the fact that men do not like pushing women ahead. He encouraged the women section to face these problems also. Again he added, "I hope that your push will have such strength that it will become very difficult for men to refuse your demands."

About the rights and legal position of women, Nehru had various thoughts. He had analyzed this matter from different angles and had studied the structure from the East and the Wests. In this context, his views of 1934 are as follows. "The position of women in the west was very bad till quite recent times. They had few rights. English women could not even own property under the law; thus husband took the lot even his wife's earnings. They were, thus, even worse legally than women are today under Hindu law. One other
outstanding features of recent years has been the emancipation of women from the many bonds, legal, social and customary, that held them. The war gave a great push to this in the west. And even in the East, from Turkey to India and China, woman is up and doing and taking a brave part in national and social activities. In early times proprietary rights of women were recognized very tardily in almost all civilizations. For a long time there was no question of holding any property; she herself was an item in the moveable property of the husband or the patriarch. The wife was under the tutelage of her husband and could possess no separate property at all. Even after the husband’s death she did not become a Suijura but passed under the tutelage of other male relatives. In India too, in very early times, women were regarded as chattel. Nehru did not appreciate the legal position of women as described by Manu. It is clearly evident from the numerous stories in the epics that the law of Manu was not applied very rigidly. The women, on the other hand, held an honoured place in the home and in the society. The old lawgiver, Manu, himself says: “Where women are honoured, the Gods dwell”. Viewing on the education and learning of women, Nehru had pointed out thus: There is no mention of women students in Taxila or any of the old Universities. But some of them did function as student somewhere, for there is repeated mention of learned and scholarly women. In later ages also there were a number of eminent women scholars. Bad
as the legal position of women was in ancient India. Judged by modern standards it was far better than in ancient Greece, Rome, early Christianity, the Canon Law of medieval Europe, and indeed till right upto comparatively modern times at the beginning of the nineteenth Century.

Looking most other ways of distinguishing themselves, living a confined and restricted life, they were told that their supreme virtue lay in chastity and the supreme sin in a loss of it. Such was man-made doctrine, but man did not apply it to himself. Tulsidas in his deservedly famous poem, the Hindu Ramayan, a written during Jahangir’s time, painted a picture of woman which is grossly unfair and prejudiced.\(^{30}\)

It is further important to note that even orthodox Smriti writers like Manu have recognized that if any rules framed are found to be not conducive to the welfare of society, or against the spirit of the age, such rules should be unheritingly abrogated or modified.\(^ {31}\) Our Dharm-sastra writers in the matters of rights of women had realised that circumstances had changed and therefore customs and institutions must follow suit. We must therefore read just the position of women to the new situation by introducing the changes suggested above by Pandit Nehru. The social organizations, the political institutions, the educational centres and the local bodies should come forward with a free and
open heart to involve themselves in solving the problems of women. They should attack the various problems from different corners so that developments will be achieved within a short period. If this is done the capacity, efficiency and happiness of women, and hence men, will increase and as a consequence, our community will achieve necessary progress for the happiness of mankind. Nehru had made his effort to analyse the problems of women and, hence, his suggestions are inevitable to be executed for the overall benefit of women.

Nehru’s View on Weaker Sections

Weaker Section did not only mean Scheduled Castes and Scheduled Tribes to Jawaharlal Nehru. He was of the opinion that there were too many backward people in this country and besides the Scheduled Castes and Scheduled Tribes there were backward classes. In a speech at the Community Project Conference, New Delhi on May 7, 1952 he had said, “As a matter of fact you can safely say that 96 percent of the people of India are economically very backward. Anyway we have to think more of those who are more backward because we must aim at progressively producing a measure of equality in opportunity and other things”.

Jawaharlal Nehru was firmly of the opinion that in the modern world things could not go on for long having big gaps between those who are at the
top and those who are at the bottom. According to him, no one can make all men equal but we must atleast given them equality of opportunity.

