

SOCIAL JUSTICE IN INDIA

ISSUES & CHALLENGES



**RAM ASHISH SHRIVASTAVA
MANOJ KUMAR RAO**

GOOD WRITERS PUBLISHING

RZ 94, Sector - 6, Dwarka, New Delhi - 110075
Shubham Vihar, Mangla, Bilaspur, Chhattisgarh - 495001

Website: *www.goodwriters.in*

© Copyright, 2023, Author

All rights reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form by any means, electronic, mechanical, magnetic, optical, chemical, manual, photocopying, recording or otherwise, without the prior written consent of its writer.

ISBN: 978-93-5756-030-6

Price: Rs.550.00

The opinions/ contents expressed in this book are solely of the author and do not represent the opinions/ standings/ thoughts of Publisher.

Printed in India

Contents

Sr. No.	Title	Authors	Page No.
1	Misuse of Section 498a of Indian Penal Code, 1860 – Need for a Better and Reformative Institutional Response	Dr. Shipra Banerjee & Amit Banerjee,	1-10
2	Human Rights and Social Status of Tribal Women: With Special References to Koraput	Dr Lakshman Patra	11-17
3	Need of Gender Justice in India	Dr. B.K. Yadav	18-28
4	Racial Inequality	Dr. Sweety Thakur	29-32
5	Gender/Sex	Ms. Shriya, R Naranapatty & Dr. Divya Dovina	33-41
6	Religious Diversity and Medicinal Properties of Plants and their Impact on Society	Dr. Kavita Sharma & Shraddha Sharma	42-51
7	Right To Information: A new Dimension Regarding Social Justice	Dr. Dinesh Babu	52-64
8	Some Reflections on Social Justice in India	Ishwar Narayan Sharma	65-70
9	Promoting Mental Health and Social Justice	Dr. Dinesh Kumar lahari	71-74
10	Issues and Challenges of Third Gender in India	Prof. B.K. Patel	75-82
11	Issues and Challenges of OBC in India: A Study of Chhattisgarh Scenario	Prof. B.K. Patel	83-96
12	Women's Empowerment and Social Justice In India	Soma Gupta	97-105
13	Working condition of Women as Compared to Man	Dr Rita Diwan	106-115
14	Issues related social justice	Dr. Ram Singh Patel	116-119
15	Social Justice and Right to Education: An Analysis	Dr Shashi Kant Tripathi	120-128

16	Legal Prespective of Religion in India	Dr.Bhoopendra Karwande	129-131
17	Development and Expression of Sexuality: Sexual Orientation	Dr. Ved Prakash Rawat, Dr. Vibha Rani & Virali Prakash	132-145
18	Social Justice and Role of Judiciary in India	Dr. Brajesh Kumar	146-154
19	Homosexuality is the Burning Concept in Present Scenario and its Legal Provision	Dr. Mohan Solanki	155-167
20	LGBTQ+Community: A Social Justice Perspective	Dr. Janet Fernandes	168-175
21	Social Justice Under Indian Constitution	Dr. Ram Ashish Shrivastava	176-180
22	Women Health and Gender Inequality	Dr. Manoj Kumar Rao	181-186
23	A critical study of Laws Relating to Protection of old age persons in India	Dinesh Malviya	187-193
24	Gender-Based Violence and Social Justice	Jyoti Panchal Mistri	194-197
25	Social Justice In Education: Contradictions and Dilemmas	Dr Niti Nipuna Saxena	198-208
26	Review of Social Justice: Some Emerging Issues	Dr. Abhay Pratap Singh	209-216
27	Social Justice and Women	Dr. Preeti Tamta	217-219

SOCIAL JUSTICE AND ROLE OF JUDICIARY IN INDIA

Brajesh Kumar

Assistant Professor(Law),

Rajeev Gandhi Govt. P.G.College Ambikapur (C.G.)

