

CONTRADICTION BETWEEN CONSTITUTIONAL SPIRIT AND REALITY OF ECONOMIC JUSTICE: AN EVALUATION OF JUDICIAL PROCESS IN UNION OF INDIA

Abstract

While politics is a means to concentrate ruling power, market is a means to concentrate economic power. Founding fathers envisioned a society of their dream, but the ethos of independence has been rejected by successive governments. This article pays attention on exposing flaws between constitutional and governmental goals. Articles 38 and 39 of Indian Constitution mandate to minimize inequalities and forbid concentration of wealth and means of production in few hands. Constitution envisions establishment of just society but role of judicial process in obtainment of preambular objective of economic justice has not been satisfactory. Contemporary global society needs objective realization of economic justice.

I Introduction

THE AIM of this paper is to analyze the extent to which Indian judicial process has contributed to procurement of high goal of economic justice enshrined in the Preamble. Availability of economic justice especially to the poor and downtrodden people cannot be assessed by taking into account any one factor because it is influenced by many; legislative, executive, economic, political, social, historical and international factors. Although per capita economic backwardness is sequel of about one thousand yearlong servitude but role of executive-judicial policy is no less significant in independent India.

Afflicted from socio-economic miseries, M.K. Gandhi decided to dress up like his poor countrymen so he bid good-bye to western coat-pants and started wearing lungi (*dhoti*) and a shawl.¹ Under his “trusteeship theory”, he assigned excess amount of wealth for welfare of others. His justice meant wealth for oneself and for whole community. He was sure that the needs of everyone could be fulfilled but not the greed..... Economic independence could be achieved only when the labour was freed from the clutches of capitalist.² He devised a commission formula to share amount of wealth between owner and trust.³ In his view, property surplus to the one’s need was no less than stealing. As long as the gulf between the rich and poor was not bridged, justice shall remain an enigma only. His moral-ethical approach towards

1 Bombay Sarvodaya Mandal and Gandhi Research Foundation (Website by Gandhian Institutions), *available at:* <https://www.mkgandhi.org/gandhiji/19costume.htm> See also S. Balakrishanan, “PIB Government of India, Special Service and Features”, *available at:* <http://pib.nic.in/newsite/printrelease.aspx?relid=149833> (last visited on Aug. 13, 2019).

2 Ch. II Gandhi’s Idea of Social Justice, 57, 64 *Shodhganga*, *available at:* https://shodhganga.inflibnet.ac.in/bitstream/10603/207905/6/06_chapter2.pdf (last visited on Aug. 13, 2019).

3 M.K. Gandhi, 8(25) *Harijan*, (Aug. 25, 1940).

justice was expressed as *simple living and high thinking* which is now reversely followed by his political descendants as *high living and simple thinking*.

II Economic justice; Indian perspective

Nature and scope of social and economic justice

Utilitarian philosophers like Hume and Bentham consider utility, the greatest good of greatest number as the sole origin of justice. Ulpian defined justice as the constant and perpetual will to render everyone his due. Economic justice can be expressed as “constant and perpetual disposition to render every man his due.”⁴ When these theories are visualized in context with availability of money, income, or other national resources to individuals so that social order could be maintained, there evolves the concept of economic justice. It denotes both the individual and social order concern. In view of Indian Supreme Court, “the idea of economic justice is to make equality of status meaningful and the life worth living at its best removing inequality of opportunity and of status - social, economic and political.”⁵ Huei-chun Su cites Edmund S Phelps in the New Palgrave Dictionary of Economics:⁶

Social justice is the justice exhibited in all the social relationships. Distributive justice is narrower concept which is synonymous to economic justice. This is justice in the economic relationship within society; collaboration in production, trade in consumer goods, and the provision of collective goods.

According to Mill simple equality (economic) without considering personal circumstances may lead to unjust results. So substantive justice requires treating different persons differently or equal treatment might actually require differential treatment in reality. Mill indicates that *social utility* to be the guide.⁷ No theory of economic justice evolved so far has yet devised a just principle for rational differential principle, however most of the western philosophers and jurists have rejected the Marxian principle of equal sharing by all participants of production. Indian judiciary could have also not proposed any efficacious differential principle for just economic redistribution despite of being judiciary of declared socialist country.

