

Role of Law and Special Legislation to usher in Social Equity

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Social Equity- Role of Law

Abstract:

Social justice, as envisaged in the Constitution of India, denotes equity among citizens and prescribes equal treatment for all without any social distinction based on caste, colour, race, religion, sex, etc. Equity is to be ensured by provision of equal opportunity to all in respect of social and economical activities. Special provisions are also to be made for women and children, disabled persons and for advancement of social and economically backward classes and for SC/STs.

Towards this end, several legislations have been enacted in India, giving effect to the fundamental principles and other special provisions enshrined in the Constitution. They may be broadly indicated under the following categories:

- *Equality before law*
- *Equality of opportunity in employment*
- *Reservation policy*
- *Abolition of untouchability*
- *Disability equality*
- *Welfare of women and children*

The following study is an attempt to assess the achievements in this regard.

Keywords: justice, freedom, equality, community development, debt relief.

Introduction:

Social justice denotes equal treatment of all citizens without any social distinction. It means absence of special benefits to particular sections of society but improvement in the conditions of the under-privileged and provision of equal opportunities for all for development. Right to equality is a fundamental right under the Constitution of India.

Right from the commencement of the Constitution, concerted steps are being taken by Central and State Governments towards this end. Necessary legislations have also been enacted to ensure development, justice and equality. These are discussed below.

Equality and Equal protection of law:

The Constitution ensures right to equality before law and equal protection of law. All citizens shall be given equal protection of the laws and prohibition of discrimination irrespective of birth, sex, religion, caste and race. This means that all should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for same kind of action should be the same for all without any discrimination. Equal protection of laws is meant to be an obligation on the State to ensure the same for all by bringing in necessary social and economic changes.

Constitutional Provisions:

Articles 14-18 of the Constitution deal with the right to equality and others deal with social justice.

Article 14 – embodies the general principle of equality before law and prohibits unreasonable discrimination.

Article 15 – relates to prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

Article 16 – guarantees equality of opportunities in public employment.

Article 17 – abolishes untouchability

Article 18 – abolishes titles and prohibits conferment (and acceptance) of titles.

Article 19 – provides rational basis for adjusting rights of individuals to suit the requirements of public good.

Articles 23&24 – provide protection from exploitation of labour force

Article 31 – makes provisions in respect of right to property and deals with the problem of compulsory acquisition of property.

Article 38 – requires the State to promote people's welfare

Article 39 - secures provision of equal justice for all and, in particular, provides for free legal aid.

Article 41 – ensures citizen's right to education, work and public assistance in case of unemployment, old age, sickness, disablement and other cases of want.

Article 42 – stresses the securing of just and humane conditions of work and maternity relief.

Article 43 – stresses the need for living wages.

Article 46 – emphasis the importance of promotion of educational and economic interests of schedule castes and tribes and other backward and weaker classes of society. Special provisions are also to be made for the welfare of women and children.

Social justice scenario:

This consists of two streams of entitlements.

- a) Sustainable means of livelihood, such as shelter, clothing, food, education, employment, health and other resources.
- b) Social and political participation, promotion and empowerment of the right to take part in the government and access to information and communication and to all available means of justice.

The present scenario is such that, in these 70 years of freedom, we have had several 5 year plan, welfare schemes and plethora of laws (and rules) to achieve the stage of development envisaged by the Constitution.

Comprehensive legislation is an effective measure to achieve the above ends. Given below are brief details of the legislative measures undertaken by governments to ensure the following for all citizens

- Life liberty and personal security
- Rights in civil society
- Rights in the polity
- Social, economic and cultural rights

Special Legislative measures:

SC&ST related legislations

SC&ST (Prevention of Atrocities) Act, 1989 emphasises the intention government to deliver justice to these communities to enable these communities to live with dignity and self-esteem and without fear of violence or suppression by the dominant castes. The practice of untouchability was made a cognizable and non-compoundable offence and strict punishments were also provided. Various types of atrocities and offences were also mentioned in clear terms. The Act did not bring about the desired results fully and number of cases of misuse of the Act were also imported. With the result that the Supreme Court, in March 2018, decided an instant case of such misuse by banning immediate and arbitrary arrest of persons (accused under

the Act) without proper enquiry. However, Parliament passed, in August 2018, the SC/ST(POA) Amendment Bill to bypass the SC verdict by making provisions for doing away with prior enquiry for arresting persons charged with insulting/injuring a SC/ST member.

