



Research Paper

## Social Justice and Caste Inequality: A Review of the Constitutional Provisions

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**ABSTRACT:** Indian society is a graded society with various communities divided according to their religion, caste, language and geographical locations. When some communities were having the privileges being in a dominant position, the other communities were suffering the humiliation in the name of tradition and culture. Among these differences, the segregation due to the caste differences with discriminatory practices made the Constitutional makers to debate in order to maintain and create a democratic space. The concept of social justice and the notion of equality and fraternity were given much importance while making the draft constitution to provide the protected space in the society. The present paper draws the attention towards understanding the social justice as discussed in the Constitutional assembly debates and look at the new directions to make a better society.

**KEYWORDS:** Social justice, Democracy, Inequality, Caste system, Reservations.

### I. INTRODUCTION

In this globalised era, the conditions of the neglected communities need a special attention in different dimensions. In order to create a social order based on justice, the Constitution makers applied the principles of equality, liberty, and fraternity to the conditions that prevailed in India at that time. The benefits of reservations in employment and education are seen through the development and opportunities provided to the groups from scheduled castes (SC), scheduled tribes (STs) and backward classes (BCs). For enabling equal representation and participation from all the castes, the special treatment or the reservations are provided for those who were earlier not able to compete with others on equal grounds. The conditions of the neglected communities are changing along with their consciousness towards education and development. This gave an opportunity to few developing communities among the neglected communities to raise their voice against the unequal distribution of benefits; which resulted in unequal development.

Caste system in Asian societies and particularly in India followed rigid practices termed as customary rules and unethical practices. The obligation of availing basic rights among the different castes is hierarchical and unequal. The caste system follows the doctrine of inequality in all realms and following the pattern of difference many castes were excluded from the functioning in the mainstream society. The condition of the excluded communities turned distressing and the poverty prevailed in almost all the caste-affected communities. The lower castes in the hierarchical ladder faced inherent structural inequality in the social relationships. They were not given equal benefits from development processes and no role in decision-making and participation in public and political life.

The justice principle guarantees the equitable position for all the communities to upgrade in the diverse societies. Rawlsian orientation of fairness delivers equal access to basic liberties of the society where the opportunities need to be made available for the least advantaged which were restricted. It should be arranged in a way that it benefits 'maximally' the worst off members in the society, providing an equal chance to every individual in a 'just' society. In order to uplift the least advantaged, the unequal distribution of resources is been supported under certain circumstances (Bevir, 2010).

The understanding of social justice took another dimension in Indian perspective. The notion of justice in ancient India revolves around 'varna vyavastha' or varna system, which was based on consent and coercion (Kumar, 2015). The duty of the ruler is to see that individuals and social groups do not transgress their boundaries. The location of an individual in a group is determined by the qualities one possesses and these qualities are inherited at birth. The *panchama varna* was considered to be outside the four-fold varnas order and also not touchable by others. The present Scheduled Caste groups were part of this *panchama* category.

The varna order came to be vigorously questioned during the British rule and the nationalist movement. Ideas of freedom, equality and fraternity informed the debates and attitudes concerning the caste

identities and how the question of untouchability and providing opportunities for the development of dalits should be addressed. The important understanding of the problem of discrimination can be understood through Dr. B.R. Ambedkar's writing. His concept of social justice clarifies the problem of inequality in India. He found a way out in the differences among minorities and majority.

## **II. UNDERSTANDING SOCIAL JUSTICE IN THE INDIAN CONSTITUTION**

B. R. Ambedkar focused much upon the existence and the practicality of 'fraternity'. It is evident in his writings about the four pillars of equality, liberty, fraternity and justice as a strong support system of the functioning of a nation with its Constitution. Equality and liberty without fraternity is an impossible target to achieve true democracy. As understood in his words, democracy is another name of equality that provides an equal platform for diverse societies, considering the life of every individual as important. He further explained that "democracy is not merely a form of government but it is primarily a mode of associated living of conjoint communicated experience. It is essentially an attitude of respect and reverence towards fellowman". His fight for social justice is against the discrimination based on the caste because of which an individual was not able to develop in the hierarchical positions and hence he fought against the caste and class differences (Moon, 1989, 52).

