



# Concept of Social Justice in Indian Constitution

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## ABSTRACT

Social Justice is a necessary attribute for the welfare state. It aims to remove the imbalances in the social, political and economic life of the people to create a just society. Social Justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. Social Justice is the foundation stone of Indian Constitution. The grund norm of the constitution is establishment of an egalitarian policy well entrenched in social justice as engrained in the preamble. This paper is an attempt to focus on the concept of social justice as enshrined in Fundamental rights, Fundamental duties and Directive principles of state policy.

**Keywords** : Preamble, Socialist, Sovereign, Fundamental Rights, speedy justice, Protective Discrimination, Arrest and Detention, amendment, substantial

## Introduction

Social Justice is a concept which is based on human rights and equality. It is the way in which human rights are manifested in everyday lives of people at every level of society. Social Justice is a necessary attribute for the welfare state. The term Social Justice implies a political and cultural balance of the diverse interests in society. The basic aim of social justice is to remove the imbalances in the social, political and economic life of the people to create a just society. It means dispensing justice to those to whom it has been systematically denied in the past because of an established social structure. Social Justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society and improvement in the conditions of Backward Classes (SCs, STs and OBCs) and women.

The Preamble of our Constitution itself declares the idea of Social Justice by asserting :-

We, The People of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens- Justice — Social, Economic and Political.

Social Justice is the foundation stone of Indian constitution. Pt. Jawahar Lal Nehru put an idea of Social Justice before the Constituent Assembly:-

**‘First work of this Assembly is to make India Independent by a new Constitution through which starving people will get complete meal and clothes and each Indian will get best option that he can progress himself.’<sup>(1)</sup>**

This statement of Pt. Nehru lays the foundation of Social Justice which is a necessary trait in a Democracy. Although the term Social Justice is not defined anywhere in the constitution but it is an ideal element which is a goal of constitution Dr. B.R. Ambedkar who drafted our Indian Constitution lead a mission of securing Social Justice to the vast section of Indian humanity with the help of law. He has strong fervour to attain Social Justice among the Indian communities. The aim or the grund norm in the constitution is social justice. The grund norm of the constitution is establishment of an egalitarian policy well entrenched in social justice as engrained in the preamble.<sup>(2)</sup>

There are various provisions in our Constitution including Fundamental Rights and Directive Principles which indicates the inherent notion of Social Justice. Fundamental Rights as enshrined in Art.14 to Art.32 expresses Social Justice:

1. **Right to Equality (Art. 14 to 18)**
2. **Right to Freedom (Art. 19 to 22)**
3. **Right to Education (Art. 21-A)**
4. **Right against Exploitation (Art. 23 and Art. 24)**
5. **Right to Freedom of Religion (Art. 25 to Art. 28)**
6. **Cultural and Educational Rights of Minorities (Art. 29 and 30)**
7. **Right to Constitutional Remedies (Art 32)<sup>(3)</sup>**

The first Fundamental Right secured to the people of India is the ‘Right to Equality’. It is contained in Articles 14 to 18. These Provisions are discussed under following heads :-

1. Equality before law or Equal Protection of Laws (Art. 14)
2. Prohibition of Discrimination against citizens (Art. 15)
3. Equality of Opportunity in Public Employment (Art. 16)

4. Abolition of Untouchability (Art. 17)

5. Abolition of Titles (Art. 18)

Equality before law means that every person whatever be his rank or condition is subjected to the ordinary law of the land. The phrase 'Equal Protection of Laws' means that all persons have the right to equal treatment in similar circumstances, in the privileges conferred and in the liabilities imposed by laws. It requires the application of equal laws to all in same situation and that there should be no discrimination between one person and another. Art. 14 strikes at arbitrariness which is a dynamic approach to save social justice. Besides this Reservation of Seats for persons belonging to areas, which are socially and educationally backward, is constitutionally permissible.<sup>(4)</sup>

Similarly clause (1) of Art. 15 provides, 'The state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to :-

- (a) Access to shops, public restaurants, hotels and places of public entertainments or.
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

However state can make special provisions for women and children [15 (3)] and for the advancement of socially and educationally Backward Classes [15 (4)] of citizens or for the Scheduled Castes and the Scheduled Tribes in order to provide social justice to all<sup>(5)</sup>.

Art. 16 (1) guarantees to all citizens equality of opportunity in matters relating to employment or appointment to any office under the state by declaring that. **"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of, any employment or office under the state."** However clauses (3), (4) and (5) of Art. 16 contains exceptions to the rule of equality of opportunity by permitting the state to make provision for the reservation of Backward Classes of people. Art. 17 abolished Untouchability and forbids its practice in any form thus ensuring social justice for all.

Sometimes Social Justice is also secured through 'Protective Discrimination' which may be defined as discrimination permissible under the constitution. It is to provide for an egalitarian society woven into the ideal of 'Social Justice. The constitution enables the state to make special provisions for the upliftment of the socially and educationally backward classes of citizens, in particular for the citizens to compete with the advanced sections of the people.<sup>(6)</sup>

The Fundamental Right to Freedom is guaranteed under Art. 19 to 22 of the Constitution.

