

The Results of Constitutional Provisions towards Social Justice

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Abstract

In the world India is one of the largest democratic Countries. Indian Constitution will give us the right perspective for appreciation of the scope and place of social justice as an aspiration of the nation. The aim of ground norm in the constitution is social justice. The preamble of the constitution has used the terms like 'Socialist', 'Social and Economic Justice', 'Equality'. These terms indicate that the state would extensively involve in social welfare of the people and would like to establish an egalitarian society. Social justice is always associated with a presumption of fair treatment, equal rights access in the legal system. Social justice is a concept necessary for the welfare state. In this study, we would like to analyse the details of constitutional issues and concepts towards social justice. For gathering the information we would like to follow the mixed methods such as quantitative and qualitative.

Keywords: Constitutions and Social justice

1.Introduction

The present Constitution of India was inaugurated on 26th January, 1950. It has made India a sovereign democratic republic and ensured equality of every citizen before law. By an amendment of the Constitution it has become a sovereign socialist, democratic republic. It has adopted basic concept of human equality before law and provided for universal adult franchise. Constitution of India, which is one of the bulkiest constitutions of the world, has certain unique and novel features. It has combined in itself both unitary and federal features. It is unitary in emergencies and federal during normal times. For the first time, it has extended certain fundamental rights to the people of India. Under the provision of constitution, Indian federation is over-centralised and according to few critics states in India are merely dignified municipalities. Centre-State relationship is one of the major and complex problems of country's political system which is posing a serious problem after the fourth General Elections held in the country in 1967 when political face of the country rapidly changed.

It was after this election that one party dominant system received serious setback. It was on the midnight of 14th- 15th August, 1947, when the whole world was asleep, that new India awoke. The first Prime Minister of India, Pt. Jawaharlal Nehru, unfurled tricolor on the ramparts of historic Red Fort to mark India's independence. It was on this day that India occupied her place, as a sovereign state, in the family of free nations. The task of giving a new constitution to the people of India, on the principles enunciated by Indian National Congress during freedom struggle had already started. The Constituent Assembly under the president ship of Late Dr. Rajendra Prasad, the First President of Republic of India, laboured hard for two years, eleven months and 18 days before it could finish the gigantic task of finishing constitutional document on 26th November, 1949. It was dedicated to the people of India and formally the Constitution was inaugurated on 26th January, 1950. In the making of country's constitution the role of Chairman of the Drafting Committee Dr. B.R. Ambedkar was immense.

Review of Literature

Indian Constitutional provisions ensuring Social Justice: Fundamental rights in Part III some of which are available to all persons and some are enjoyable only by the citizens of India are:- a) Equality before law (Art 14) b) Prohibition of discrimination on ground of religion, race, caste, sex or place of birth (Art 15) c) Equality of opportunity in matters of public employment (Art 16) d) Abolition of Untouchability (Art 17) e) Abolition of titles (Art 18) f) Protection of certain rights regarding freedom of speech etc. (Art 19) g) Protection of life and personal liberty (Art 21) h) Protection in respect of conviction for offenses (Art 20) i) Protection against arrest and detention in certain cases (Art 22) j) Protection of traffic in human beings and forced labour (Art - 23) k) Prohibition of employment of children in factories or mines or in any other hazardous employment (Art 24) l) Freedom of Religion (Art 25 - 28) m) Protection of interests of minorities (Art 29-30) n) Judicial remedies for enforcement of rights conferred by this Part - III of the Constitution (Art 32). 7 Chapter IV of Indian Constitution Article 36 to 51 incorporate certain directive principles of State policy which the State must keep in view while governing the nation. The most important of these directives are – a) Promotion of welfare of the people (Art 38) b) Adequate means of livelihood; equal distribution of material resources of the community; distribution of means of production to the common good and equal pay for equal work; - promotion of health and strength of workers, men and women and the children : Protection against exploitation of child hood and youth (Art 39) c) Equal justice and free legal aid (Art 39A) d) Right to work, education and to public assistance in certain cases (Art 41) e) Just and human conditions of work and maternity relief (Art 43) f) Living wages for workers (Art 44) g) Uniform civil code (Art 44) h) Free and compulsory primary education for children (Art 45) In a very important case of *Indira Sahani vs. Union of India*⁸ the Supreme Court declared twenty seven percent reservations legal for socially and economically backward classes of the society under central services. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society.

Equal pay for equal work 'Equal pay for Equal Work' has not been secured as a fundamental right, but has been held to be deductible from Articles 14, 16 and 39 (d). It has been held that this principle of equal pay for equal work' might be applied to cases of unequal scales of pay based on no classification or irrational classification. Denial of equal pay for equal work becomes irrational classification within Article 14. When the difference in duties difference in pay; difference in duties justifies discrimination in pay then writ can be used to enforce the principles of equal work if Article 14 is infringed. In making a comparison the Authority should look at the duties generally performed by men and women. Both men and women work at inconvenient times, there is no requirement at all those who work, e.g. At night, shall be paid the same basic rate as those who work normally day shifts.