If all men are born equal, they carry the same principles considered as common, meant for all. The rights, regulations, righteousness and values be carried forward to all equally (Sontakke, 2004). The aspect of morality comes here how an individual looks upon the other human being in the same society. For Ambedkar, justice is the key to uphold the liberty and equality with a connecting aspect called fraternity. Equal status in the society by all the diverse population is possible only when there is a significant participation. The fraternity among the fellow citizens that could allow the participation in the society irrespective of class, colour, creed and caste (Rodrigues, 2002).

The problem of integrity arises with the existence of the majority and minority differences. Hence Ambedkar suggested a platform through legal dimension, i.e., equal treatment before law, fraternity, and socio ethical justice. To elaborate it further, Ambedkar sought the root cause of the problem that is hindering the development with the restrictions and found the socially segregated society with caste hierarchies as the biggest problem. Hence, he fought for annihilation of caste not only by questioning the discriminative hierarchical structure of Indian society but also urged the subjugated communities to fight against the rigid caste system.

With all the issues and concerns in this diverse society like India, the concept of social justice can be explained in terms of providing equal space socially, economically and politically. It can be understood in the words of Ambedkar: "the term social justice includes everything that the state is required to do in pursuance of the Preamble, the Fundamental Rights of the citizen and the directive principles of state policy" (Purohit and Joshi, 2003, 34). Helping the weaker sections of the society to change from the existing secluded conditions, social justice was considered to be an ideal means of fair distribution of resources. The treatment of unequal individuals needs to be adjusted in proportion to their significant similarities and differences. Hence, the concept of social justice can be explained in any situation, but the best approach in India is in the context of caste inequalities.

## **III. CONSTITUTIONAL ASSEMBLY DEBATES ON RESERVATIONS**

The Constitution makers, in order to safeguard the weaker sections (as mentioned during the period), aimed at providing the preferential treatment. The preferential status in educational, employment and in political bodies; to curb the socio religious and cultural disabilities; protection through legislation from injustice and practices that excludes the communities.

Ambedkar while drafting the Constitution spoke about the minorities that there is a problem with both majorities and minorities regarding the discrimination against the weaker communities. He criticized the majority for not accepting the existence of minorities and also the minorities for perpetuating themselves. As the chairman of the drafting committee of the Constitution, he informed the members that none of the member from the minority group would happily submit their existence to the hands of majority. Hence there were some suggestions for amendments to the Draft Constitution for providing a safe space to the weaker sections in India.

The Reservations are provided for the disadvantaged people and the important question that rose while making the Constitution was, on what basis? For that P.S. Deshmukh (from Central Province) suggested that in order to give reservations to all the communities there should be equal representation. In his words "All that I want is that Parliament and the Legislatures should be free to see that there is a fair proportion of representation for all the classes and the communities in India...I want that there should be a fair distribution" (CAD, VOL. IX. 1949). He stressed on giving fair distribution for larger communities among the disadvantaged sections, for which their representation will help in the advancement of the country as a whole. He further emphasized upon fair distribution of opportunities among SCs, STs, and OBCs.

Whereas discussing on providing the reservations in public services, H.J.Khandekar (Central Province), he himself being a member of SC community, stated that providing reservations is no favor to them. Since the SCs faced brutalities and oppression in different forms and now the reservation entitlements are providing them as a compensation for the past which need not be considered as a great favor. He raised the issue of sub castes and the differences amongst the sub-castes. He further mentioned about each community or the sub-caste has some percentage of these differences, he feared about the discrimination by the majority on minorities within SCs.

The Constitution under various articles provided protective discrimination like Articles 330-332 political reservations, Article 15(4) and 29- Reservations of seats in educational institutions, Articles 16(4), 320 (4), 333 and 335- reservations in government employment. Article 330 provides reservation of seats for scheduled castes and scheduled tribes in the House of the People. Article 332 provides the reservation of seats for SCs and STs in the legislative assemblies.

