

LAW, EQUITY AND SOCIAL CHANGE –AN INTROSPECTION

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Abstract

The importance of equity to development is well recognized. Equity is a dream to be reached for the status of an egalitarian society and law plays a key role in it. Decades of inequities were changed and reformations were brought by 'law', which is considered as an excellent engine useful for achieving the status of model society. The very idea of equity comes from the idea of moral equality. It encompasses the equal life chances and equal concern for all which necessitates a power balance in the political, economic and social spheres. If this is not addressed properly, this inequity which itself is negative in nature, will radiate the same on growth of the society. In this regard, the role of law is undisputed as the law is important for a society, it being a norm of conduct for citizens and guidelines and order upon the behavior of people to sustain the equity. The rule of law cannot co-exist along with arbitrariness.¹ Equity too presupposes the same and excludes arbitrariness. Without law there would be chaos and it would be survival of the fittest and there would be conflicts between social groups and communities. Thus law leads to social change through a change in the system of social relationship. Causing alterations in the structure and functions of the society, law stands in the cases like provisions for compulsory educational system or the abolition of the of untouchability, child marriage or ensuring of equal wages for both men and women etc., as an agent of modernization and social change. Thus law is instrumental in leading to equity and it is pivotal in introducing changes in the societal structure and relationships. This paper explains the role of law in bringing equity and analyzes some of the legislations in this context.

Key words: Law, society, equity, role.

“Equity in its true and genuine meaning, is the soul and spirit of all law; In this, equity is synonymous to justice; in that, to the true sense and sound interpretation of the rule.”

Blackstone

INTRODUCTION

The role of equity to bring about a holistic development is well recognized. The word equity implies a need for fairness in the distribution of gains and losses, and the entitlement of everyone to an acceptable quality and standard of living. It's not exactly as equality. While equity necessitates qualities of justness,

¹ *Bachchan Singh v. S State of Punjab*, A.I.R 1980 SC 1325.

fairness and impartiality, equality is about equal sharing and exact division. Social equity is a concept that applies concerns of justice and fairness to social policy. It is a dream to be marched for by any society so as to reach the status of an egalitarian society. The very idea of equity comes from the idea of moral equality, that people should be treated as equals.² It encompasses the need of equal life chances, equal concern for people's needs and ensuring fair competition among all. In order to achieve this, power balances in the political, economic and social spheres must be regulated and all the patterns of inequality should be controlled. If this is not addressed properly, this inequity which itself is negative in nature, will radiate the same on growth of the society. It is a contribution of many factors and among them law plays a key role. This paper explains the role of law in bringing equity and analyzes some of the legislations in this context.

LAW FOR EQUITY?

Equity is also understood as including social Justice within its circle. As Aristotle had pointed out equity and justice 'coincide.'³ Social justice is a mere species of genus 'justice' which also includes political and economic justice.⁴ Therefore, Equity is more expansive in scope and arguably includes within itself the concept of Social Justice. In this paper the function of law to bring out various aspects of justice is discussed, with a focus on social justice. The decades of inequities were changed and reforms were brought by 'law', which is considered as an excellent engine useful for achieving the status of model society. In this regard, the role of law is undisputed as the law is important for a society, it being a norm of conduct for citizens and guidelines and order upon the behavior of people to sustain the goal of equity. The basic postulate of rule of law is that it excludes arbitrariness.⁵ Equity too presupposes the same and excludes arbitrariness. Thus rule of law leads to equity. This can be well established by the changes brought into Indian society through the Constitution of India and many other legislation. The Constitution commands justice liberty, equality and fraternity as supreme values to usher in the egalitarian social economic and political democracy. Our constitution through Article 14 is ensuring idea of moral equality which forms the heart of the concept of social equity, that people should be treated as equals.⁶

The doctrine of equality is a dynamic, and an evolving concept having been referred in the preamble and the various Articles⁷ enabling the society to reach "equality of status and of opportunity." Many Articles in Part IV⁸ also contemplates minimizing the inequalities in income and eliminating the inequalities in status, facilities and opportunities not only amongst individuals. It was this theory of social

²HarryJones, "Equity in development Why it is important and how to achieve it", (<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4577.pdf>). (Visited on 15/ 11/2018).

³ C. Douzinas, *The End of Human Rights*. (1st ed. Oxford: Hart Publishing, 2000) 4.

⁴ D.D.Basu, *Commentary on the Constitution of India*. (8th ed. v. 1. Agra: Wadhwa and Company, 2011), .419

⁵ *Bachchan Singh v. S State of Punjab*, *Supra* n.1

⁶ Indian Constitution, Art.14, "The state shall not deny to any person equality before the law or equal protection of the laws with in the territory of India."

⁷ Indian Constitution, Art. 14 to 18.

