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**The Constitutional Foundation of Human Rights and Justice,
Methodologies to Improve Social Justice to the Marginalized and the
Vulnerable**

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Introduction

Human rights always existed from the very beginning¹. The core concept which is eternal in Human Rights is no matter where you are born, no matter how you are born, but your birth is important and humans are equal in dignity and rights by birth. Thus being born as human, man is entitled to equal rights. These values can be termed as moral claims which are inseparable, absolute and innate in human beings irrespective of their race, class, sex or nationality.

So, whether our society had the so called Human rights principles before Constitution? Yes, before Constitution coming up these basic principles existed in the society through religions. Human Rights exist in all religions like Hinduism, Buddhism, Islamic and other religious principles. Many ancient works depicted human rights principles like the Magna Carta, Petition of rights and Bill of Rights. It is a natural law principle. Internationalization of Human Rights began only after the world wars. However these rights need not be granted by any government or authority as they are the natural claim of every person because he is born as a human. In short, the human rights pronounce that every individual has legitimate claims upon his or her own society for certain freedoms and benefits.

India is one of the oldest and largest democracies of the world and has a constant democratic life longer than Germany, Italy or Japan. Human rights principles are strongly rooted within the system. India had contributed to the drafting of Universal Declaration Human Rights with respect to gender equality. India is a signatory to the six core human rights covenants, and also the two Optional Protocols to the Convention of the Rights of the Child². Thus our country is absorbed with lot of principles of human rights. India had adopted the, 'The Protection of

¹ From the inception of Adam and eve

² <http://india.gov.in/spotlight/human-rights-0>

Human Rights Act 1993' which is reflection of the international laws on human rights. The founding fathers of Indian Constitution while drafting the Constitution had kept in mind the experience of India's struggle for freedom from the alien British rulers, The great Magna Carta, French revolutionary principles of Liberty, Equality and Fraternity, The American Bill of Rights and the Petition of Rights and Linguistic, regional diversities and components of our social structure influenced the architects of the Indian Constitution.

When India attained Independence and Constitution came into force at that time there were the problems of poverty, ignorance, illiteracy and discrimination. The idea of social justice was initiated from the inception of Constitution considering the background of India. By the 42nd Constitutional amendment 'socialist' was introduced into the Constitution though the principles existed in the draft. Social Justice is a principle which is intrinsic part of liberal democratic state and is a difficult term to be defined in simple words but it can be explained that every man gets his due. All the basics needs and rights of the masses are taken care of by the government. Justice can be interpreted to be political, social and economic under the constitution. Honourable SC has held that the principal aim of a socialist state is to eliminate inequality in income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave.³

In Indian Constitution the rights are divided into two separate parts where in the name of fundamental rights that forms Part III of the Constitution and Directive Principles in Part IV of the Constitution all the basic, natural and inherent rights of human beings has been included like the right to life, right to equality, right to free speech and expression, freedom of movement, the right to freedom of religion. Directive Principles guide us towards social, economic and cultural

³ *D. S. Nakara v. Union of India* ; (1983)1 SCC305 ; http://www.lawyersclubindia.com/articles/Concept-Of-Social-Justice-Under-Indian-Constitution-3685.asp#_ftn2

rights, such as right to education, livelihood, health and environment. These rights are again divided as justifiable and not justifiable as the directive principles are mere guidelines given to government and are not enforceable.⁴

What is the role of Justice? Rawls theory says that Justice is the first virtue of social institutions. Laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust⁵.

Who is the Subject of Justice? There are many things which may be just and unjust like laws, institutions, social systems, decisions, judgments and attitudes of people. Since justice constitutes the basic structure of society there are many institutions which has to placed on the basis of justice. While providing this justice at times we place some at a higher position resulting in inequalities. Apparently it is to these inequalities that the social justice must be applied.

"The theory of justice must be more concerned with the elimination of removable injustices rather than defining a perfectly just society,"⁶ Justice is based on the old Sanskrit terms like "Neeti" means that which is just, rules and institutions which is complete and successful only if it is implemented and therefore is abstract in nature and "Nyaya" means realization and it is based on enforcement of laws and regulations. Thus it is a concept based on righteousness, rationality, equity and fairness. Through justice develops the concept of equality as part of just society. There are different types of justice loaded within this like retributive, restoration and distributive justice. Social Justice means equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of

⁴ Social Rights and Indian Constitution; Advocate Jayna Kothari.

⁵ Theory of Justice, Rawls.

⁶ Nobel Prize-winning economist Dr. Amartya Sen at an event hosted by Asia Society Northern California. <http://asiasociety.org/business/development/amartya-sen-and-idea-justice>

privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs, and OBCs) and women. Social Justice within itself includes the distributive justice. Now when we look at equal treatment of all citizens as a part of social justice, we need to ask ourselves whether equality principles are really applied in India. State has a role to act as *parents patriae* and should take care of the people.

The term “equality” means the absence of special privileges to any section of the society, and provision of adequate opportunities for all individuals without any discrimination. The Preamble secures at all citizens of India equality of status an opportunity. This provision embraces three dimensions of equality- civic, political and economic. The following provisions of the chapter on Fundamental Rights ensure civic equality:

- ✓ Equality before the Law (Article 14).
- ✓ Prohibition of discrimination on grounds of religion, race, caste, sex of place of birth (Article 15).
- ✓ Equality of opportunity in matters of public employment (Article 16).
- ✓ Abolition of untouchability (Article 17).
- ✓ Abolition of titles (Article 18).

