

SOME THOUGHTS ON SOCIAL JUSTICE\*

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MAN IS a gregarious creature. He lives in groups. Naturally he tends to become a member of a family, a tribe, a country, and a citizen of the world at large. The relationship between him and others in the group is called social relationship which gives rise to social obligations. The performance of these obligations by every member of the society ought to result in the vindication and fulfilment of the rights of others.

We talk of social justice. What does it mean? In that expression two concepts are involved: One, the concept of society, and the other, the concept of justice. David Hume in his *Enquiry Concerning the Principles of Morals* defines justice as "the bond of society" and, according to him, without it no association of human individuals can subsist. We, orientalist, call this bond by the name *dharma* as something which holds us together. Some think that it is only authority which is something external to society that holds us together. It may not be a correct view. What holds us together and what can continue to hold us together are economic and moral factors, viz., "productivity and efficiency, equality and fellow feeling." These virtues together with liberty constitute the cardinal principles on which a political society is based. It is only by following these principles that one can achieve the fulfilment of his role as an effective member of a political society. Only then can he find his true identity with society. Only then a political society can determine the course of human history. That is way the *Mahabharata* states :

कालोवा कारणं राज्ञः  
राजा वा काल कारणम्  
इति ते संशयो मा भूत्  
राजा कालस्य कारणम् ।<sup>1</sup>

"Is time the cause of the political state or is the political state the cause of time? Let not this doubt assail you, for it is the political

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1. M.B. 12-70-6;

state that creates and determines the times [in which we live].” (“Raja” which ordinarily means a king is translated here as “the political state.”)

A precise meaning cannot be given to the word “justice”. It is used in different senses. We are familiar with “a just man, a just war, a just decision, a just price, a just law, a just apportionment, a just procedure and a just society.” Justice may not mean expediency, prudence, equality, liberty, generosity, friendliness, mercy or goodwill although it involves an aspect of each of these terms. It may mean the “other chap’s good”. It was only when Robinson Crusoe met Friday that he got the “first opportunity of being just”. Justice is essentially a virtue which calls for a regard for other persons. Making another man merely happy may not always be being just—one may be unjust to a student by exhibiting nice movies at the time of examination even though he may be happy if he can see them. Mere generosity may not be being just for one may thereby encourage laziness. What the other man deserves is justice. It is what one can insist upon. The concept of liberty or freedom is slightly different from the concept of justice. “It deals with the question—who shall take a decision? but justice deals with how to take a decision.” Equality is also a slightly different concept. It is concerned mostly with results. But justice is concerned with the question—how to bring about equality? “Fraternity is fellow feeling, a warm virtue. But justice is cold virtue which should be manifested without feeling.” Justice recognizes independence or separateness of the other individual. Justice is concerned with procedures and outcomes, and with the consequences of actions and of their significance. Injustice, it is said, adds insult to injury. We are angry when we are hurt but indignant when we are treated unjustly. “Being done down is being treated unjustly, you may act rationally but still you may be unjust. It is said justice argues against picking on one man rather than another. Justice is concerned with not doing down somebody.”

Talking about social justice, one extreme view is that every man should stand or fall on his individual merit or capacity and should not seek any gratuitous assistance from anybody. It is argued that the principle of nature being the survival of the fittest, any claim for assistance from others is unnatural. Absolute competition is considered to be the essence of life. Even those who hold this view have to concede that at least at two stages of man assistance is necessary—the stage when a person is born and the stage when he dies. Somebody else should take care of the child and somebody else has to dispose of the dead body. Even from the point of view of nature it is seen that from the stage of childhood there is only a gradual reduction in the extent of dependence on others until the child becomes an adult and can take care of himself. Then again when he attains senility, say after 75 years of age, his dependence on others gradually increases. This is part of nature. The uneven characteristics

of the human beings who are members of society, the unequal distribution of natural resources in the world, the gradual depletion of these resources coupled with the psychological feeling of scarcity of goods and resources that is created as time passes, constitute strong factors against the blind belief in the myth of pure competition. No country can claim today that it is self-sufficient in all respects and no individual can say that he can live without any kind of assistance from others. It is here that the necessity for social justice arises both among different countries of the world and among people who are the citizens of a state. The degree of such assistance keeps on moving higher with the progress made by the society. All social justice measures taken at the international and national level aim at increasing the happiness of the people wherever they are. It always needs to be noted that social justice cannot be confined to the man-made boundaries of a so-called sovereign state.