In a Speech at the Inaugural Address of the Harijan Convention at Wardha on Nov. 1, 1952 Nehru said, “Giving government jobs to a few people would not solve the problems of crores Indians who are unemployed. It would not be possible for the govt. to find employment for everybody. If unqualified people were employed, the country would suffer” He said that let all those who were engaged in an occupation do their jobs well and production be made proportionate to the work done. In the words of Nehru “we have got to change our mentality. At present we are opt to look down on manual labour and, that tendency is responsible for our present plight. There are two kinds of unemployment in our country. There are people who do not find work and there are those who are not willing to work. During my recent tour of Assam I came across a young girls who was carrying a load of fire wood on her head I stopped and spoke to her. I was surprised because she spoke perfect English. She had been educated in England. Her parents had lost their all in Pakistan and were reduced to penury. Inspite of her background she did not hesitate to do manual work. The most important thing is the will to work.”
Jawaharlal Nehru was basically against indefinite continuation of reservation for Scheduled Castes and Scheduled Tribes. In a speech at Wardha in 1952 he said: “If we want to prosper as a nation we must have to pay premium on efficiency and competency and, therefore, only those who are competent should be given employment in the government. Nepotism, favoritism or reservation will lower the standard of govt. work. It worries me to find out our standard of efficiency falling. It will be dangerous to allow this state of affairs to continue. It is wrong to think that the govt. services are there to maintain people. In advanced countries it is no honour to be a govt. servant. It is only in backward countries where there is a great deal of unemployment that govt. services are given undue importance”.

Long before he became the Prime Minister, Jawaharlal Nehru had felt that very strongly attracted towards the tribal people of this country. This feeling was not the curiosity of an ideal observer for strange customs nor was it the attraction of the one who is charitably disposed and wanted to do good to other people Nehru was attracted to them. Simply because he felt happy at home with them. He liked them without any desire to do them good or to have good done to himself. In his own words “to good to others is very laudable desire but it often leads to create excesses which do not result in any good to either the door or the recipients”.
In the tribal people of India the following aspects attracted Nehru

i. Their Virility and action mindedness.

ii. Their simplicity.

iii. Their spirit of comradeship amongs each other

iv. The democratic practices amongst tribes within them without a written Constitution.

v. The quality of enjoyment in their life.

Nehru saw in India as well as in other great countries that people were anxious to shape others according to their image or likeness and impose on them particular way of living. He said in a speech at the opening session of the Scheduled Castes and Scheduled Areas Conference in New Delhi in 1952, “We rather welcome them to our way of living but why impose it on them? This applies equally to national and international fields”. According to him, there would be more peace and harmony in the world if we were to desist from imposing our way of living on other people and countries. Nehru thought that it was grossly presumptions on our part to approach the Scheduled Tribes with an air of superiority or to tell them what to do or not to do. There was no point, he thought, in trying to make Scheduled Tribes a second rate copy of ourselves.
Nehru’s Ideas on Social Justice

Jawaharlal Nehru, therefore, had the following prescriptions for change in our attitude and responsibility towards S.T.:

1. We should have a receptive attitude towards the tribal people. There is a great deal we can learn from them. We must try to help and cooperate.

2. One of the things we have lost in our civilization is the spirit of song and dance and the capacity for employment which the tribal people have abundantly retained. We must imbibe something from the spirit of the tribal folk instead of damping it with our lone face and black gowns.

3. They are our own people and work does not end with the opening of so many schools and so many dispensaries and hospitals. What we ought to do is to develop a sense of oneness with these people, a sense of unity & understanding.

4. The basic problem of India taken as a whole is one of integration & consolidation. The greatest problem of India today is not so much political, but psychological integration and consolidation. Therefore, we must approach the tribal people with affection and friendliness and come to them as liberating force. If the tribal feel you have to come impose orders upon them or that you are going them in order to try and change their methods of living altogether and take away their land and engage our businessmen to exploit them, than the fault is ours.
5. An officer to be appointed in tribal areas should not merely be a man who has passed an examination or gained some experience on written work. He must be a man with enthusiasm whose mind and even more so, whose heart understands the problem, it is his duty to deal with.

