

Constitutional Compulsions for Social Justice

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1. Backdrop to the Theme: A Prophetic Warning

On November 26, 1949, the Constituent Assembly of India adopted and enacted the Indian Constitution. A day before, i.e., on November 25, 1949, Dr. Ambedkar addressed the Constituent Assembly. An extract from this address is given below:

"On 26th of January, 1950 we are going to enter into a life of contradictions: In politics, we will have equality, and in social and economic life we will have inequality. In politics, we will be recognising the principle of one man-one vote, and one-vote-one value. In our social and economic life, we shall by reason of our social and economic structure, continue to deny the principle of one-man one-value".

"How long shall we continue to live this life of contradiction? How long shall we continue to deny equality in our social and economic life? If we continue to deny it long, we will do so only by putting our political democracy in peril. We must remove these contradictions at the earliest possible moment, or else those who suffer from inequality will blow up the structure of our political democracy".

The extract of this address sets the tone for what consequences would follow if the country ignores the domain of social and economic justice by placing emphasis only on political democracy.

Against this backdrop of prophecy, the issues examined in this paper are as detailed below:

- Why was India said to be entering into a life of contradictions on January 26, 1950?
- Why not to cast the inclusive and exclusive development paradigms in the perspective of Development Economics?
- How are the major domains of our Constitution erected to ensure social and economic justice?
- What are the evidences on the use of major domains of our Constitution to ensure social and economic justice?
- Does 21st Century belong to the deprived? What evidences to contrary? What could be the rationale for social and economic justice?
- What could be the components of a larger canvas for social and economic justice to the deprived?

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2. Development of the Laggards: Paradigms on Inclusive and Exclusive Development

The major challenge of the present century is to bring the laggards (the bypassed social groups, sectors, regions and so on) into the main stream of development orbit. In fact in addition to the emphasis on "Build on the Best", the development focus should be more on the strategy of "Build on the Rest". This is the theme of inclusive and exclusive development. The discipline of development economics would provide some insights into the theme of inclusive and exclusive development paradigms.

- **Paradigm 1:** Boeke's Riddle on development inclusion of Portuguese and exclusion of Indonesians has been explained in terms of cultural differences between these two nationals.
- **Paradigm 2:** Development is always gradual, continuous and smooth, and development benefit groups, sectors and regions. Development exclusion is only a temporary aberration, and bound to diminish over a period of time.
- **Paradigm 3:** Development is neither smooth nor uniform. It is a process of disequilibrium, involving jolts, shocks and breaks. Backwash effects are said to be more dominant than trickledown and spread effects. Because of backwash effects, the exclusion of the already excluded gets reinforced.
- **Paradigm 4:** Development is always selective. Hence development dualism is stubborn, persistent and pervasive, if development interventions through policy instruments are not made. Ghetto development strategies are needed to lead the excluded to inclusive development orbit. Hence the need for Constitutional compulsions for positive decimation and affirmative action.

3. Major Domains of Constitutional Commitment to Social and Economic Justice

The premise that Indian Constitution has committed to social and economic justice in addition to political democracy is quite evident from its three domains.

3 A. This first domain is the very Preamble of the Constitution, where it is adumbrated that

we the people of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure all its citizens:

**Justice: Social, Economic and Political
Liberty
Equality
Fraternity**

With these noble causes, the Constituent Assembly adopted and enacted the Constitution on November 26, 1949.

Two elaborations on this Preamble are relevant:

- Political democracy is only a means. But the ends are social and economic justice.
- Amartya Sen defines justice as elimination of injustice in the areas of food, health, education, women, Dalits and minorities. In fact, elimination of injustice is a part of inclusive development.

3 B. The Second domain is the Directive Principles of State Policy with its Nobility and Promise. Two examples would illustrate the promise of Directive Principles to ensure economic and social justice. The first one: The opera of the economic system does not result in concentration of wealth and income. The second one: As per Article 41, it is states' obligation to ensure the provision of adequate means of livelihood to its people. Article 47 stipulates: The state shall regard the raising of the level of nutrition and standard of its people, its primary duty among others.