#### **IV. DISCUSSION ON DISTRIBUTION**

The main controversies with regard to the distribution of reservation benefits can be seen through articles 15 (4) and article 16 (4). In Article 15, Clause 4 was added by the Constitution by the first amendment act 1951. It states that “nothing in this article or in clause (2) of article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens for the scheduled castes and the scheduled tribes” (COI, 2007). The famous case which dealt with this article was *Balaji vs. State of Mysore*.

Article 15 prohibits the discrimination on grounds of religion, race, caste, sex or place of birth (COI, 2007). Article 29 protects the interests of minorities by giving the educational rights. Article 29 (2) says “no citizen shall be denied admission into any educational institution maintained by the state and receiving aid out of state funds on grounds only of religion, race, caste, language or any of them” (COI, 2007). The main objective of article 16 is to create a platform to have the right to equality of opportunity and employment in public offices.

Article 15 (4) envisages the policy of compensatory or protective discrimination. Later in 2006 the article was again amended by adding the Clause 5, which states that “nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the state making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes in so far as such provisions relate to their admission to educational institutions, whether aided or unaided by the state other than the minority educational institutions referred to in clause (1) of article 30” (COI, 2007, p.24). This shows the creation of more opportunities for the people belonging to backward sections of the society in the educational institutions.

The principle of non-discrimination was discussed in article 14 and 15 of the Indian Constitution, by providing the equal space before law. Article 16 gives equality of opportunity in matters of public employment for the discriminated sections of the society. Considering the discriminative practices and to eradicate them, article 16 (2) prohibits the discrimination in government services on the basis of religion, race, caste, sex etc.(COI, 2007).

Providing a space for the political participation with socio economic mobility was considered as social justice. They predicted that this space gives them more strength to come out of the caste clutches and rigid socio-cultural practices. Participation in political processes by giving the voting right to all equally as a major objective was considered as political justice. By providing a platform for the weaker sections to take part in the state services which in turn provide the opportunities to benefit in the economic realms is considered as socio economic justice. According to Nehru, the essence of justice in free India is valued towards benefits to the poor, hungry and wretched. It is required to give them special consideration in order to guarantee the better status and identity; though the people facing backwardness in majority areas and promising the equality among those people is a mirage (Thimmaiah, 1993). The reservations are very helpful not only in case of scheduled castes but also to the other socially backward communities who couldn't avail the entitlements in the development process.

Social justice is significant in the Indian context as social inequality is a serious problem to Indian Democracy. The Indian Constitution accepts the spirit of social justice as it reunites the ideas of individual liberty with equality of all the individuals including the equality of the least advantaged (Purohit and Joshi, 2003). The above concept can be useful to understand the issues of classification of reservations where individuals tend to have their own choice of lives to lead and in support of that, provided the State is helpful to them.

With these safeguards, the concerned scholars discussed if these reservation benefits providing equal result in development? As Marc Galanter pointed, the equality of opportunity provided by the Constitution is not just a word of equality for competitions to be conducted fairly but equality of result (Galanter,1984). The constitutional mandate of providing equality of opportunities implied preferential treatment to those who are unequal.

Justice Krishna Iyer propounded a complex vision of the constitutional commitment to equality. He proposed for the real and not a formal equality by treating unequal's equally. The Backward Classes were classified into four different categories by the Anantaraman Commission of enquiry (1970). Later on through the division or categorization of Mandal Commission (1979), the Backward Classes were classified as ABCD groups. The whole 27% reservations were divided as 11% to A group, 7% to B group, 1% to C group and 1% to D group (Sharma and Reddy, 1982). As there were many castes and sub-castes the division of castes gave equal participation of all the castes in the social sphere.

Sudha Pai (2011) clarifies that affirmative action has enhanced the awareness of caste and sub-caste identity' (. The problem of the group identity is not just with the scheduled castes but also with the Backward Classes (BC), Other Backward Class (OBC) and Most Backward Class (MBC). The struggle for identity not only depends on the problem and rising of the issue publicly and politically; but it also depends on the central and state governments' response to it.