According to Nehru, it is far better to send a totally uneducated man who has passed no examination so long as he goes to these people with friendships affection and who lives as one with them. The man who goes there as an officer must be prepared to share his life with the tribal folk. “He must be prepared to enter their hurts, talk to them, eat and stay with them, live their lives and not consider himself Superior or apart. Then only can be gain their confidence and respect and thus be in a position to advice them”.

Nehru found mainly two ways of approach. What tribal people do not want according to him could be called the anthropological approach in we treat the tribals as museum specimens to be observed and written about. This was an insult to them because this approach did not conceive of them as living human beings with whom it would be possible to work and play.

The second approach was one of ignoring the fact they are something different requiring special treatment and their attempting forcibly to absorb them into the normal pattern of social life. This would be a type forcible assimilation through the operation of normal factors which would be equally
Nehru was of the opinion that we must give them a measure of protection in their areas so that no outsider could take possession of their lands or forests or interfere with them in any way except with their consent and goodwill. Nehru always emphasized that one must always remember that we do not mean to interfere with their way of life but to want to help them live it.

Nehru did not want to perpetuate the designations of Scheduled Castes and Scheduled Tribes for all time to come. He said in an inaugural address at the Tribal Affairs Conference, New Delhi in December, 1954, that to divide the people as tribals and non-tribals and non-tribals and Scheduled Castes and Non Scheduled castes for ever is wrong. The description in our Constitution of the Scheduled Castes was according to him rather arbitrary. Govt. consideration decided whether a particular caste is Scheduled Caste or not. It is not possible to a hard draw possible to draw and fast time. That is why he said that we must ultimately aim at removal of these descriptions and names which was ideologically and physically separating the people as the depressed class, the Harijans, the Scheduled Castes, the Scheduled Tribes and so on. The difference in customs and way of living would continue to remain because they are due to geography and climate. But this barrier chart so and so belonged to a Scheduled Caste should not lost for ever.
The view of Jawaharlal Nehru about reservations could be summarised in his own words as follows, “It is not a good thing for castes and groups to permanently installed in superior positions. However, every individual should have openers of opportunities for advancement. The real problem thus is of raising the level of all depressed humanity in Indian and not this group or that group. We shall never succeed if we proceed group by groups about protection measures”. However, Nehru had the firm conviction that protective measures should continue because we must present the incursion of the market economy into the tribal areas. He said, “we shall have to prevent rich people from acquiring land and dispossessing the tribal people. We do not want the tribal areas to advance in peace. They not like something alien to be imposed upon them. No individual can grow in alien surrounding, habits or customs. The museum approach is as bad as open door approach and we have to find a middle course”.

The way out is that we have to train people and train the tribals to train others. Since training takes time the progress may not be very rapid. It is better to go ahead on a systematic basis than by an odd job approach.

Thus Nehru had a very broad and liberal attitude towards the members of the Scheduled Castes and Scheduled Tribes. He wanted their
amalgamation to the main stream so that there is no continuing barrier between them and majority for all time to come. But this process of amalgamation would be done at a pace and in a way which would be conducive to the psyche and ethos of the scheduled castes and tribes and not according to the ways others would dictate.

Nehru’s View On Socialism

Nehru’s socialism was influenced by his earliest Marxist and Leninist readings and his first visit to the Soviet Union and Brussels in 1927 where he came in contact with Marxist and Labour leaders. He had admitted:

A study of Marx and Lenin produced a powerful effect on my mind and helped me to see history and current affairs in a new light.

But the fundamental basis of his idea lay in his acute awareness of the poverty of the masses of his people, their psychology of dependence, feudalism, traditionalism and his conviction that neither economic nor social nor cultural betterment was possible except through the reconstruction of Indian society on socialist lines.