In *Society for Un-aided Private Schools of Rajasthan* apex court ruled, “Socio economic rights are realized only against the State and not against private state actors like private schools, private hospitals *etc.*, unless they get aid, grant or other concession from the

4 The Law.com, Dictionary, *see* ‘Justice’, available at: <https://dictionary.thelaw.com/?s=economic%20justice> (last visited on July 3, 2020)

5 K. Ramaswamy J., *Air India Statutory Corporation v. United Labour Union*, AIR 1997 SC 645.

6 Huei-chun Su, *Economic Justice and Liberty: The Social Philosophy in John Stuart Mill’s Utilitarianism* 87 (Routledge New York 2013).

7 *Id.* at 86-87.

State.”⁸ It is hard to understand how privatization and liberalization based capitalist economy can meet constitutional mandate but judicial process is endorsing it. Court further reiterated, “To remove the obstacles in fully realizing the socio-economic rights enshrined in Part IV of the constitution, parliament has on several occasions imposed limitations on the enjoyment of the fundamental rights, through constitutional amendments”.⁹ Several constitutional amendments including first and fourth were passed, several articles including 31A, 31B and 31C have been added and several other important articles like 15 and 16 were amended by the parliament to subserve the aim of economic justice. Various laws were enacted for nationalization, privatization and globalization but situation of economic justice could not be improved satisfactorily. In very socialistic manner, public welfare bench of the Supreme Court stressed, “Laws can be enacted so as to impose regulations in the interest of public health, to prevent black marketing of essential commodities, fixing minimum wages and various social security legislations *etc.*, which all intended to achieve socio-economic justice.”¹⁰ Legislature and executive have not yet complied with such rulings.

Economic justice versus socio-economic justice

Preamble to the constitution proposes three kinds of justice- social, economic and political separately and gives equal significance to them but legislature as well as judiciary has mixed previous two in order to give new kind of justice *i.e.*, *socio-economic justice*. Through this extra constitutional and unfocused term, whole concept of economic justice has lost its value, identity and viability. Indian constitution nowhere contains expression *socio-economic justice or socio-economic right*. Terms like “economic interests”, “economic zone”, “justice- social, economic and political”, “economically weaker sections”, “economic disadvantage’ and “economic development” are there in the Constitution. However in Part XVI pertaining to special provisions for certain classes (scheduled castes and scheduled tribes and other backward classes) connotation *socio-economic development* has been used which denotes overall upliftment of depressed classes. Hybridization of social and economic adjectives produces new product with wider and confusing meaning. “Social” ingredient of phrase carries properties of equality, nondiscrimination and other human rights in social context while “economic” half of socioeconomic justice deals with equality in sharing of national income and wealth distribution, establishment of egalitarianism and freedom from poverty, hunger, homelessness and other monetary disablements. Socio-economic justice demonstrate justice in context with a group or whole society. However social justice includes economic justice and economic justice brings under it the social order. These

8 Writ Petition (C) No. 95, 2010 at 94, *available at*: <https://main.sci.gov.in/jonew/bosir/orderpdf/1498452.pdf> (last visited on June 27, 2020); (2012) 6 SSC 1.

9 *Id.* at 95

10 *Id.* at 97

legislative and judicial processes have altered the whole perspective of economic justice especially in relation to individual's birth right on national income and other productive resources.

Individual based *micro*¹¹ justice (economic justice) in post liberalization India has got less attention than societal based *macro* justice (socioeconomic justice) leading to more economically divided India between haves and have nots. Economic justice implies Aristotelian distributive justice which is antagonistic to the concentration of wealth and widening rich-poor gap. Accumulation of economic power in few private hands through anti poor state process (legislative, executive and judicial) including corruption and other unfair means could not be corrected by the available retributive justice system. *Overall economic prosperity does not ensure individual prosperity*. This is the sole myth behind the truth of contradiction between constitutional spirit and real availability of economic rights to the all people of India.

