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DISTRIBUTIVE JUSTICE IN INDIA

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Abstract:- Dr. B.R. Ambedkar was a great crusader for the right of the downtrodden and weaker sections of Indian society. By his speeches and writings and organized social activities and movements he tried to create self-respect among lower castes and the untouchables so that they could fight for social justice and be able to undo the indignities heaped on them for the past many centuries. In way connection, this paper will be present the views on Distributive Justice in India.

Keywords: Distributive Justice, Indian society, social justice, economic and political.

INTRODUCTION

Distributive Justice, as provided in the constitution is so unique and communicative we find the concept of distributive justice in the preamble itself. It states of justice-social, economic and political. The structure shows that without social and economic justice, political justice will be illusory. In the background of caste bound social status in Indian society, one cannot have satisfactory means of livelihood, since the sources of wealth are concentrated in few upper straits in the society. Social justice is a tridimensional concept – it is a prime democratic value, a prime social ethic and an instrument of social transformation.

Social justice is the concept of distribution of benefits throughout society. It concerns such matters as the regulation of wages and profits, the protection of person's rights through the legal system and the allocation of housing, medicine and other welfare benefits. Distribution of benefits is known as distributive justice or social justice. In directive principles of State Policy Article 38, 39 A, 40, 41, 42, 43, 43A, 45 and 47 are directly connected with social justice and the philosophy of Dr. Ambedkar.

Dr. Ambedkar was a great crusader for the right of the downtrodden and weaker sections of Indian society. By his speeches and writings and organized social activities and movements he tried to create self-respect among lower castes and the untouchables so that they could fight for social justice and be able to undo the indignities heaped on them for the past many centuries. To achieve the social and economic justice, we have the concept of protective discrimination as provided under Article 15, 16 and 335.

The Indian constitution comprises a basic philosophy that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness and to secure these rights, governments are instituted among men, deriving their just powers from the congener of the governed. In order to realize this objective part-III of the constitution deals with a series of fundamental rights guaranteed to the citizens. The first and foremost is equality before law, Article 14 states that "the state shall not deny to any person equality before law within the territory of India".

The spirit contained in Article 14, sets forth a programme for the reconstruction and transformation of a medieval hierarchical society highlighting inequality into a modern egalitarian society based on individual attainments and equal opportunity for all regardless of one's castes tribe, race, or religion. The concept of equality in clear-cut manner envisages the idea that all men are free and equal and that there should be no discrimination on the basis of religion, race, caste, sex, colour or creed. The reason for this disproportionate distribution of opportunities and utter lack of social justice. Lay in the very nature of caste system, which derived sustenance in social inequalities perpetrated by birth. Thus, the concept of equality clause under Indian constitution is a revolutionary concept which

gives meaning and significance to the democratic way of life and makes the rule of law dynamic.

The makers of the Indian constitution were well aware of political, social and economic inequalities which existed in the country due to historical reasons and were anxious to remove the inequalities. The constitution promises to every person a right to “equality before the law and equal protection of laws”. The scope of Article 14, discloses that it has been designed to provide a great protection against any form of unfair or unreasonable discrimination, whether legislative or administrative.

The notion of protective discrimination aims at equal treatment of unequally, i.e., those who were the victims of man-made aspirates for centuries together now need to be compensated. The truth is that the downtrodden people need protective discrimination to develop their personality and to participate in the mainstream of national life, the way, and the constitution grants and ordains for them. The government is bound to perform a formidable task of balancing the competing claims of different sections of the society. The harmonization is required to resolve this conflict between “need-based claims” of the backward groups to protective discrimination and the rights of the members of advanced sections to which they become entitled because of their performances, contribution and merit.

The compensatory discrimination notion takes into account the inequalities of social, economic and educational background of the people and seeks the elimination of the existing inequalities by positive measures. The constitution of India directs and empowers the government to undertake special measures for the advancement of the scheduled castes it is a directive principles of state policy that state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

The objective of the constitution Act, 1951, is to empower the state to enact special provisions to tune up the spirit of objective resolution of the constituent assembly which states among other things that adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes. The judiciary has endeavoured to shape and reshape the protective discriminatory policy with open mindedness keeping in view of social factors and the felt necessities of the time. Every decision of Indian judiciary reflects the new judicial trend towards the legitimization of the governmental initiatives to level up the social, educational and economic status of the disadvantaged and oppressed sections of the society.