Nehru did not mean define socialism in rigid and concrete terms. But he did define it in overall, general justice; it meant putting an end to social and
economic inequality and disparities created by capitalism; opposing of the acquisitive instinct and capitalist competitiveness and promoting the cooperative tendency; gradual ending of class distinctions and class domination; large scale Social ownership; or control over the means of productions.

In his Presidential Address to the Lucknow session of the Indian National Congress in April, 1936, he said, “I am convinced that the only way to the solution of the world’s problems lies in socialism. I see no way of ending the poverty, the vast unemployment, the degradation and the subjection of the Indian people, except through socialism, that involves vast and revolutionary changes, the ending of the vested interests in the land industry, as well as the feudal and autocratic Indian State System”.

Nehru had, thus, rightly realised the exploitation, injustice and suffering of one class by another that’s why he declared in the Lahore Congress of 1929:

“India means the peasantry and labour, and to the extent that we raise them and satisfy their wants we will succeed in our task”.
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CHAPTER – VII

CONCLUSION
CHAPTER-VII

CONCLUSION

The idea of justice is quite old; that of social justice is relatively new. Human society since earliest times remained divided on the basis of different privileges and different duties of different groups. There divisions were almost taken for granted, as if divinely ordained; and justice was largely interpreted to consist in fulfilling one’s prescribed duties within the existing framework. It was only since the last quarter of the eighteenth century when the American and the French Revolutions for the first time challenged the prevailing division of society on the basis of privileges unrelated to function, that the idea of social justice began to gain ground. It is significant that the Industrial Revolution, which had begun prior to the American and French Revolutions, tended to aggravate the existing division of society by introducing a new pattern of production leading to concentration on economic power in fewer and fewer hands on the one hand, and impoverishing the rest of the community on the other. Gradually thus the vast economic disparities were also recognised as manifestation of the social division on the basis of different economic privileges, and considered morally untenable.
In order to meet the situation at least three alternatives were evolved:

a) Humanitarian approach which relied on charity of the rich to ameliorate the lot of their poor brethren;

b) Revolutionary approach which sought to overthrow the capitalist regime by violent revolution, mainly relying on the class consciousness of the workers and their invincible strength; and finally

c) The Constitutional method of establishing the tangible rights of workers who were hitherto exploited and were likely to be exploited further if the existing system was not changed. The idea of social justice largely stems from this final approach.

The object of the present study was to investigate the basic tenets of social justice to inquire how far the provision of the Supreme Court conform to the principles of social justice. Accordingly a hypothesis was formulated and relevant provisions of the Indian judiciary were empirically tested in light of the hypothesis so evolved, especially in regard to their working in the background of the Indian social, economic and political life.

It will be gleaned from the foregoing study that social justice, in essence, represents a logical synthesis of the principles of liberty, equality and fraternity. It transcends the formal aspects of these principles where liberty may be interpreted merely as 'absence of restraint', equality merely as 'absence of
discrimination', and fraternity merely as charity of the strong and privileged towards the weak and the underprivileged; thus preserving the existing order.

On the contrary, demand of social justice tends to issue from the mouth of reformers who seek to make an effective dent in the prevailing socio-economic structure. Thus as principles of social justice

(a) liberty in the political sphere demands the due representation of the citizens in decision making bodies, and to make this representation real it is essential that electoral system is so designed that political power vests in true representatives of the people so that manipulative or money power does not serve as gateway of political office;

(b) equality in the economic sphere demands that equality of consideration and equality of opportunity are not reduced to an empty form due to vast disparities in economic capacities, particularly in the matter of seeking justice in the law courts, and availing of education and other opportunities for self development;

(c) fraternity in the social sphere can become a real force only when the spirit of fraternity ensues from the feeling of mutual dignity, especially from appreciation of each other's importance in social life, related to the function performed, not from special privileges whatsoever, nor from affinities based on narrow sectarian interest; incidentally it also requires that there are not deprived of their due representation in the decision making organs and role in national life because of their minority character; that the weaker sections are given special consideration in the
distribution of benefits so as to enable them to compete with other sections of equal footing; and that

(d) the right to property is so regulated that an individual’s sphere of wealth is closely related to the function presently performed or service rendered, that major portion of wealth which is largely of social origin accrues back to society for reinvestment in expanding and strange thing social services, and that production of goods and services is undertaken primarily to subserve the social needs rather than for earning huge private profit.