Backward classes related legislation

National commission for backward classes was formed as a constitutional body (under Article 338B) pursuant to the provisions of the National Commission for Backward Classes Act, 1993.

Separate commissions for the welfare of the Backward Classes are also formed by several State Governments.

Abuses against BC's and ST & SC's are numerous and take different forms.

They include:

Socio, Economic discriminations

Beating, slashing and other forms of torture

Arson – burning the huts of the community

Violence against women (rape, gang rape, parading of women naked through streets)

Punishing and embarrassing the families of women (killing female children at the time of birth)

Bonded labour

Denial of rights especially land rights

Custodial abuse

Lack of educational opportunities and employment sources.

Constitution of India has abolished untouchability and has made special provisions for the welfare of BC's and SC/ST's. The POA Act and rules thereunder have criminalised the practice of untouchability and other abuses against these communities. They have provided severe and grave penalties for violations. Measures have been put in place to extend to them the freedom to use public wells, schools, burial grounds and roads and also to enter temples for worship. Adequate legal measures have been taken to provide reservations for them in educational institutions and portals of employment, both at entry points and for promotion. Elementary education has also been made compulsory. Special political representation has also been secured for them.

Legislations towards the welfare of Women and Children

Some of the legislations in this regard are given below, their nomenclatures, themselves, are self-explanatory.

Women:

The commission of Sati Prevention Act

Hindu Marriage Act

Dowry Prohibition Act

Child Marriage Restraint Act

Immoral Trafficking Prevention Act

Medical Termination of Pregnancy Act

Prenatal Diagnostic Technique Act

Maternity Benefit Act

National Commission for Women Act

Prevention of Women from Domestic Violence Act

The Sexual harassment of women at work place (Prevention, Prohibition and redressal) Act.

Compensation Scheme for Women victims/survivors of sexual assault / other crimes, 2018

Equal Remuneration Act

Children:

Commission for Protection of Child Rights Act

The Infant Milk Substitute Act

The Juvenile Justice (Care and Protection of Children) Act

Protection of Children from Sexual Offenses Act

These measures have brought about elimination of gender – based discrimination in domestic and social life and economic empowerment. Women have been enabled to lead a life of dignity, freedom and economic independence. The Hindu Succession Act ensures for women devolution of interest in coparcenary property providing rights to a daughter in a family equal to those of a son, right from birth.

Reservations for women are provided for seats in elections for Panchayat, Municipalities and other local bodies.

Disability legislation:

Disabled persons include persons with physical, visual, hearing, speech, locomotor and mental disabilities. Most of these persons can lead a better quality of life if given equal opportunities and effective access to rehabilitation measures. With this end in view, the following legislations have been enacted.

- **Mental Health Act 1987:** Objectives of this act are mainly;
 - Establishment of psychiatric hospitals and nursing homes; licensing and supervising of such private facilities.
 - To provide for custody of mentally-ill persons and to protect society from dangerous manifestation of such persons.
 - To regulate procedure of admission in such hospitals and discharge therefrom
 - Central and State Governments have established Authorities for mental health services for achieving these objects.
- **The Rehabilitation Council of India Act,1992(as amended in 2000):**
 - This act provides for establishing Rehabilitation Council and an executive committee thereunder. For the purpose of monitoring the training of rehabilitation professionals and personnel, promoting the result in rehabilitation and special education. The disabled persons have the right to be served by trained personnel and be given special education for the purpose of fruitful rehabilitation.
 - Two other acts have also been enacted namely; Persons with Disabilities (Equal opportunities, Protection of rights and full participation) Act,1995;
 - National Trust for welfare of persons with Autism, Cerebral Palsy, Mental retardation and Multiple disabilities Act,1999.

Several programmes are being implemented under these acts by Central and State Governments with a view to improve the living conditions of these persons.

Conclusion:

In December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) which declares “All Human Beings are born free and equal in dignity and rights and everyone is entitled to all rights and freedom without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Our Constitution has incorporated all these principles in the preamble and articles on fundamental rights. The foregoing details have indicated the several steps taken by the Government to ensure these principles of equality and social rights. In the course of 70 years of freedom, it is seen, emancipation of women, safety and security of children,

development of the depressed and backward classes, amelioration of living conditions of disabled persons have all been achieved to a considerable degree.