In the field of economic activity in particular there has always been a conflict between free market competition and state intervention, which in some countries may take the form of democratic planning and in some others the form of authoritarian planning. We in India have resorted to democratic planning in order to bring about social justice. Julius Stone, a well known jurist writing in 1966, said :

Contemporary India, however (if we may use this example), entered on her "Four Year Plans"<sup>2</sup> aimed at comparable "economic take off", as a society democratically governed on the basis of universal suffrage. The difficulties of such a venture are not only great; they are also unprecedented in the first two centuries of the industrial revolution. Success will imply a unique self abnegation in favour of the wide national plan by tens of millions of poverty-stricken workers and voters. It will imply that Indians, under such conditions, have nevertheless been able to create the necessary local, vocational and other instruments of co-operation and bargaining which in England took a century, and a long series of state interventions, to bring into being. India's will to meet this challenge merits not only admiration but the most generous aid which the more developed states can afford. For very great issues for all mankind depend on her example.<sup>3</sup>

What was said about seventeen years ago still holds good. The basic principles of state planning in India were enunciated by Pandit Jawaharlal

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2. The Indian plans are five-year plans and not four-year plans.  
3. *Social Dimensions of Law and Justice* 768 (1966).

Nehru in 1958 when he said :

~~Marx~~ is a famous name and many things were done by applying his theories...

The ~~concept~~ of Socialism is changing even in Western countries. Therefore, we in India have to be more wide awake and the conditions ultimately are governed by the state of our people, state of their minds.

In India, we are a very conservative people. In a sense, the Planning Commission does not discuss Socialism, but it has to keep the ~~socialistic~~ objective before it...<sup>4</sup>

In a ~~publication~~ of the Planning Commission on the second five-year plan, it was stated :

Essentially, this means that the basic criterion for determining the lines of advance must not be private profit but social gain, and that the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increases in national income and employment but also in greater equality in incomes and wealth. Major decisions regarding production, distribution, consumption and investment—and in fact all significant socio-economic relationships—must be made by agencies informed by social purpose. The benefits of economic development must accrue more and more to the relatively less privileged classes of society, and there should be a progressive reduction of the concentration of incomes, wealth and economic power. The problem is to create a milieu in which the small man who has so far had little opportunity of perceiving and participating in the immense possibilities of growth through organised effort is enabled to put in his best in the interests of a higher standard of life for himself and increased prosperity for the country.<sup>5</sup>

By the Constitution (Forty-second Amendment) Act 1976 the Indian republic has been declared to be a sovereign socialist secular democratic republic. Socialism assures the actual participation of the entire people in the making of policies both at home and foreign front in the management of affairs of the state and in the elimination of kinds of exploitation of one by the other. This naturally leads to the development of human personality on all sides—cultural, social, economic and political. It ensures scientific and technological development and finally it assures group living based on principles of equality. That is the object of introducing the above amendment in our Constitution.

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4. See Durga Das Basu, *Commentary on the Constitution of India*, vol. 2 at 311 (5th ed. 1965), quoting from *Hindustan Standard* 7 (17 May 1958). Emphasis added.

5. *Second Five Year Plan* 22 (1956) (Planning Commission, Government of India).

Social justice in a broad sense involves political justice and in a restricted sense economic or distributive justice. Political justice is sought to be guaranteed in our country by a constitutional mechanism providing for elected legislatures, parliamentary executive and an independent judiciary. Elections are to be held under the control of the Election Commission and the principle of universal suffrage is adopted. But still all these have not been able to usher in true political justice to a desirable extent because of the cost of elections which is prohibitive and of the social and economic backwardness of millions of citizens. We should remember that full democracy with universal suffrage is possible only at an advanced stage of economic development, where there are "relatively high levels of living and literacy and a fair amount of equal opportunity." Such a stage has not yet been attained by us.

Social justice measures which are introduced to reduce the effect of centuries old social injustice include abolition of untouchability, reservation of seats in educational institutions and of posts in government employment, reservation of seats in elected bodies and certain other positive measures such as financial assistance given to socially and economically backward people in order to ameliorate their conditions.

Economic justice and distributive justice are still eluding all of us. Land reforms measures, control over the growth of monopoly houses, various taxation measures introduced to prevent accumulation of wealth in the hands of a few and restrictions on the production and distribution of essential commodities are some of the measures taken in the direction of bringing in economic justice. The ingenuity of human beings to evade the laws enacted for these purposes and the ever growing population of the country have been mainly responsible for creating insurmountable difficulties in the way of making any substantial headway in this regard. These are battles which we must keep on fighting until we are able to bring all our people above the poverty line. It is in part IV of our Constitution containing the directive principles of state policy that we find the inspiration to wage these battles.

At this stage let me refer to the current controversy which relates to the primacy of fundamental rights, contained in part III, over the directive principles. I should say at this stage that whatever is stated by me is only a cursory assessment and cannot be the final view. It is true that article 37 of the Constitution says that the provisions contained in part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply those principles in making laws. What is the meaning of this article? It only says that nobody who is aggrieved by the neglect on the part of the government in giving effect to various articles laying down the directive principles can approach the courts to issue a direction to the government to give effect to the said principles. Parts III and IV of the Constitution form parts of the same document, and as far as possible they will have to be reconciled. If part III says that certain

things should not be done by the state, part IV says that certain other things shall be done by the state. Naturally in view of the topics dealt with by them, the question of reconciliation or as we usually call it the question of harmonious construction of the provisions in those parts would arise for consideration. The solution to this question becomes clear if we just keep aside articles 13 and 37 for a while and read the rest of parts III and IV. Even then any law contrary to part III would have to be declared as invalid because any ordinary law which is inconsistent with any part of the Constitution, which is the fundamental law of the land, is invalid just like any other law which is contrary, say, to article 265 or 286 or articles 301 to 304 will have to be declared invalid even in the absence of an express provision corresponding to article 13. That is the true principle enunciated by Chief Justice Marshall in his famous decision *Marbury v. Madison*<sup>6</sup> and that is what is found incorporated in article 13. Similarly the courts would have to set at naught any law contrary to part IV also. But the Constitution makers wished to treat part IV differently. Dr. B.R. Ambedker said in the Constituent Assembly :