There are two provisions in the Constitution that seek to achieve political equality. One, no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325). Two, elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage (Article 326).⁷ Article 36 to 51 incorporate certain directive principles of State policy which the State must keep in view while governing the nation, but by Article 37 these principle have been expressly made non-justifiable in a court of law. Although these

⁷ http://www.lawyersclubindia.com/articles/Concept-Of-Social-Justice-Under-Indian-Constitution-3685.asp#_ftn2

principles are not judicially enforceable, yet they are not without purpose. The report of the Sub-Committee said:

“The principles of Policy set forth in this part are intended for the guidance of the State. While these principles shall not be cognizable by any Court they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State”.

Marginalized and Vulnerable Sections

Why are some sections of society called marginalized and vulnerable? Vulnerability and marginalisation can differ from person to person. There is broad category which involves, people suffering from mental health, SC/ST, Minorities, Indigenous people, Children (general , orphan, conflict with law and in need of care and protection), Women(in general), Elders, Disabled or differently- abled persons, drug addicts, poor sections of society (people with no income or low income, beggars and homeless)and single parents. For some people the category or group may differ like for example there are people who feel that single parents are not vulnerable. Those who are marginalized are outside the dominant culture of a group. The group could be a professional group, a social group, or a whole society. An individual may be marginalized out of choice, but more often it is because the dominant culture is unable to accommodate a particular group or individual.⁸

Methodologies to Improve Social Justice

1. ***Protective Method:*** Here the vulnerable and the marginalised groups are provided with protection through various laws that has been enacted for them. Art 17 of the Constitution prohibits Untouchability and for further protection laws like Protection of Civil Rights

⁸ <http://www.invo.org.uk/wp-content/uploads/2012/01/InvolvingMarginalisedandVullGroups2004.pdf>

Act, 1955 was enacted .To remove the atrocities against SCs, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has also been enacted. For women laws like Sati Prohibition Act, Widow Remarriage Act, The anti dowry laws, child marriage restraint act were enacted. For elders The Maintenance and Welfare of Parents and Senior Citizens Act 2007 has provided a life with self respect and peace. For Children laws like Juvenile Justice Act, Child labour enactments and provisions for compulsory education exist.

2. **Reparation Method:** This method forms a part of the restorative justice. Being a witness to the atrocities and injustices committed against the community, state tries to compensate the group by enacting laws on reservation policies. Land reform laws, Victim Compensation laws try to restore justice to women, children and other members of the group.
3. **Empowerment Method:** In this method state undertakes the responsibility to settle the group by laying down various schemes: Self employment Scheme for rehabilitation of Manual Scavengers, Post-Matric Scholarship for SC students, Central Sector Scheme of ‘Rajiv Gandhi National Fellowship’ for providing scholarship to Schedule Caste students to pursue programmes in higher education such as MPhil and PhD. Deendayal Disabled Rehabilitation scheme to promote voluntary action for persons with disabilities. Sarva Shiksha Abhiyan, a project initiated by the Central Government to provide free and compulsory primary education to all children in the age group of 6 to 14 years. There is also provision for mid day meal so that children get encouraged. An example of empowerment method: It is always complained by the senior citizens that they are neglected by society and the government of India provides various concessions and

facilities to its senior citizens. For the health of elders many concessions are provided by the government and private hospitals for the treatment of the diseases like cardiac problems, diabetes, kidney problems, blood pressure, joint problems and eye problems. There is also a condition for separate queuing of reservations for hospital beds. For travel, Indian railways give 30% concessions in the ticket prices to all the persons aged 60 years and above. It is 50% for women aged over 60 years. Air India provides 45% concessions to older persons in wheel chairs and are allowed to board the plane first. For Banking the Indian government gives high rates of interest to its senior citizens on certain savings plans which are run by the post offices and other private banks.

Conclusion

The Constitution of India nowhere defines social justice and this particular expression was used by great philosophers like Plato. Every phrase that forms the foundation of society is based on social justice like for example equality, liberty, fairness and fraternity are incomplete without social justice. But still India needs to go a long way to attain a comprehensive society as today when our Prime Minister Man Mohan Singh denies racism in India, we find people discriminating on the basis of caste. Being Indian the positive part is that we have come a long way and have changed a lot and are capable enough to bring about massive change in our outlook as we have always been accommodative in our nature.

Suggestions

1. **Awareness:** There is a need for the development of this group of social workers or NGO's to create awareness about their rights.

2. **Legislation and Implementation of laws:** For beggars there is a need for national law that would protect them as at times it is the Police and the local community tries to harm the beggars and homeless people on streets.
3. **Change in the institutional approach:** Government schools and institutions around India should change their approach and have an open acceptance for all students, but in reality many teachers refuse to teach Dalit children. They cite them as 'unworthy of learning' or a 'waste of teacher's time'. Even if they are accepted, Dalit children are not given equal opportunities in many schools.

References

Amartya Sen, *The Idea of Justice*, Penguin Books, New Delhi (2009)

Gurusamy, S., *Human Rights and Gender Justice*, APH New Delhi (2009)

<http://india.gov.in/spotlight/human-rights-0>

http://www.lawyersclubindia.com/articles/Concept-Of-Social-Justice-Under-Indian-Constitution-3685.asp#_ftn2

<http://asiasociety.org/business/development/amartya-sen-and-idea-justice>