The role of judiciary in any well organized country is to maintain the 'Rule of Law' and to establish 'Legal supremacy'. Also judiciary plays the important role of interpreting and applying the law and adjudicating upon controversies between one citizen and another and between a citizen and the state. In a country judiciary assure that the government play his role according to law. India has a written constitution and holds a federal nature. In the constitution of federal nature, the main role of the judiciary is to achieve the goal of constitution and to run the governance according to the provision of constitution. The makers of constitution have provided rights to the people in India through the constitution on the one hand for the development of the individual, while on the other hand the constitution has given the goal of social, economic and political justice to the citizens. The main objective of this 'justice' is to establish harmony between social interest and personal interest.

Our constitution makers had the objective of establishing a 'welfare state' and 'socialist system' in India. Its meaning is 'greatest good of the greatest number'. The role of the judiciary becomes very important for achieving the goals of social-economic justice of the constitution and for the establishment of a welfare state. The Indian judiciary has laid emphasis on social justice so as to attain substantial degree of social, economic and political equality.

MEANING OF SOCIAL JUSTICE:

The expression 'Socio-Economic Justice' is not constitutional rhetoric or political claptrap meant for heroic sloganeering⁷⁶. Social justice is the quality that should be embodied in social activities or in the behavior of society towards individuals and groups.

In order to understand the true meaning and concept of social justice in its proper perspective, the meaning of 'Justice' must be understood.

Justice is the spirit of every legal system but to define justice it is not an easy task because of its dynamic nature. It is not a stable concept but a highly variable and transformed concept. The idea of justice is so ancient that everything has been said about it is so modern that it constitutes an ever-changing context of contemporary society.

⁷⁶ V.R. Krishna Iyer, *Indian Social Justice in Crisis*, New Delhi, East-West Press Pvt.Ltd.,1983,p.17.

Justice is the requirement of the society for its progress and maintenance of peace and prosperity. Without justice, progress of society is not possible and without it, there will be a revolution in the society.

The concept of 'justice' is pregnant with various diverse notions of right, morality, welfare and happiness. Justice is considered to be the primary goal of a welfare state and the very existence of it rests on the parameters of justice. The greatest contrast, however, between ancient and modern thinking about the social harmony of justice is in the changed conception of individual personality in relation of law.⁷⁷

The concept of justice has been affected to the change of time and circumstances, change in social economic and political views.

The first detailed and thoughtful explanation of justice has been given by Aristotle. Aristotle tried to explain justice by categorizing it as 'Distributive justice' and 'Corrective justice'. In distributive justice, Aristotle has considered it justice to give equal distribution of resources to equal people by considering the principle of equality. According to Aristotle, corrective justice deals with private transactions. Its main purpose is to establish harmony in the relations between individuals. Corrective justice has to be ensured justice by legal remedies like compensation in torts, imposing penalties in crimes and ordering damages in contracts.

It should be noted here that justice is not synonymous with equality, equality is an aspect of justice. Justice is not something that can be formulated under a single formula, it is a process. Equality is also a factor among the various factors of justice. As Friedrich observed 'Justice is never given, it is always a task to be achieved'⁷⁸.

Justice has a limited as well as a wider meaning. In its limited sense, it means ratification of injustice in the personal relations of the people. In its larger sense, it seems to remove the imbalance in the political, social and economic life of the people. It is in the second sense that social justice should be understood.⁷⁹

Social justice is the quality that should be embodied in social activities or in the behavior of society towards individuals and groups. Social and economic justice in itself is the main basis of civilized human society. Those given to definitional pedantry may disagree with the conceptual expansionism of the expression on social justice; but a phrase is not meaningless merely because it has wondering boundaries.

'Social justice' is sometimes confused with 'socialism'. The expression 'Socialism' may be looking at from two different angles. One, 'the end' and other, 'the means to achieve that end'. In the former sense, it means the removal of inequalities and the ushering in of a just society; in the latter sense, it means the public ownership of all the means of production and distributions. Socialism in the first sense is equated with social justice whereas in the second sense it is equated with economic justice. Thus both social and economic justice is the objective of socialism.

⁷⁷ C.K. Allen, *Aspects of Justice*, London, Stevens and Sons Ltd., 1998, p.32.