Judiciary has widely used the phrase socioeconomic justice in different verdicts. Socialist goals as prescribed by founding fathers in Part IV of the Constitution and explicit mention of 'economic justice' and 'socialist' in the Preamble jointly emphasize upon need of economic equality over its social and political counterparts. Provided Preamble is the basic feature of the Constitution.¹² Court held: "Social justice is the conscience of our constitution, the State is the promoter of economic justice¹³ and social justice has been held to be fundamental right."¹⁴

Noble laureate Amartya Sen in his "Idea of Justice"¹⁵ analyses justice in terms of rationality, motivation and well-being of people. For him, freedom from ill health, hunger and nondiscrimination and maintenance of human dignity are basic parameters of well-being. According to him just institution, just government and just and orderly society are necessary prerequisites for social and economic justice. Whether it is theory of John Rawls (who inspired Amartya Sen) or it is theory of Amartya Sen, it is very difficult to understand how liberalization, privatization and globalization based market economy can proliferate economic justice in the society. Unfortunately capitalist

11 Christine Lillie, "Micro and macro justice in the context of truth and reconciliation commissions" *University of Massachusetts Amherst* 2006, available at: <https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=3578&context=theses> (last visited on June 28, 2020)

12 *S.R. Bommai v. Union of India* (1994) 3 SCC 1.

13 *Som Prakash Rekhi v. Union of India*, AIR 1981 SC 212, available at: <https://indiankanoon.org/doc/1602162/> (last visited on June 26, 2020).

14 *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42.

15 Amartya Sen, *The Idea of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2009)

philosophers have explained “economic justice” abjectly despite of its authoritative nature.

While writing about nature of judicial process applied in interpretation of social welfare legislations Supreme Court held in *Harjinder Singh v. Punjab State Warehousing Corporation*,¹⁶ “attractive mantras of globalization and liberalization are fast becoming the *raison d’être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers.” Court stressed upon basic needs, “if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity the freedoms enshrined in the constitution remain illusory.”¹⁷ To obtain the goal of economically just society apex court realized to follow the judicial approach compatible with Part IV of the constitution.

Constitutional provisions and economic justice

Human beings need physical and mental wellbeing in order to live dignified life. For this most esteemed goal, Indian Constitution enshrines necessary conditions and guarantees in its Part III and IV. Fundamental rights of Part III of the constitution, primarily ensure civil and political rights and freedoms which more or less contribute to mental satisfaction. However, fundamental rights provide for equal opportunity in jobs (article 16) and education (article 21 A), freedom of choosing avocations [article 19 (g)] and protection of life and personal liberty (article 21). In the contemporary materialistic society, human life is impossibility in absence of adequate source of money, wealth or income. *Can we imagine a life with equal human dignity with economic inadequacy?* Interestingly, the primary or inevitable necessities of human life have not been made justiciable (article 37) while secondary or probable requirements have been made justiciable by article 32 of the Constitution. According to article 37, directive principles must be fundamental in governance of the country but partisan interests and corrupt practices have been fundamental choices of ruling elites.

State is directed to establish a social order to promote welfare of people by extending to them justice-social, economic and political [article 38 (1)], to minimise income inequalities and to eliminate inequalities in status, facilities and opportunities (article 38 (2)). Article 39 of the Indian constitution not only directs to right to an adequate means of livelihood (a) and use of material resources for common good (b) but also it advocates to non-concentration of wealth and means of production in few hands to the common detriment. In nutshell, articles 38 and 39 read with articles 41, 42, 43, 45, 46, 47 and 48 contribute to economic justice. Unfortunately, none Union Government

16 (2010) 3 SCC 192.

has paid due attention on this aspect in order to establish just and egalitarian socio-economic order.

According to Justice Gajendragadkar social justice implies to removing all inequalities and affording equal opportunities to citizens in social as well as in economic affairs.¹⁸ Allen on the other hand describes equality of opportunity as misleading and such opportunity cannot be equal among them who have unequal capacity to grasp it.¹⁹ *Economic justice* is generally expressed as allocation of fair share to citizens in the national resources. More specifically Directive Principles of State Policy under articles 38, 39, 41 and 43, direct the state to establish 'economically just' social order.

Critical observation

Indian jurisprudence recognizes political justice in the form of equal 'political status' and equal 'voting right' but it astonishingly avows discriminatory approach with respect to economic justice. The parameters of spelling out economic justice fall far below the normality and remain confined to derogatory terms of 'adequate means of livelihood' in place of 'equal means of livelihood', 'undue concentration of wealth' in place of 'no concentration of wealth and means of production' and 'living wage' in place of 'logical and justified wage'. Genuinely, un-justiciable status of *economic charter* could not be reevaluated after seven decades while nation has observed thumping economic growth.²⁰ Moreover amount of black money, incidences of corruption and concentration of wealth in few hands increasing day by day resulting in creation of multiple *corporate economic sovereignties* within the national sovereignty. Statement by Justice Louis Brandeis of Supreme Court of United States also becomes true in Indian context, "we can have democracy in this country or we can have great wealth concentrated in the hands of a few, but we cannot have both".²¹ Although an economic improvement of a significant section of population has been observed and remarkable development can be fairly seen in almost every aspect of social life but pernicious poverty and other socio-economic miseries are also showing their fierce faces. In the peoples' self-rule