Regarding the discussion on facilitating the provisions for minority classes, K.T. Shah suggested that it should be the unit in the device of proportional representation by which representation is to be secured (CAD VOL VII. 1949). In this regard, Ambedkar discussed as follows; "then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the drafting committee had to produce formulas which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration. If honourable members will bear these facts in mind-the three principles, we had to reconcile, they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of Article 10 (Article 10 is now article 16). Of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity has been embodied in sub-clause (1) of article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now- for historical reasons, been controlled by one community or few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70 per cent of the total posts and under the State, only 30 per cent are retained as the unreserved. Could anybody say that the reservation of 30 per cent as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If honourable members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State"(CAD, Vol. VII, 1949).

This discussion about the inclusion of the most vulnerable communities among the Scheduled Castes or even among the Backward classes highlights the internal segregation and discrimination in sharing the benefits of reservations.

## **V. CONSTITUTIONAL SAFEGUARDS FOR EQUALITY**

The normative response of the Constitutional provisions towards the problem of inequality and discrimination is of two-fold. It that guarantees the rights to a citizen, and for eradication of the existing inequalities, it envisages that legislatures will enact laws. Equality as a concept can be understood with various aspects. Beteille (1983) discussed these aspects under three principles, i.e., egalitarian or numerical principle, meritarian and proportional. The egalitarian principle provides the opportunities to all irrespective of the demand and ability. The meritarian aspect provides a single platform for all the individuals to avail the existing opportunities. There is a difficulty in implementing the principle in an unequal society with abled and disabled persons have to take the opportunities from the same vessel. Thus it can be compensated with the principle of proportional equality. The scale to measure the proportionality is the principle of justice; where justice deals with the individual case depending on the requirement in the process of development. The concept of reservations in the educational institutions, and employment opportunities in public sector along with political participation follows the principle of justice.

The notion of community is strong in Asian societies and in India in particular and the problems and concerns are dealt together as a larger group instead of individual cases. The Constitutional special provisions

were provided based on two principles: Inclusion of excluded and discriminated communities into mainstream social and political space and equalization of opportunities (Pai, 1994). The reservations meant for the upliftment of the weaker sections is not only a compensation for the past injustices and forceful discriminations but also to protect the people from the discrimination and also not to continue with the same into the future. This process of creating a protective space, there is a possibility of having an egalitarian democracy in the nation.

The minorities (Anglo-Indians, Muslims, Sikhs, Scheduled Castes and Tribes) were given special care while making the Constitution. In order to do justice to all the communities they classified the minorities into three groups: 'A' consisted of population less than ½ per cent (Anglo-Indians, Parsees, Plains' Tribesman of Assam), group 'B' consisted of population more than ½ per cent but not exceeding 1 ½ per cent (Indian Christians and Sikhs), group 'C' consisted of minorities with a population exceeding 1 ½ per cent (Muslims, Scheduled Castes)'. The committee came to the conclusion that there are no adequate grounds for departing from the general formula in the case either of the Muslims or of the Scheduled Castes. Regarding to that understanding, "seats be reserved for these communities in proportion to their population". They were confined to no-weightage policy where the minorities for whom representation has been reserved will be allotted seats on their population ratio (Report on Indian Constitution, 2000). With this distribution it is understood that the division between various communities was made by ensueing the principle of proportional equality from the inception.

## VI. CONCLUSION

The Constitution makers struggled for long time and successfully provided the benefits for the overall development of the deprived communities. Basing on the discussions and debates, the constitution basing on the pillars of justice, equality, liberty and fraternity created the democratic space. As the chief architect of the Indian Constitution rightly presented that the essence of the equality, liberty and fraternity is not possible without the vision of justice. The feeling of oneness is important among all the citizens that gives the true meaning of fraternity. Despite the restricted understanding of fraternity among different schools of thought, the real meaning of acceptance and walking towards the goal of democratic space would definitely fight against the caste inequality existing in the country. The major change that one can look forward would be that majority or the developed communities should feel the others or the minorities as one among them and further include the excluded communities in the process of development. The feeling of oneness among the diverse groups not only create a democratic space by reducing the differences but altogether one gets the spirit to perform the just actions.

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