⁷⁸ Dias, *Jurisprudence*, Fifth Edition, LexisNexis, p 66.

⁷⁹ K. Subba Rao, *Social Justice and Law*, Delhi, National Publication, 1974, p.1-2.

Social justice is the foundation of the Indian constitution. Although the definition of social justice has not been given anywhere in the Indian Constitution, still the feeling is of an ideal element which is the goal of the constitution. In the preamble of the constitution, it has been talked about providing social, economic and political justice to all the citizens.

Social justice is a relative concept with changing context dependent on time and circumstances, on people's culture and aspirations.⁸⁰ Seervai, an eminent scholar also says that the expression 'social justice' is not easy to define.⁸¹

Justice Bhagwati in *Muir Mills Co. Ltd. V. Juit Mills Mazdoor Union*,⁸² described, 'Social justice' is a very vague and an undermine expression and that no clear cut definition can be laid down which will cover all the situation. It has to be understood on the basis of several social, economic and humanitarian considerations. This necessarily means that its content and scope would differ from person to person depending upon his socio-economic philosophy, in this direction certain basic principles of social justice are required to be ascertained for understanding the concept.⁸³

Law is the most flexible and appropriate instrument to achieve social and economic justice. The constitution, which is the fundamental law of the land, has undoubtedly significant role to play in the development of social and economic progress.

During the course of discussion on the objective resolution in the constituent assembly, there emerged two different opinions on the phrase relating to socio-economic Justice. According to the first view, the phrase should have been so drafting as to express clearly the phrase should have been so drafted as to express clearly the acceptance of the doctrine of socialism.⁸⁴

This view was supported by the chairman of the Drafting Committee Dr. B.R. Ambedkar. Dr. Ambedkar, stated that if the resolution:

"(H)as a relating behind it and a sincerity...., it Should have expressed some provisions whereby it would have been possible for the state to make economic, social and political justice a reality and its should have from that point of view expected the resolution to state in most explicit terms that in order that there may be social and economic justice in the country, there would be nationalization of industry and nationalization of land. I do not understand how it could be possible for any future government which be lives in doing justice, socially, economically and politically, unless its economic is socialistic economy."⁸⁵

⁸⁰ V.R. Krishna Iyer, *Social Justice- Sunset or Dawn*, (2008) Eastern Book Company, p-53.

⁸¹ H.M. Seervai, *Constitutional Law of India*, Bombay, N.M.Tripathi Ltd., 1st ed.1967,pp.75.

⁸² AIR, 1955,SC.170.

⁸³ Baidyanath Chaudhury : "Legal Aid Programme as an Instrument for Social Justice an in road in Industrial Adjudication", *JLI*, Vol. 38,1996, p.239.

⁸⁴ Dr.B.R. Sharma, *Socio-Economic Justice under Indian Constitution*, New Delhi, Deep & Deep Publication, 1984,p.17.

⁸⁵ Constituent Assembly Debates, Vol. I, pp.97-98.

There was a second view also, some member thought that since the constituent assembly had no sufficient mandate to incorporate in the constitution such an economic policy of doctrinaire character, so they did not share the view expressed by Dr. Ambedkar.⁸⁶ Some other members felt that the incorporation of such an economic policy might impart rigidity into the constitutional framework and make the same unworkable.

Dr. S. Radhakrishnan, also observed in the constituent assembly that India must have a 'socio-economic revolution' not only do bring about the real satisfaction of the fundamental needs of the common man, but to go much deeper and bring about a fundamental change in the structure of Indian society.⁸⁷

In a welfare state sometimes there is a conflict between the causes of individual liberty and socio-economic planning. But it should be remembered that the welfare state is dedicated to the cause of common citizen and establishment of socio-economic justice as its avowed objective. Sociological jurisprudence subscribes that without regulation of individual freedom socio-economic justice cannot be achieved.⁸⁸

The main objective of social justice is 'Sarvodaya' means 'progress of all'. Social justice is a combination of many factors such as social, economic, political, cultural, ideological, educational and spiritual development. Social justice means equal distribution of resources of the state among equal people. Crores of downtrodden, backward and hungry people of the society are brought into the mainstream of development through social justice.