17 *Ibid.*

18 Gokulesh Sharma, *Human rights and Social Justice Fundamental Rights vis-à-vis Directive Principles* 393 (Deep and Deep Publication Limited, 1997).

19 *Id.* at 394.

20 PTI, "India 6th wealthiest country with total wealth of \$8,230 billion: Report" *The Economic Times* (Jan. 30, 2018), available at: https://economictimes.indiatimes.com/news/economy/indicators/india-6th-wealthiest-country-with-total-wealth-of-8230-billion-report/articleshow/62710884.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited on July 5, 2020).

21 Robert B. Reich, *Reason: Why Liberals Will Win the Battle for America* Chapter 1 (Knopf Doubleday Publishing Group, 2004), available at: <https://books.google.co.in/books> (last visited on Aug. 24, 2019).

of more than seven decades span, approximately one-fourths²² population is still living below poverty line. Social and political liberty in absence of economic liberty of getting equal or rational share in national wealth and resources is derision with the principles of democracy and economic justice.

Legislative and executive policies are made and implemented by the same stock of politicians with almost no significant difference based on political parties. *Judicial policy*, though somewhat independent but has worked more or less under the pressure of political dynasty. However few judges of higher judiciary have pronounced remarkable rulings too. On many occasions they have been threatened, harassed and overruled by their superiors. New advanced trends of *socio-legal globalization* under many national and international thrusts are rewriting the meaning and scope of social justice including its economic segment. Latest version of *welfare economics* (evaluation of economic policies in terms of their effects on wellbeing of the community²³) focuses on globalized market based economic policies regulated by multinational companies. While marketization and privatization in association with liberalization encourage concentration of wealth leading to economic sovereignty and slavery simultaneously. So how relatively weak measures of taxation in corrupt and arbitrary governance can bring about social welfare or economic justice? Thus optimal allocation of resources philosophy of welfare economics is becoming detrimental ideology to the majority of disadvantaged global population especially in developing and undeveloped nations.

Economic justice to farmers

Agriculture in association with allied activities is the largest source of livelihood in India. It is estimated that percentage of agricultural workers of total work force would drop to 25.7 percent by 2050 from 58.2 percent in 2001.²⁴ Approximately 70 percent of rural population still depend on this primary sector, however 82 percent farmers are with small and marginal land holdings. India was seventh largest exporter of

22 RBI- in 2012, 22% of Indian population was below its official poverty line; Suresh Tendulkar Committee report- the toll in 2009-2010 was 354 million that is 29.6% of total population which decreased up to 269 million in 2011-12 (21.9% of the population); The Rangarajan Committee mentioned that in 2009-2010, the BPL people were 454 million (38.2% of the population) which declined up to 363 million in 2011-2012 (29.5% of the population), *Book of Readings Mainstreaming Social Inclusion Deendayal Antyodaya Yojana: National Rural Livelihoods Mission 18* (DAY-NRLM), available at: <https://aajeevika.gov.in/sites/default/files/nrlp_repository/Vol%204%20-%20Book%20of%20Readings.pdf> (last visited on Aug. 25, 2019).

23 Welfare Economics, *Encyclopedia Britannica*, available at: <https://www.britannica.com/topic/welfare-economics> (last visited on July 10, 2019).