⁸ *Ibid.* at Arts .38, 39 , 39A, 41 and 46.

justice of our Constitution spread the seeds of distributive justice, demanding a fair distribution of the social benefits and burdens among all. The principal of equality before law and equal protection of law necessitate that socio-economic inequalities and disabilities need to be redressed to bring socially disadvantageous and economically exploited at par with other. “The concept of social justice thus takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities”⁹ The concept of social justice which the Constitution of India wanted to establish accommodates diverse principles essential for the growth and development of personality of every citizen and this itself is a manifestation of principle of social equity. The equity has ‘justice’ as one its important ingredient of it. It is undisputedly interpreted by the highest court of our country too that, social justice is one of the sub-divisions of the concept of justice.¹⁰ Rule of law therefore, is a potent instrument of social justice to bring about equality in results.¹¹

Without law there would be chaos and it would be survival of the fittest and there would be conflicts between social groups and communities. Thus law leads to social change through a change in the system of social relationship. It ensures social processes and social interactions to facilitate this ‘social change’ to bring desirable variations in social institution and social organization. Causing alterations in the structure and functions of the society, law stands ahead as a catalyst of social equity in the cases like provisions for compulsory educational system or the abolition of the of untouchability,¹² child marriage¹³ or ensuring of equal wages for both men and women¹⁴ etc., is an agent of modernization and social change. Thus law is instrumental in leading to equity and it is pivotal in introducing changes in the societal structure and relationships. Equality and dignity of person are corner stone of social democracy, without which social equity cannot be reached, which are well addressed by the legal system of the country.

EQUITY IN PRE-INDEPENDENT LEGAL SYSTEM

Even before the advent of the British rule, equitable principles were there in the Indian legal system. For example, both Hindu law and Islamic law recognized through popular usages, *vyavahara*,¹⁵ and juristic preference *istihsan*.¹⁶ The British too simultaneously recognized the principles of equity¹⁷ wherein equity was imbibed in the juridical framework in India. *Adalats* also adjudged according to principles of justice,

⁹ Dr. P.B. Gajendragdkar, *Law and Liberty and Social Justice* (1977) 77- 79.

¹⁰ *M.Nagraj v. Union of India*, AIR 2007 SC 50

¹¹ Dr. K. P. Singh., *Supreme Court on human Rights and Social Justice* (Allahabad law agency) (2001) 48.

¹² Indian Constitution, Art. 17.

¹³ The child marriage restraint act, 1929, The Prohibition of Child Marriage Act, 2006

¹⁴ As part of its Directive Principles of State Policy, the Constitution of India through Article 39 envisages that all states ideally direct their policy towards securing equal pay for equal work for both men and women, and also ensuring that men and women have the right to an adequate means of livelihood.

¹⁵ meaning, ‘removal of various doubts

¹⁶ meaning ‘to approve’

¹⁷ M. Gandhi, *Equity, Trusts and Specific Relief*. (4th ed. Eastern Book Company, 2010), 28.

equity and good conscience.¹⁸ Supreme Courts headed by English judges also administered English Common Law as liberalized by equity.¹⁹

ANALYSIS OF THE IMPACT OF LEGISLATIONS IN BRINGING EQUITY

As said before, equity presupposes all sorts of discriminations including gender. Only if it is ensured that women, who forms the majority of the population is given ample and equal opportunities to grow, then only this concept will be perfectly enjoyable. The right to elimination of gender based discrimination is very vital for attaining economic empowerment. There are many legislations in this regard. Some of them are mentioned below. It was the Hindu succession (amendment act) 2005 ensured property rights in a joint Hindu family governed by the mitakashara law for the daughter of a coparcener.²⁰ The women's limited ownership of property was converted into full ownership in pursuance of article 15(3).²¹ Reservation for women is another area and it is an efficient tool at the hands of women providing opportunities to in male dominated society is equally strong.²² Efforts have been taken to provide for reservation seat in election to the panchayats and municipalities.²³ Many other Acts relevant in this context are the dowry prohibitions act 1961, the Muslim women protection of right on divorce act 1986, the equal remuneration act 1976, the maternity benefit act 1961, the medical termination of pregnancy act 1971, the child marriage restraint act 1976, the Immoral trafficking prevention act 1986, the prenatal diagnostic technique (regulation and prevention of measure act 1994 and the protection of women from domestic violence act 2005.

CONCLUSION

The above description shows that law is an effective tool in the process of social transformation. It brings about a social change by diluting the caste inequalities, supporting the weak and vulnerable sections, ensuring the dignified existence of all. It influences its economic structure, political and social dimensions. In spite of the inadequacy of the anticipated change, it may at least create certain preconditions for social change. But those who administer law will be more efficient to bring out the desired change, if they are concerned about the various dimensions of equity. Because, "without an awareness of and concern for social equity, administrators might simply follow the letter of the law or fail to question whether the law should be changed. The concern for social equity also can guide administrators in the exercise of discretion under the law."²⁴

¹⁸ M.P. Jain, *Outlines of Indian Legal and Constitutional History*, (6th ed. Wadhwa and Company, 2006)

¹⁹ *Ibid.*

²⁰ Section 6 of The Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005

²¹ Section 14 of Hindu succession 1956,

²² I. Sheetal Mishra, "Gender Justice the Constitutional perspective and Judicial Approach" AIR, APR Journal 53 (2006) 53.

²³ Indian Constitution, Art. 243D.

²⁴ James H. Svara and James R. Brunet, "Social Equity Is a Pillar of Public Administration", https://www.jstor.org/stable/40215707?seq=1#page_scan_tab_contents (Visited on 15/ 11/2018).