The Indian Constitution can be called a social document and most of its provisions are meant to advance the concept of socio-economic justice. The message of the concept of social economic justice is received in the Preamble, part 3 Fundamental Rights and part 4 Directive Principles of State Policy of the constitution.

Preamble of constitution stated that to secure to all its citizens social, economic and political justice; liberty of thought, expression, belief, faith and worship; equality of status and opportunity, and to promote among them fraternity so as to secure the dignity of the individual and the unity and integrity of the nation.

The main goal of social justice is to end exploitation, end social oppression, remove disparity, provide social security, provide free education, provide employment opportunities, ensure social and economic development, eliminate social evils. The Indian Constitution is trying to achieve this goal of social justice through Part III Fundamental rights and Part IV Directive Principles of State Policy.

The Indian courts have also expressed the expression of 'socio-economic justice' in many cases i.e. Justice Gajendragadkar has expressed the concept of socio-economic justice in the case of the *Workers of Gold Mines V. Union of India*⁸⁹ "The concept of social

⁸⁶ Constituent Assembly Debates, Vol. I, p.91.

⁸⁷ *Id.* At 269.

⁸⁸ V.K. Krishnan Iyer, *Law Versus Justice*, New Delhi, Deep & Deep Publications, 1981, p.224.

⁸⁹ AIR 1958, SC. 923.

and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state. It is on this concept of social justice that the formula in question has been founded and experience in the matter of industrial adjudication shows that, on the whole, the formula has attained a fair amount of success".

In *J.K. Cotton Spinning and Weaving Mills V. Labour Appellate Tribunal*.⁹⁰ The court simply stated that the concept of social justice is not narrow one sided or pedantic, but its sweep is comprehensive, as it is founded on the basic ideal of socio-economic equality and its aim is to remove socio-economic disparities.

In *G.B.Pant University of Agriculture & Technology V. State of U.P.*⁹¹ Justice Banerjee held that. "Economic justice is not mere legal jargon but in the new millennium, it is the obligation for all to confer this economic justice on a seeker. Society is to remain, social justice is the order and economic justice on a seeker, society is to remain, social justice is the order as to and economic justice is the rule of the day".

The concept of socio-economic justice which is a revolutionary concept, takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as in economic activities. It gives meaning and significance to the democratic way of life and makes the rule of law dynamic.

SOCIOL JUSTICE AND JUDICIAL RESPONSE:

Judiciary has a major role in making social justice successful in India. The Supreme Court and various High Courts have considered social justice as an indispensable part of the legal system. It has always been the intention of the judiciary that the provisions of the constitution should be interpreted in the public interest in such a way that social justice can be established.

After the *Keshavananda Bharti*⁹² and *Maneka Gandhi*⁹³ case decision the Supreme Court of India established itself to be a court of justice. In the seventies and eighties, the Supreme Court humanized justice through its decisions and played an important role in establishing the goals of the welfare state enshrined in the constitution.

The judicial revolution in the form of Public Interest Litigation (PIL) is a welcome more towards helping the poor. The strict legal barrier of *locus standi* has been dispensed with by the Supreme Court in matters of public interest litigation, any person of the public can more the Supreme Court or High Court for enforcement of constitutional or legal right of persons who by reason of their socially or economically disadvantaged position are unable to approach the court.

⁹⁰ AIR, 1964 SC. 737.

⁹¹ (2000) 7 SCC. 109 at 117.

⁹² AIR,1973,SC.

⁹³ AIR,1978,SC.

In *Air India Statutory Corporation V. United Labour Union*,⁹⁴ the Supreme Court discussed at length about the socio-economic justice in the context of the constitution of India. It observed: "The constitution provides as instrument, designed to meet the changing needs of each succeeding generation altering and adjusting the unequal conditions to pave way for social and economic democracy within the spirit drawn from the constitution..... Preamble of the constitution, its integral part, is designed to realize socio-economic justice to all people including workman, harmoniously blending the details enumerated in the fundamental rights and the way he directive principle..... The individual interest can, therefore no longer stem the forward flowing tide and must, of necessity, give way to the broader public purpose of establishing social and economic democracy in which every workman realizes socio-economic justice assured in the preamble, Article 14,15,16 and 21 and the directive principles of the constitution."