Social justice and Constitutions of India, as explained by eminent members of the Constituent Assembly, means rejection of the existing social structure, promise of social security, provision for equality of opportunity and a smooth and rapid transition from a state of serfdom to one of freedom. In short, it has envisaged a far reaching social changes, a socio-economic revolution, through mechanism of political democracy and individual liberty. Some members of the Constituent Assembly felt that since the social justice enunciated by them and embodied in the Constitution could be achieved only through socialism and in a socialist state, that fact should be specified in the Constitution. However, at the end, they avoided mentioning specifically socialism or socialist state, for they felt content with the phrase “social justice” which was said to have embodied contents of socialism. After the commencement of the Constitution, the major agrarian reform legislations ran
up against conservative stance of judiciary on property and on the question of compensation. So, a few amendments were made to the Constitution to enable the state to forward with agrarian reforms and to facilitate the proper distribution of property and economic rights in the society. Besides, with respect to Preamble the judiciary changed its view and started using it as a tool to interpret the provisions of the Constitution. Because of these facts Parliament by the Constitution, (forty-second) Amendment Act introduced the word “socialist” into the Preamble. Thus, it has been made clear that social justice and Constitution of India envisages not merely the contents of socialism but also its format or what may be called its infrastructure. In other words, the social justice and Constitution of India envisions distributive justice oriented equal dispersal of all social primary goods coupled with protective discrimination in favour of “the least favoured members” of the society to achieve a new social order within the framework of socialist democratic republic.

The essence of socio-economic justice as the goal of planned development means reduction in the equality and removal of poverty. These two objectives are interrelated; it need not automatically lead to reduction in inequality. Both the goals would have to be pursued simultaneously and incoordination. Socio-economic inequality in India is a heritage of long history. India is the world’s classic unequal society from the time immemorial.
Inequality in India's past was sanctified by the rigid caste system that had ordained by professions by the accident of birth in a given family or jati.

The genesis of Article 16 (4) and scrutiny of debates in the Constituent Assembly over the contents of reservation clause in Article 16 (4) revealed two significant ideas. First, the exact use and connotation of the word "backward" must be understood in the context of an attempt made to reconcile the opposing views of perfect equality of opportunity reservation-promoted equality of opportunity in the matter of government employment. Second, the reservation of posts and appointments in service under the state were meant for communities, which hitherto had no "proper look-in" into the administration. Thus, the state authorities were expected to determine or bring with in the fold of "backward classes" those Classes or communities, which hitherto had no berth in the administration and the determination of Backward classes and the scheme of reservations of posts were such that they did not destroy the principle of equality of opportunity. The ideas that emerged from debates in parliament and constituent Assembly over Article 15 (4) and Article 16 (4) respectively would show that makers of the Constitution did not consider "caste" as a dominant criterion for determining the backwardness of the people.
A close survey of reports submitted by various class commissions during the period of 1955 and 1990 has revealed that most of the commissions harped on “caste” as an inevitable test to determine the backwardness of people. The Mandal Commission, which was latest commission constituted by the Central government, made caste as a unit or what it called a recognisable and persistent collectivities for dealing with the problem of backwardness. Further, it said that since Article 340 of the Constitution spoke of “socially and educationally backward classes”, the application of economic tests” for their identification seemed to be misconceived. It virtually discarded the economic or poverty test to determine the Backward Classes of people. This view of the commission is narrow and the caste test may perpetuate caste system instead of eradicating social evil of backwardness.