Article 15, clearly mandates that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any one of them. Further, clause (2) of Article 15, states that no citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shapes, public restaurant, hotels and place of public entertainment or (b) the use of wells, tanks bathing ghats, roads and place of public uses maintained wholly or partly out of state funds or dedicated to the use of the general public.

The spirit behind Articles 14, 15 and 16 is that every citizen of the country, wherever he might be living should have an equal opportunity of employment under the state. This opportunities are equally applicable to all, including the scheduled caste. They have their constitutional rights to the effect that they cannot be deprived of the equality of opportunity in matters relating to employment or appointment to any office under the state. Article 17, constitutionally abolishes ‘untouchability’ and forbids its practice in any form. While Article 23, bans forced labour, which was commonly a case of landowners versus peasants or economically oppressed people. Part III of the constitution not only pledges the fundamental rights but it also guarantees their enforcement. Article 32, which itself is a fundamental right, guarantees the right to move the Supreme Court for enforcement of any fundamental right and makes it constitutionally obligatory on part of the Supreme Court to issue appropriate direction, order or writ for the enforcement of the fundamental right.

Part-IV of the constitution, lists a number of directives to be followed by the state, among them, Articles 39 and 46 deserve special mention. Article 39, which is said to be the charter of the economic democracy. The makers of the Indian Constitution for SCs and STs and the Anglo-Indians, under Articles 330, 332 and 334, seats are reserved in the Lok Sabha and State Legislative Assemblies in proportion. Under Article 338, the constitution had provided for the post of a special officer to investigate all matters relating to the safeguards guaranteed to SCs and STs and report to the President about their working under Article 339, the President of India was authorized to appoint after 10 years the Scheduled Areas and Scheduled Tribes Commission to report on the administration of the scheduled areas and welfare of the scheduled tribes. Article 340, empowers the President to appoint a commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to recommend steps to be taken by the union or any state to remove such difficulties and to improve their condition. Constitutional provisions and safeguards were most important for empowerment of weaker section. According Article 23 (2) which empowers the state to make provision for obligatory service for public purpose without any discrimination on the only grounds of religion, race, casts, or any of them.

Article 39 (a) orders that ‘the state shall secure that the operation of legal system promotes justice, on the basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation as schemes or in any other way, to secure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities’. Article 29 (1), deals with right by any section of the citizens residing in India to preserve their language, script or culture. Article 29 (2), prohibits discrimination in matters of admission into education institutions of the

types mentioned therein on grounds only of religion, race, caste, language or any one of them. Article 30(1), provides that all religious and linguistic minorities have the right to establish and administer educational institutions of their choice. Article 30 (2), stops states from making any discrimination against any educational institutions in granting aid on the ground that is managed by a religious or linguistic minorities. Indian constitution gave protective constitutional provisions safeguards concerning secularism, discrimination, untouchability and atrocities.

Such and all religious groups enjoy the some constitutional protection without any favour the philosophy of secularism is embodied in our National charter, the very preamble of the constitution solemnly resolves to constitute India into a secular state. Articles 25 to 28 confer certain rights relating to freedom of religion not only on citizens but on all persons in India, India being a secular state, there is no state religion as of discrimination. Every religious demonstration or any section thereof, has been assured the right: (a) to establish and maintain institutions for religious and charitable purposes (b) to manage its affairs in the matter of religion (c) to own and acquire movable and immovable property and (d) to administer such property in accordance with law.

The philosophy of secularism contained in our national charter discloses clamour for liberation and emancipation from the restrictions of a society based on primitive and vested interests. The liberation of the downtrodden untouchables within the national communities has grown space and all form of discriminations has been scrapped. But today, with the introduction of the secularization of Indian society law has become pre-eminent among the process of social control. The constitution has left every person free in the matter of relation to his creator, if he believes in one. A person is not liable to answer for the variety of his religious views, and he cannot be questioned as to his religious beliefs, by the state or any other person. The basic philosophy behind the concept of secularism in India is that religion and politics are two different areas of human activity, each with its own objectives and tools.