These Article deal with the following different aspects of Freedom

**1- Six Fundamental Freedoms (Art. 19)**

- 1- Freedom of Speech and Expression; 19 (1) (a)
- 2- Freedom to Assemble Peacefully without arms; 19 (1) (b)
- 3- Freedom to form Associations or Unions; 19 (1) (c)
- 4- Freedom to move freely throughout the Territory of India. 19 (1) (d)
- 5- Freedom to reside and settle in any part of the territory of India 19(1) (e)
- 6- Freedom of practice any profession or to carry on any occupation, trade or business 19(1) (f)

**2- Protection in respect of conviction for offences (Art. 20)**

**3- Protection of Life and Personal liberty (Art. 21)**

**4- Right to Education (Art. 21 — A)**

**5- Protection against Arrest and Detention in certain cases (Art. 22)**

Besides the above freedoms and rights certain rights like Right to bail, Right to Speedy Justice, Right to Privacy against inhuman treatment<sup>(7)</sup> torture, assault etc. are also provided to the citizen.

Art. 23 and 24 guarantees, 'The Fundamental Right against Exploitation' These provisions are to protect children and youth against exploitation and against moral and material abandonment. Art. 23 provides for prohibition of Traffic in human beings and begar while Art. 24 prohibits the employment of children below the age of fourteen years in any factory or mine or any hazardous employment.<sup>(8)</sup>

Right to Freedom of Religion is contained in Art. 25 to 28 of the constitution which assures following rights to its citizen:

- A. Freedom of Conscience and the right to freely profess, practice and propagate religion (Art. 25).
- B. Right of a religious denomination to manage religious affairs (Art. 25).
- C. Freedom from payment of taxes for promotion of any particular religion (Art. 27) and

D. Freedom from attendance at religious instructions in certain educational institutions (Art. 28)

Cultural and Educational rights are provided under Article 29 and 30 of the Constitution of India. Art. 29 (1) guarantees the right to citizens to conserve their distinct language, script or culture.

Art. 30 (1) provides Right to Minorities to establish and administer educational institutions. The term 'Minority' is not defined in the constitution. Literally, it means a non-dominant group and they are less in number. Special Provisions which are made in the constitution through amendment to safeguard the interest of minorities are indicative of the efforts of the state to maintain social justice in society.

Art. 32 confers one of the 'highly cherished rights' which protects the citizens where there is infringement of Social Justice. It is because of this Article that the Supreme Court is declared as, 'the protector and guarantor of fundamental rights.'<sup>(9)</sup> Clause (1) of Art. 32 declares, "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed."

In this way we see that part III of the constitution which envisages Fundamental Rights is a comprehensive document which provides and protects social justice for all.

Likewise Directive Principles of State Policy mentioned under Art. 35 to 51 provides social, economic and political justice. Part IV of the constitution sets forth the ideals and objectives to be achieved by the state for setting up in India a social welfare state which aims at social welfare and the common good and to secure to all its citizens, justice-social and economic. Art 38 (1) asserts that, '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 national life. Constitution strengthened the concept of social justice by inserting clause (2) in Art. 38 by 44<sup>th</sup> Amendment Act, 1978 which requires- the state in particular, to minimize inequalities of 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.'<sup>(10)</sup>

Art. 43 is also indicative of social Justice which states that ; 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 and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

Art. 39 A guarantees social and economic justice which asserts that, the state shall secure that the operation of the legal systems 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.<sup>(11)</sup> Free legal aid strives to ensure that constitutional pledge for social justice is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.<sup>(12)</sup>

Art. 42 requires that, “The State shall make provisions for securing just and humane conditions of work and for maternity relief.”<sup>(13)</sup> This Article exhibits the concern of the framers of the Constitution for the welfare of the workers.

Other instances of Social Justice in Indian Constitution are :-

- 1- Free and Compulsory Education for children (Art. 45)
- 2- Promotion of Educational and Economic interest of weaker sections (Art. 46)
- 3- Reservation of seats for S.C/ST’s in the House of People (Art. 330)
- 4- Reservation of seats and special representation in legislative assemblies (Art. 334)
- 5- Claims of Scheduled Castes and Scheduled Tribes to service and posts (Art. 335)
- 6- National Commission for Scheduled Castes and Scheduled Tribes (Art. 338)
- 7- Appointment of a commission by the President to investigate the conditions of Backward Classes (Art. 340)

Thus we see that both the Fundamental Rights and the Directive Principles of State Policy aim at the same goal of bringing about a social revolution and the establishment of a Welfare State. Courts have also performed a great role to make the social justice successful. The aim of Social Justice is to attain a substantial degree of social, economic and political equality. Only the need of hour is to ensure the proper and balanced implementation of government

policies free from prejudices so as to make social justice an effective vehicle of social progress.

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