Even though the Directive Principles cannot be enforced in the Court of Law, but these are fundamental in the Governance of the Country.

3 C. The third Domain is the Fundamental Rights: These Fundamental rights are the building blocks of political democracy. The basic question is: Could these Fundamental rights which are enforceable in the Court of Law be interpreted in support of social and economic justice. However, it depends

on mobilizing the concept of radical jurisprudence. Further the disaggregate reading of the Constitution should be avoided, the spirit of the Constitution in its totality should be kept in view, and the adjudication authority should go all out for transformative constitutionalism to ensure social and economic justice.

Again the pertinent question is how to interpret the spirit of our Constitution. The spirit of Indian Constitution could be understood by reading the proceedings of the Constituent Assembly. One could recapture the romance, the conflicts, the clashes, the diversities, the turbulence, the candour, the contradictions and the quality of the debate in making our constitution.

Two observations of the Members of the Constituent Assembly could provide perspectives into the spirit of our Constitution. First, after all, a Constitution cannot be judged merely by its texts. So, it is not the Constitution that matters, but it is the men who work with the Constitution, and the spirit with which they work. Second, what is after all a Constitution? It is a grammar of politics, if you like it. It is a compass to the political mariner. However good it may be, by itself, it is inanimate, it is insensitive and it cannot work by itself. It is for us to work with it, but also use it not merely in letter, but also in spirit. The spirit of our Constitution could very well be appreciated, if we read carefully the address of Dr. Ambedkar on November 25, 1949, a day earlier to the adoption and enactment of our Constitution by the Constituent Assembly.

One more facet of spirit of a Constitution could be gauged from the observation of Joseph Story, the great American jurist on American Constitution: "The structure of the Constitution has been erected by architects of consummate skill and fidelity. Its foundations are solid. Its compartments are beautiful as well as useful. But it may nevertheless perish in an hour by the folly or corruption or negligence of its only keepers, The People".

4. Some Evidences on the Commitment of Indian Constitution to Economic and Social Justice

To the question: Whether our Constitution has

commitment the Country to Social and Economic Justice, in addition to political democracy, (But there is a tyranny of majority even in political democracy). The answer is emphatic yes. It is evident in the Preamble, Directive Principles of State Policy, and even in Fundamental Rights, depending on the use of the concepts of radical jurisprudence and transformative Constitutionalism.

There are enough evidences accumulated on the use of the provisions of our Constitution to ensure social and economic justice. To cite some: Reservation policy for the deprived, land reforms, labour reforms including social security, and many Right-Based Initiatives such as Right to Information Act, Right to Education Act, Right to Employment Act, Right to Food Act, and special provisions for addressing the problem of development imbalances in regions of a State, and so on. Some of the "needs" have been transformed into Rights.

How Constitutional compulsions have been used effectively to pass Right to Food Act need some elaboration. Right to Food campaign started sometime in early 2000s. Starvation deaths in Rajasthan, Orissa and Jharkhand triggered this campaign. The People's Union for Civil Liberties provided leadership for this campaign. In the month of May 2001, there was a Public Interest Litigation (PIL) in the Supreme Court. In January 2002, there was a Public Hearing: "**Voices of Hunger**" organized by NGOs. Further, there was a concern on visibility of India in Global Hunger Index and in multidimensional deprivation, and on higher levels of child malnutrition than Sub-Saharan Africa as reflected in National Family Health Surveys. All these and many more, had led to a new interpretation of Article 21: Right to Life of our Constitution, leading to the judicial interpretation that Article 21: Right to Life encompasses Right to Food, and to treat food as a part of Fundamental Rights. It is recalled that Constitution has to be read in its totality, not as a disjoint pieces. Hence, if Articles 39 (A) and 47 are read along with Article 21, Right to Food becomes a part of Fundamental Rights. Hence Food Security has become one of the Right-Based Acts, reminding

both Central and State Governments that Right to Life and food are both Constitutional and ethical concerns. The judicial new interpretation of Article 21 is in accordance with what the philosopher John Stuart Mill observed: I am now convinced that no great improvements in the lots of mankind are possible until a great change takes place in the fundamental Constitution of their modes of thought. This is exactly what is required in interpretation of the spirit of our Constitution.