In Balaji case, the Supreme Court examined deeply the problem of determining the socially and educationally backward classes of citizens and laid down in the following principles.

1. The backwardness contemplated in Article 15 (4) is both social and educational.

2. The dominant test to determine social backwardness of classes of citizens generally to poverty that is abject poverty.
3. In relation to Hindus, caste may be a relevant factor in determining social backwardness of classes of citizens, because it often aggravates the social backwardness resulting from poverty. In other words, caste-cum-poverty test is the appropriate test to determine the social backwardness of class of citizens in the Hindu social order.

4. The educational backwardness of classes of citizens may be determined first by determining the state average of student population in High Schools and then treating only those communities which are well below the state average of student population, that is, those classes of citizens whose average of student population would be considered as educationally backward.

One important idea that emerges from the aforesaid principles laid down in Balaji case is that comprehensive test to determine the social and educational backwardness of classes of citizens is poverty-cum-caste below 50 percent of the state average of student population test in relation to Hindus and poverty below 50 percent of the student population test in relation to others. This test emerges from the Balaji decision and it can rightly be described as Balaji doctrine or test to determine social and educational backwardness of classes of citizens. This Balaji doctrine or test is in conformity with the views of the makers of the Constitution.

Equality in law in the sense of absence of discrimination of any kind has been embodied in clauses (1) and (2) of Article 15. Equality in fact in the
sense of different treatment in order to attain a result which establishes an equilibrium between different situations has been stipulated in clause 4 of Article 15. The concept of equality in fact is essentially different treatment in order to attain a result which establishes an equation between two different situations in which the weaker sections and forward communities are found in the society. This, in other words in known as "protective discrimination" and "compensatory discrimination". But, whether the compensatory discrimination stipulated in favour of weaker sections is creative in nature or destructive in character depends on two factors, namely, (1) the quantum of compensatory benefits conferred on weaker sections and (2) the duration for which they have been given.

The idea of compensatory state action was to make people who were really unequal in their wealth, education or social environment, equal in specified areas. Equality of opportunity guaranteed by Article 16 (1) could be gauged only by the equality attained in the result Article 16 (1) only a part of a comprehensive scheme to ensure equality in all spheres. It was an instance of the application of the larger concept of equality under the law embodied in Article 14 and 15. Therefore, Article 16 (1) permitted classification just as Article 14 did.
Conclusion

Analysis of the views of the judicial response to social justice has revealed that they accorded prime importance to it. They described the social justice as the signature theme of the Constitution. The Court discussed all aspects of the concept of social justice and explained its various connotations. First, social justice means socialism, because its goal is to bring national wealth and means of production under state control to subserve the common good. But, at the same time in a mixed economy interests of private enterprise cannot be stifled unjustly. So, necessarily a just balance must be maintained between conflicting interests. With such a role assigned to socialism it become more dynamic than doctrinaire. As indicated by the judiciary, social justice is dynamic socialism which aims at a just socio-economic order.

Second, social justice demands the existence of reasonable and just procedures which are conducive to the pursuit and protection of the rights of ordinary people. Therefore, procedures must necessarily be freed from stifling technalities in order to render access to justice a meaningful concept to common man. Third the concept of social justice envisages creation of a new human order and egalitarian society, wherein gender justice, dalit justice and equal justice among the chronic unequal, were assured. Forth Fundamental Rights must be construed in the light of Directive Principles and the Preamble, which, in effect, means that they have to be construed in the light of the concept of
social justice. It is also said that the dynamic Directive Principles energies the static provisions of the Fundamental Rights. This rule of interpretation has rendered the social justice a vibrant concept of the Indian Constitutional jurisprudence. Fifth, socio-economic justice stemmed from the social morality and then became an enforceable formula and hence it abhors economic exploitation. Finally, social justice contemplates comprehensive social security schemes and also lays stress on distributive justice. Thus meaning attributed to, and the unique role designed by for, the concept of social justice by the judiciary have made the social justice a multi-dimensional vibrant concept of for reaching importance.