The activist role of the Supreme Court and the High Courts to give relief to the under privileged and disadvantaged is welcome move in the forms of PIL. The judiciary play activist role to protect and uplift the socio-economic justice of poor. This is proved by many previous decisions.

1. Right to Equality :

Equality is grammar to justice, social, economic and political. Unless there is equality there cannot be justice. The doctrine of equality which is provided in Articles 14 to 18 of the constitution is the foundation of socio-economic justice. In *John Vallamattom V. Union of India*,⁹⁵ the Supreme Court observed that all persons in similar circumstances shall be treated alike both in privileges and liabilities imposed.

2. Equal Pay for Equal Work:

In *Randhir Singh v. Union of India*,⁹⁶ The Supreme Court expanded the principle of equal pay for equal work by reading Art.14 and 16 with the directive principle contained in Art. 39(d).

3. Protection against Untouchability :

Article 17 abolishes untouchability and forbids its practice in any form. In the case of *People's Union for Democratic Rights v. Union of India*,⁹⁷ the Supreme Court has held that the fundamental rights conferred by Article 17 are not only available against the state but are also available against private individuals and it is the constitutional duty of the state to protect and to take necessary action to prevent the encroachment of these rights.

4. Extended view of Article 21 :

A very fascinating development in the Indian Constitutional jurisprudence is the extended dimension given to Article 21 by the Supreme Court in the post-*Maneka* era. The Supreme Court has asserted that in order to treat a right as a Fundamental Right, it is not necessary that it should be expressly stated in the Constitution as a Fundamental Rights.

⁹⁴ AIR,1997,SC.645.

⁹⁵ AIR 2003 SC 2902.

⁹⁶ AIR 1982 SC 879.

⁹⁷ AIR 1982 SC 1473.

Political, social and economic changes in the country entail the recognition of new rights. The law in its eternal youth grows to meet the demands of the society.⁹⁸

Since *Maneka Gandhi*, Article 21 has proved to be multi-dimensional. This aspect of Article 21 is brought out by the following judicial pronouncements. This extension in the dimension of Article 21 has been made possible by giving an extended meaning to the word 'life' and 'liberty' in Article 21. These two words in Article 21 are not to be read narrowly. These are organic terms which are to be construed meaningfully.⁹⁹

The following new rights have emerged from active judiciary through interpretation of Article 21 and by public interest litigation, which are discussed here under:

Right to Live with Human Dignity:

The Supreme Court elaborated in *Francis Coralie v. Union Territory of Delhi*¹⁰⁰, *People Union for Democratic Right v. Union of India*¹⁰¹ and many other cases that the right to live is not restricted to mere animal existence. It means something more than just physical survival. It also includes 'the right to live with human dignity'.

Right to Livelihood:

In *Olga Tellis v. Bombay Municipal Corporation*¹⁰² a five judges bench of the Supreme Court has finally ruled that the word "life" in Article 21 includes the "right to livelihood" also. In *D.K. Yadav v. J.M.A Industries*¹⁰³ the Supreme Court has held same views.

Right to Privacy:

The right to privacy has not been covered specifically under the Indian Constitution, but this right has been discussed by the Supreme Court in number of cases. In *R. Rajagopal and Another v. State of Tamilnadu and another*¹⁰⁴ also in *Mr. 'X' v. Hospital 'Z'*¹⁰⁵ the Supreme Court has held that although the "right to privacy" is a fundamental right under Article 21 of the constitution but it is not an absolute right and restrictions can be imposed on it for the prevention of crime, protection of health and freedom of others.

Right to Shelter:

In *Chameli Singh v. State of U.P.*,¹⁰⁶ the Supreme Court has held that the right to shelter is a fundamental right under Article 21 of the constitution.