The true commitment behind the philosophy of secularism is that state is not going to make any discrimination whatsoever on the ground of religion against any person professing any particular form of religious faith. The idea of secularism symbolizes that the state is concerned with the relationship between man and man not with the relation man and God which is the matter of individual conscious. Thus, every person living in India has been assured freedom of religion. The scheduled castes people have also been brought at equal footing with the rest section of the society.

The preamble of the constitution clearly envisages that one of the cherished objects is to secure all citizens, liberty of thought, expression, belief, faith and worship. The constitutional freedom of religion upholds the ground norms of equality by referring to all persons and qualifying the very 'entitle' by the adverb equality. To quote Jawaharlal Lal Nehru, "so far as India is concerned we have very clearly stated that both as government and otherwise that we cannot think of any state which might be called a communal or religious state. We can only think of a secular, no communal, democratic state in which every individual to whatever religion he may belong has equal rights and opportunities. Our constitution gave freedom of religion but every time struggle between religions in some parts of India.

The directive of Article 17, clearly lays down that "untouchability" is eliminated and its practice in any form is forbidden and the enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. Both Gandhi and Ambedkar addressed themselves to the problem of the removal of untouchability and the uplift the untouchable. Dr. B.R. Ambedkar viewed untouchability as an institutionalized expression of socio-religious oppression and exploitation by the dominant elements. He traced the roots of the problems in the structure of the Hindu society and characterized it as a by product of the Hindu four Varna system. For many years, he tried to improve the lots of untouchables by means of struggles. Gandhi repeatedly harped on the evils of untouchability. He himself adopted a Dalit girl as his daughter, he voluntarily decided to live with the untouchables to become one with them. He symbolically called untouchables Harijans, i.e., people of God. He started the Harijan Sevak Sangh to launch programmes to remove untouchability and improve the economic condition of the untouchables. The spirit of Article 17, comprises the philosophy of Gandhiji's dream of cherishing a casteless society in India. It is in this background that Article 17, has been designed to do away with untouchability. The primary objective is that inequities social customs and disabilities based on the feeling of casteism is abolished from our country and secure to all the citizens of India "Social Justice and equality of status" and also to promote among them all "fraternity" assuring the dignity of the individual and unity of the nation.

Article 17, has practically given a severe death blow to the century old practice of untouchability. Disabilities or for refusal to admit persons to Accordingly, the untouchability Act, 1955, has been brought into existence with a key note that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. It prescribes punishment which may extend to imprisonment of six months or a fine which extend to 500 rupees or both, for any one enforcing on the ground of "untouchability" religious disabilities, social hospitals, etc., for refusing to sell goods or render services, and for any other offences arising from the untouchability. The importance of protection of Civil Right Act, 1955, lies in the fact that, it not only aims at elimination of untouchability among the Hindus, but it equally aims to abolish it among the other religion also, the Scheduled Caste and Scheduled Tribes Act, 1989, clearly states that, whosoever commits an offence of atrocities on the scheduled Castes shall be punishable with imprisonment for a term which shall not be less than six months but

which may extend to five years with fine the government has been empowered to impose collective fine on the inhabitants who are abating or harbouring persons indulged in the Commission of offences under this Act. The Act prohibits application of the provision of anticipatory bail provided under section 438, of the criminal procedure code. Both Central and State Governments or any other authority are protected from any suit or proceeding against the action taken in good faith. Our constitution have safeguards against untouchability but even today it is in practice by society in different ways in many parts of India.