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and the Governors of the Colonies and to those of India by the British Government under the 1935 Act . . . . What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive . . . [W]hoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles.<sup>7</sup>

On another occasion Ambedkar said again in the Constituent Assembly :

[I]n enacting this part of the constitution the Constituent Assembly . . . is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power which they will have . . . . Surely . . . it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip-service to these principles...but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country.<sup>8</sup>

By the enactment of articles 13 and 37 three classes of provisions in the Constitution have come into being :

(1) Provisions of part III which more or less impose negative duties

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6. 1 Cranch 137 (1803) ; 2 L. Ed. 60 (1803).

7. *Constituent Assembly Debates*, vol. VII at 41.

8. *Id.* at 476.

on the state not to do certain things, coupled with article 13 which expressly declares that a law or an executive act contrary to part III is void.

(2) Provisions of part IV which prevent a person from approaching the court with a complaint that any of the articles in that part are not implemented but which cannot be ignored by the court while interpreting the Constitution and the laws.

(3) The rest of the provisions of the Constitution which are binding on all the instrumentalities of the state the transgression of which may lead to a judicial action and a declaration by the court that the act or omission in question is unconstitutional.

In the above situation would it be wrong for the court, while investigating into an action based on an allegation of infringement of fundamental rights, to take note of a directive principle where it is relied on by the state government by way of defence, and to reject the action by relying upon the principle of harmonious construction? In such a case no direction may be issued against the state if it is found that what the state has done is what the Constitution requires it to do. The court may not make a declaration that the action is unconstitutional on the ground that what is prescribed by the Constitution itself cannot be arbitrary or unreasonable. In such a case the question is not one of giving primacy to either the fundamental rights or to the directive principles but only declaring that the action of the state is such that no judicial intervention is called for. This is one view which needs to be examined further when an appropriate occasion arises. The presence of article 13 ought not to make any difference at all for the provisions in part IV are not subject to part III but are as important as the provisions in part III.

It is seen from the Constitution that the implementation of the directive principles, which are intended for rendering social justice, is the duty of all the instrumentalities of the state although they are not enforceable by the courts. Even so, the courts have also a special responsibility in their implementation though not by way of decrees or orders but by making it possible for other instrumentalities of the state to do so, first by recognizing them as incorporating the duties of the state and secondly in relying upon them while determining the validity of restrictions, if any, placed on the enforceable rights. Great constitutional provisions, observed Justice Holmes, must be administered with caution. Some play must be allowed to the joints of the machines and it must be remembered that the legislatures are also the guardians of the liberties and welfare of the people in quite as great a degree as the courts are.

Social justice is possible only when the national cake is big enough. We should remember that for every mouth nature has given two hands. If we are about 700 million today we have 1400 million hands. What has happened to all these hands? Are we all thinking in terms of putting forth our maximum efforts to improve our national well being? Everybody is in a mood to advise but few are in a mood to work. Can we

not put aside petty issues for a while and think of contributing our mite to the nation? Can we not exercise for a while some amount of restraint and check our words and actions which are likely to weaken the country? It is said that the easiest thing to do in this world is to advise and we are following it with full vigour. A time has now come to increase the number of silent and honest workers and not to allow a few to come to the top by whatever method. येन केन प्रकारेण प्रसिद्ध पुरुषो भव appears to be the motto of many. We find that seeing one's name in newspaper everyday has become the worst kind of intoxicant and that has got into our head. We have only to pray, that all of us will have good sense to do what is good for the country and the only way to do so is hard work and hard work alone.

In conclusion may I add that it should be the duty of everybody who has the power over the destiny of the nation to establish social institutions, create new social norms and bring into force a new code of conduct binding on all concerned for the protection of the economically weak against the economically strong. If we want our freedom to be safeguarded then we must accept the policy of planned intervention by the state thereby replacing unlimited freedom of action of individual without at the same time interfering with free individual initiative in areas where there is no scope for exploitation. The problems which our country is now facing are many and complex. It may be necessary that in order to meet some of the urgent needs of the country certain ad hoc, emergent measures have to be taken. Whatever that may be, the goal to be achieved should be general welfare and public good. May we remind ourselves that our tradition has always been a combination of *tyaga* (sacrifice) and *seva* (service). A little sacrifice on the part of everybody and the inclination to render service to others who are in need of assistance should help us pass through this difficult period in our history.