Contemporary Issues of Social Justices

As a part of this study we need to explore the present social issues in India what were took place in recent. As mentioned below there were happened so many issues towards social justice in India.

Triple Talaq

The instant Triple Talaq has already been declared unconstitutional by the Supreme Court and is therefore, non-etc. As per this bill, a Muslim man can be jailed for up to three years along with a fine at the instance of the wife or a blood/marital relative of the wife. This provision has the potential to destroy a marriage because of a false complaint by a scheming relative. Under the bill, the magistrate will grant bail only after hearing the wife. This provision has far reaching consequence as a

man may only get bail on the conditions imposed by the wife. This bill is in violation of Art 14 of the constitution as it discriminates between Muslim women and women of other religions. Section 498A of IPC, Domestic Violence Act and Dowry Prohibition Act already applies to Muslims. Therefore there is no need of having an additional law to protect only Muslim women.

There are several contradictions to the bill that in section 3 of the bill, it says that Talaq- e-Biddat is void but in section 5 and 6 it discusses post-divorce issues such as subsistence allowance for the women and custody of her minor children as if marriage is dissolved through Talaq –e –biddat (Triple Talaq). The ordinance also provides for subsistence allowance for the wife. However if the husband is in the jail how will he be able to provide the subsistence allowance over and above the maintenance he has to provide under other laws applicable. The Supreme Court in Triple Talaq judgment nowhere said that Triple Talaq should be criminally punished. Imprisonment not for abandoning his wife but merely for chanting Talaq three times resulting in imprisonment up to 3 years and fine or both. Considering that causing death by negligence provides for a punishment of imprisonment of only up to 2 years and or a fine, it is rather extreme that the mere utterance of Triple Talaq (which is already legally void due to the SC Judgment and has no meaning in law) will attract a higher penalty than causing death by negligence (section 304A of IPC). This bill will cause distress to familial ties and matrimonial relationships that the only option available to the aggrieved Muslim husband would be to walk out of marriage and abandon the wife.

Dalits and Landlessness in India

In today's era of Hindutva in India, the so-called backward castes are in an existential crisis. In India citizenship requires entitlement to land along with other essentials but this being of the utmost importance has always been a discriminating factor for the Dalits in India. Without land one is always exposed to insecurities. Even after so many years Dalit are not independent in India. They are displaced people, exiled in their ancestral land, wandering about as stateless subjects. They've been here as long as any of us have yet their landlessness takes away their legal, official and constitutional validity as an Indian. This landlessness gives exclusive rights to landowners to question their legitimacy and belonging. They're continually being harassed and exploited by the hands of the resourceful. According to a study by census of India it was found that 71% Dalits are landless labourers. In 58% of the rural areas, Dalit household own no amount of land. This has forced them to migrate to cities in search of odd jobs that are usually the lowest paying like house helps security guard etc.

Here in cities they are discriminated further as they're looked upon by members of higher castes and are not allowed to rise. The agricultural census of India 2015-16 reveals that Dalits own only about 9% of the total agricultural land. The situation is grim in Dalit dominated states like Haryana, Punjab and Bihar where 85% are dependent on the landlords. The corresponding number is 60% in case of Tamil Nadu, Maharashtra, Andhra Pradesh, Gujarat, Kerala, West Bengal and Odisha. In many districts of states like Bihar, Haryana, Punjab, Gujarat, Andhra Pradesh, Tamil Nadu and Kerala, 90% of the Dalits are agricultural labourers.

Objectives of Study

The main objective of this study is exploring the overall social justice in India and Impacts of contemporary decisions which were taken by central government. The present Government has been taking various decisions towards reforms in constitutional matters towards social justice.

However, the following objectives are focus on Indian Constitutional system.

1. To understand the new policies regarding Social Justice and impacts of new Decisions in social sector

2. To get the knowledge about concept and aims of social justice
3. To develop understanding about the social realities of Indian society its impact on Society
4. To learn the concept of social change and social transformation in relation to justice
5. To know the different values enshrined in the constitution of India and its impact of Society
6. To find out the current problems in social issues and suggest to policy makers

Methodology

For the purpose of this study, primary and secondary data were collected. Primary data was collected through study of the constitutional issues from reputed newspapers and magazines. Remaining data was collected by secondary methods such like newspapers, magazines, and referred editorials from reputed newspapers in various languages. Various research papers of similar type have been referred to check the format and the type of graphs for analysing data. Other than this various scholars and data from other sources are used to collect data which is interpreted further for data analysis. Also referred the various magazines and journals for collect the information formaking this study. And also followed reputed websites such like Central ministry of education, the Press Information Bureau, Information and Broadcasting ministry etc.

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