Public Interest Litigation which has significantly broadened the sphere of judicial activity, is a notable aspect of social justice. Under this concept, any one can bring a disputed issue, a public grievance, or any other such matter direct to the notice of the Supreme Court merely by sending a post card briefly stating the case and thus avoiding the elaborate and costly procedure that is prescribed for raising a matter in a Court. The variety of cases decided by the Courts is itself evidence of the wide scope of judicial activism. Some examples are bonded labour, displacement and other grievances of tribals, child adoption and ecological threats to society. These indicate the broadened view of the judiciary role in a democracy.
Conclusion

There is no denying that Public Interest Litigation has increased the quantum of work of High Courts and the Supreme Court, especially of the latter. The judiciary also enters the field which is strictly that of the executive and the legislature. In fact, in some cases the Supreme Court has given suggestions and even issued directives to the legislature concerned to follow up a particular matter and ensure that the cause of social justice is always upheld.

There is of course a limit to which Public Interest Litigation and judicial activism can go, otherwise its own workload, which is now much too heavy, will increase beyond measure. While it is true that society has a moral and Constitutional obligations to ensure that injustice is not done to any section, such as the tribal, bonded labour, women or any other suppressed category, the system cannot be strained to disconcerting limits.

There is also a question of availability of financial resources for carrying out social and economic, reconstruction programmes, even though these programmes are dictated by the concept of social justice. India is a poor country and has a vast percentage of neglected, deserving people whose plight arouse sympathy in every human heart, except the most callous. However, neither social reform nor social justice can be ensured in a short time. An outstanding instance is that of colossal poverty. Justice demands that all socio-
economic inequalities should be redressed. But it is not possible to remove poverty and bring everyone to the same level, with a magic ward as it mere. Social justice, therefore, is an ideal which we should all promote earnestly.

Nehru concern for national unity, equality, dignity, justice and the socio-economic upliftment and welfare of the people was well known. He understood the needs and ethos of his people. His fascination for socialism, and economic development was born out of his deep concern for the suffering Indian masses. He was firmly committed to planned economy which, he left, could alone resolve the socio-economic disparities of the modern world. Nehru viewed that socio-political independence of Afro-Asian countries could only be safeguarded through economic and progress.

In the tribal and rural sphere, Nehru laid emphasis on tribal integration, that is integration of tribal communities with the rest of the Indian population and protecting and respecting the tribal autonomy and identity from outside interference. He unassisted on apt utilization of tribal genius embodied in the techniques of production process. He adopted vital measures aimed at elimination of the economic backwardness of the rural populace. He was opposed to discrimination of any kind against any citizen anywhere on grounds of religion, caste beliefs and sex. He planned and implemented developmental
schemes for the promotion of the welfare of the weaker sections. On women, Nehru had equally enlightened views. He did not regard them as a separate class but viewed them as equal individuals who had suffered from serious social disabilities and handicaps. He was staunch supporter of women’s education and firmly believed in equality of men and women. He was deeply perturbed by the social absurdities like dowry system, growth of purdah and seclusion of women from day to day life.

Nehru looked upon socialist pattern of society as an extension of democracy and freedom. Democracy, he left had no meaning without equality and equality cannot be established so long as the principal instruments of production are not owned by the state.
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### ABBREVIATIONS

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L.L.J. : Labour Law Journal
Mys. : Mysore
O.B.C. : Other Backward Classes
Pat. : Patna
P.I.L. : Public Interest Litigation
S.C.A. : Supreme Court Appeals
S.C.C. : Supreme Court Cases
S.C.J. : Supreme Court Journal
S.C.N. : Supreme Court Notes
S.C.R. : Supreme Court Reporter
S.C.W.R. : Supreme Court Weekly Reporter
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