As mentioned earlier, the Dalits have been the chief providers of labour which created the ancient Indian agricultural civilization that has continued to this day. The system of caste had been devised to destroy their moral and capacity to organize resistance. For many centuries the Indian caste system was able to operate as a perfect instrument to keep the 'untouchable' castes and plains tribes under total subjugation as providers of labour for agriculture and other purposes. Many of the cases of atrocities arise from agricultural wage issues, with Dalit agricultural labourers demanding, not the statutory minimum wages. Which are low by objective standards but something between them and their prevalent wages. And larger landholders employing wage labourers refuse to play even such minimal-level wages. So many Dalits killed by dominated communities across India, like in Tamil Nadu, Andhra Pradesh, Bihar, Maharashtra, etc., connected with the state of absolute or relative landlessness of the Dalit, is their land hunger. The demands have triggered off some of the atrocities, even though the Dalit efforts have been according to the law of revenue rules and national policy. Some examples are Vijayanagar, Sriganganagar district of Rajasthan where landlords attacked three Dalit families and gang-raped two Dalit women, in June 1983, as penalty for complaining about land grabbing by landlords. Where as in Golana, Kheda district of Gujarat, where four Dalits were killed and 20 injured on 25-01-1986, the was land granted by the government to Dalit agricultural labourers, who were also released from bonded labourers. Some of the atrocities are related to lack of facilities essential or access to in dalit localities. The situation of the Sah-Dalit tribes is marked among others, by loss of their lands to individuals who delay the laws, aided by state inaction and on account of longer government projects, of which the cost is borne by the Sah-Dalit tribes and the benefits goes to others. This goes hand in hand with the deprivation of their age old traditional rights in the tribal areas to this is added the increasing burden of agricultural and migrant labour. A new phenomenon is atrocities arising from no specific cause other than dalit assertion of self respect. A typical example is the case of Tsundur, Guntur District, Andhra Pradesh. All these are reflected in the pattern of atrocities on them.

In India a series of steps were taken to remove the discrimination, exploitation and atrocities on untouchables. Untouchability and social discrimination, which caused sever social disability, were constitutionally abolished and legally banned and a series of steps were taken for the improvement of their lot through constitutional safeguards for deprived and weaker sections empowerment.

The National Commission for the SCs and STs has published two reports which delineate that the problem of atrocities on the SCs and STs is still wide spread throughout the country. In fact, both the report have exposed an increasing trend of atrocities on SCs and STs. The nature of atrocities reveals that in states like Madhya Pradesh, Bihar, Gujarat, Andhra Pradesh, Kerala Uttar Pradesh, Karnataka, Maharashtra, it is quite substantial. The most prominent of all preferential policies is the reservation of seats in elective legislative bodies. The constitution of India precisely provides reserved seats in proportion to their number for Scheduled Caste and Scheduled Tribe for the promotion of their political participation. According to Article 330, which provides the reservation of seats for Scheduled Castes and Scheduled Tribes in the house of people Article 332, provides the reservation of seats for Scheduled Castes and Scheduled Tribes in the legislative assemblies of the states. Article 335, is of special importance because it provides for the consideration into claims of Scheduled Castes and Scheduled Tribes to be consistent with maintenance of efficiency of administration. 73rd and 74th constitutional amendments provided reservation in local bodies for Scheduled caste, Scheduled Tribes and Backward class. For their empowerment, the reservation of seats in legislatures has been provided for the reason that the Scheduled Caste and Scheduled Tribes were in a disadvantageous position and they could not have competed with the advanced section of the society on the footing of the equality. The constitution provision of reserved seats is complemented by statutory provisions to enhance political participation by weaker section.

CONCLUSION:

The constitution of India incorporated Dr. B.R. Ambedkar ideologies which resolved to establish a new social order based on justice – social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity and fraternity assuring dignity of the individual and integrity of nation. The fundamental rights do not merely contain civil and political rights traditionally known as civil liberties such as freedom of speech and expression, religion, right to personal liberty, but also contains provision such as abolition of untouchability, prohibition of traffic in human beings and forced labour and prohibition of employment of children in hazardous employment. These fundamental rights are social rights. The real strength is also given through directive principles of state policies. These provisions of Indian constitution are the paradigm of Baba Saheb's ideology of distributive justice. Baba Saheb Ambedkar was the 'Architect' of our constitution. Dr. B.R. Ambedkar thoughts

were full of justice from preamble to other provisions in the constitution for people empowerment.

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