⁹⁸ M.P. Jain, *Indian Constitutional Law, Eighth Edition*, LexisNexis, p-1207.

⁹⁹ Ibid.

¹⁰⁰ AIR 1981 SC 746.

¹⁰¹ AIR 1982 SC 1473.

¹⁰² AIR 1986 SC 180.

¹⁰³ (1993) 3 SCC 258.

¹⁰⁴ (1994) 6 SCC 632.

¹⁰⁵ AIR 1997 SC 968.

¹⁰⁶ (1996) 2 SCC 549.

Right to Education:

Today, education is perhaps the most important role in life. It is the very foundation of good citizenship. It helps in promoting and understanding various human rights. Education is a necessary means of achieving socio-political justice. In *Unni Krishnan v. State of A.P.*¹⁰⁷ the Supreme Court partly overruled Mohni Jain decision and held that "the right to education which is implicate in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principle of state policy in part IV of the constitution."

The constitutional (86th Amendment) Act, 2002 has added a new Article 21A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may by law, determine".

Right to Food:

In a significant judgment in *PUCL v. Union of India*,¹⁰⁸ the Supreme Court has held that the people who are starving because of their inability to purchase food grains have right to get food under Article 21 and therefore they ought to be provided the same free of cost by the states out of surplus stock laying with the states particularly when it is unused and rotting.

New Dimension of Criminal Justice System and Environmental Protection:

The Supreme Court has added a new chapter in the criminal justice system and in the field of environmental protection by giving a comprehensive interpretation of the words mentioned in Article 21. Gave birth to many new rights for the protection of human rights of prisoners and victims in the criminal justice system, such as speedy justice, free legal aid, right against solitary confinement, right to health, right against handcuffing, right to compensation etc.

5. Bonded Labour and Judiciary:

There has been existence of bonded or forced labour in large parts of the country. The practice of bonded labour is based on exploitation by a few socially and economically powerful persons. The practice of bonded and forced labour is not only an affront to basic human dignity but also constitutes gross violation of human rights.

During the recent years, the judiciary, particularly the Apex Court, has played an important role in making right to live with human dignity a reality for millions of Indians and has protected them from exploitation. The Supreme Court has not only give the widest possible meaning to the fundamental right enshrined in Article 21, 23 and 24 but also took into consideration the various factors which were responsible for the failure of various other social welfare laws.

¹⁰⁷ AIR 1993 SC 2178.

¹⁰⁸ 2000(5) SC. ALE.

In *People's Union for Democratic Rights v. Union of India*¹⁰⁹ the Supreme Court considered the scope and ambit of Article 23 in detail. Court observed that "Article 23 is clearly designed to protect the individual not only against the state but also against other private citizens. Article 23 is not limited in its application. The sweep of Article 23 is wide and unlimited and it strikes at traffic in human beings and beggar and other similar forms of forced labour wherever they are found.

*Bandhua Mukti Morcha v. Union of India*¹¹⁰ is yet another landmark judgement of the Supreme Court where the bonded labour have been protected from exploitation.

In *M.C. Mehta v. State of Tamilnadu*,¹¹¹ the Supreme Court has held that children below the age of 14 years cannot be employed in any hazardous industry, mines or other works and has laid down exhaustive guidelines how the state authoritative should protect economic, social and humanitarian rights of millions of children, working illegally in public and private sectors.

CONCLUSION:

The Indian judiciary has strengthened the concept of social justice by giving many important decisions in the direction realizing it. There are some such decisions given by the Supreme Court which made social justice even more meaningful, like Maneka Gandhi decision, Indira Shahani decision, S. P. Gupta decision and there are so many decision by which there has been strength in establishing social justice. But a lot of work remains to be done in the field of strengthening social justice. It is hoped that the Government and the Judiciary will discharge their positive responsibility according to the intention of the makers of the constitution and the needs of the Indians.

¹⁰⁹ AIR 1982 SC 1473.

¹¹⁰ AIR 1984 SC 802.

¹¹¹ AIR 1997 SC 699.