Yes, considerable progress in social and economic justice in India has taken place. However, there are evidences of “injustice” also: Income and consumption inequalities, gender development disparities, regional development imbalances, poverty, and malnutrition. Even in 2017, India’s rank in Global Hunger Index is 100 out of 115 countries surveyed and so on. In this context, two perspectives of Amartya Sen are relevant. **First**, what is the idea of justice: As already stated, elimination of injustice in the area of food, health, education to Dalits, tribals, minorities and women. **Second**, what is the right concept of freedom in a democracy?

Freedom from:

- Hunger
- Illiteracy
- Gender discrimination
- Social humiliation
- And so on.

5. Does Twenty-First Century belong to the Deprived under LPG Regime?

Earlier centuries did not do much to envelop the deprived into the fold of development orbit, but how about twenty first century during which the country has been on high growth trajectory. The answer to this question is No, because, there are enough evidences to argue that LPG Regime has reinforced the privileges of the privileged, and exclusion of the excluded. Our faith in myth and miracle of market economy has led to the further exclusion of the excluded, due to lack of entitlements, assets, and capabilities. In fact, development space for the deprived has decreased, suggesting the need for

enhanced drive for social and economic justice. For example, reservations for the deprived in the management quota seats of professional colleges are denied. Public sector has been downsized, and “barriers” to entry into private sector cannot be surmounted by the deprived due to social and economic disadvantages confronting them. All these, and many more have given rise to many apprehensions: 1. Whether Preamble of the Indian Constitution and Directive Principles of State Policy are put to the back burner? 2. Whether the dictum greatest happiness of the largest number is replaced by the greatest happiness of the smallest number.

Why Social and Economic justice?

This question has been answered by Dr. Ambedkar in his address to Constituent Assembly on 25th of November 1949. To recapitulate the theme: How long shall we continue to deny equality in our social and economic life? Those who suffer from inequality will blow up the structure of our political democracy. In addition to this, there are three other reasons: First, there is a brewing anger against social and economic exclusion. Hence there is a forward-looking rationale (i.e., social and political stability), and backward looking rationale (i.e., to compensate for past injustice). Second, two propensities of human behaviour as articulated by Adam Smith in his book, Theory of Moral Sentiments. First, man by nature is a commercial animal. Second, however selfish man may be, he has concern for the happiness of others also. Perhaps, the first propensity is becoming more dominant, relegating the second propensity to the background. Third, there are four stages in the behaviour of human beings in response to injustice meted out to them:

- Silent tolerance
- Silent resentment
- Vocal
- Violent

With respect to these four stages of human behaviour, the question that is being raised is India bordering between vocal and violent. Is India in civil war, but undeclared?

Given this kind of situation, our Constitution is the only anchor for the deprived. The story of shepherd boy told by Abraham Lincoln is relevant: A wolf snatches away a lamb from the sheep herd. The shepherd boy runs after this wolf and rescues the lamb.

The lamb says (to the shepherd boy): You have restored my freedom to live. I am grateful to you.

The wolf says (to the shepherd boy): You have snatched away my freedom to grab and eat. I despise you.

Don't we think that we have lambs and wolves in our society at large, and in our institutions? Further, our Constitution is like the shepherd boy. That establishes the relevance of our Constitution to protect the deprived, and our Constitution is almost the only source for social and economic justice.

6. Social and Economic Justice in a Larger Canvas

There were two important movements in India during the 19th and early 20th century. The first one was the independence movement led by Gandhiji. The second one was the social movement led by Dr. Ambedkar, in addition to many other social reformers.

In fact, Dr. Ambedkar had a larger canvas for painting the philosophy of social and economic justice for the deprived. The major building blocks of his larger canvas were:

He was a forerunner to the **land reforms** in the post-independent India. He was deeply concerned about surplus labour in agricultural sector and disguised unemployment in India. Above all, land asset was a source of feudalism and serfdom in rural India. He made a revolutionary suggestion in the Constituent Assembly: To nationalize and redistribute land so that there would be no land lords, no tenants and no land-less labour. This was thought to be a solution to the problems of landlessness of the deprived so that the deprived could escape from the tyranny of the feudal landlords.

But this revolutionary suggestion was not agreeable to the Constituent Assembly. Finally, it was agreed to

recommend land ceiling and distribution of surplus land to the deprived.

- **Industrialisation** was suggested as a remedy not only for surplus labour in agriculture, but also an avenue for salvation and emancipation of deprived so that they could migrate to urban areas.
- To Dr. Ambedkar, **labour welfare** was an important domain of social and economic justice. Labour was treated as hiver of wood and drawer of water like slaves in Roman Empire. He suggested Minimum wages for agricultural workers, and social security benefits to industrial workers through State patronized labour welfare system.

• Social and Economic Justice for Women

Dr. Ambedkar treated women as a deprived segment of the Indian society, suffering (perhaps silently) in the clutches of some ancient cultural code. For their emancipation, he introduced Hindu Code Bill in the Parliament on September 15, 1951 with three major components: Abolish different marriage stems and establish monogamy as the only legal system of marriage; conferment of right to property, conferment of marriage rights, and judicial separation of wife and husband. It is to be realised the Bill is in fact a derivative of Preamble of Indian Constitution. There was a stirring debate in the Parliament with strong opposition to the Bill. To quote one strong objection to the Bill by Sham Prasad Mukherjee: The bill would shatter the magnificent structure of Hindu culture, stultify a dynamic way of life they (women) lead, wonderfully adapted to changes for centuries.

The reaction of Dr. Ambedkar to this strong objection to the Bill was "Yes, survived as vanquished, subjugated and slaved. This survival does not imply the goodness or soundness of the social structure".

But reaction of Justice Gajendragadkar to this Bill was: The achievement of Dr. Ambedkar would go down in history as a very eloquent piece of poetic justice. The Bill was not approved in Parliament. On September 27, 1951, Dr. Ambedkar resigned from the cabinet. This decision to resign could be treated as courage of conviction. Power must pass and vanish, but glory, which is accumulated through courage, and

conviction alone remains. Some leaders avoid battles to avoid defeat. But some wage epic battles. That alone would pilot the system to the cause of social justice. The great irony was that the components of Hindu code Bill were incorporated in the four bills approved by parliament during 1955-56. Hence, the Hindu code bill presented by Dr. Ambedkar in 1951 was a forerunner for social justice to women.

Social and economic justice to the deprived segments of the society would need a larger canvas to paint and to address the problems confronting these segments through positive discrimination and affirmative action.

Yet, another dimension of the needed social justice emanates from the diversity of India. India is a country of diversity. It is an ethological museum and an epitome of the world. This diversity of India

should be reflected in our institutions, public offices, and educational institutions and so on. In fact, India is integrated by law, but it is segregated by practice and perspective. The deprived segments of the society not only live parallel life to privileged, they also have a different understanding of what India has been, is and could be. There are two warring souls and two perceptions. That is why as stated already India is said to be in civil war, but undeclared. We have to realize that the rights of the deprived are protected not by law alone, but by social and moral conscience of the Indian society. Perhaps, an epic battle like the one waged by Dr. Ambedkar is needed to awaken the frozen conscience of our society. The Indian constitution as such has all the "ingredients" needed to support social and economic justice. That depends on our understanding of the spirit of the constitution in its totality.