24 Shushruth Sunder, "India Economic Survey 2018: Farmers gain as agriculture mechanization speeds up, but more R&D needed" *Financial Express* (Jan. 29, 2018), available at: <<https://www.financialexpress.com/budget/india-economic-survey-2018-for-farmers-agriculture-gdp-msp/1034266/>> (last visited on Aug. 3, 2019).

agricultural products and sixth largest net exporter in 2013.²⁵ Due to several natural and man made factors, this highly productive sector is suffering from corrosive sickness. Poor, illiterate marginal and landless farmers (democratic masters) are compelled to commit suicides under economic crisis in their own rule. At least 10, 349 laborious food givers had to commit suicide in 2018.²⁶ This data proves violation of articles 43 (just and human condition of work) and 48 (organization of agriculture and animal husbandry). Higher judiciary has not taken seriously this governmental violation of farmers' right to live with human dignity. Because in many cases (PILs) judiciary took the side of non-interference in policy matters of government. It issued notices to respective governments for submission about preventive measures taken by them or directed to pay compensation to the victim families. M.S. Swaminathan report described that indebtedness, among others was main reason of farmers' suicide.²⁷ Indian agriculture is suffering from several drawbacks and contradictions leading to widespread socio-economic injustice.²⁸

Judiciary has no device of restricting populist pre poll declarations of political parties. TRS government in Telangana offered Rs. 10,000 per hectare per season (now Rs. 12,500) under its *Rythu Bandhu* scheme and received much favourable support of voters in assembly election 2018. However scheme is against the principles of egalitarian development as it gives more money to big farmers, many of them may not need any relief while excludes tenants and landless farm workers.²⁹ The maxim *ubi jus ibi remedium* becomes useless in cases of economic wrongs. Loan waiver declarations in 2018 assembly elections in Madhya Pradesh, Rajasthan and Chhattisgarh played significant role in victory of Congress. However such waivers are not pertinent solution of injustice to farmers. It is hard to accept these wrongs are *damnum sine injuria*.

III Economic justice and inequality

B.R. Ambedkar had estimated today's milieu so he warned:³⁰

In politics we will have equality and in social and economic life, we will have inequality.....How long shall be continue to deny to live this life of contradictions? How long shall we continue to deny equality in our

25 India's Agricultural Exports Climb to Record High, United States Department of Agriculture (2014).

26 See Ch. 2- "Suicides in India" 203 NCRB available at: <https://ncrb.gov.in/sites/default/files/chapter-2-suicides-2018.pdf> (last visited on July 18, 2020)

27 *The Secretary, All India v. The Principal Secretary* 2006 (3) Bom.CR 867.

28 Shreekant Sambrani, "Time for true universal basic income" *Business Standard* Mumbai at 8 (Jan. 3, 2019).

29 *Ibid.*

30 Constituent Assembly Debates, 1999 at 979 as cited by Krishna Deo Gaur (ed.), *Criminal Law and Criminology* 524 (Deep and Deep Publications, 2002).

social and economic life? We must remove this contradiction at the earliest possible moment otherwise those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.

Magnitude and causes of inequality

Economic justice mentioned in Constitution denotes prospective economic equality among citizens. Although absolute equality of income and wealth is an impossibility but drastic inequalities cannot be justified under the framework of constitution. A small section of Indians possess huge part of national income and large segment of population remains devoid of due share. Rise of *Gini index*³¹ from 32.7 in 1993 to 37.8 in 2011-12 indicates alarming magnitude of *inequality* in India. The increasing trend of *Gini* index is an indicator of rising inequality independent of absolute incomes.

Global Hunger Index 2019 ranked India at 102 out of 117 countries and categorized as in serious condition. It was ranked 95 in 2010. India's score has dropped from 38.9 in 2005 and 32 in 2010, to 30.3 in 2019.³² According to UK based organization, *Oxfam*, India ranked 147 out of 157 countries on the basis of country's commitment to reducing inequality and remarked as 'very worrying situation'. Moreover richest 1 percent Indians own more than four times of total wealth of 70 percent poorest Indian people. It amounts approximately 40 percent of national wealth.³³

Among others important *causes of economic inequality* are; inherited ownership of assets due to laws of inheritance, capitalist operation of economic system, defective economic, industrial, agricultural and labor policies, multiple kinds of education and high cost of professional training, inflation, unemployment, increasing population and social backwardness, existence of personal laws, tax evasion and higher burden of indirect taxes and corruption, smuggling and other financial crimes.

Economic justice: critical analysis of some important cases

Supreme Court held in *Manohar Lal Sharma v. The Principal Secretary* that the allotment of coal blocks was illegal and arbitrary and Court's "consequence proceedings" were intended to correct the wrong done by the Union of India. Government was not

31 Gini coefficient or index is a measure of inequality of income or wealth. Gini coefficient of zero indicates perfect equality where everyone has same income and Gini coefficient 1 expresses perfect inequality where one person owns all national income. GINI index (World Bank estimate) – India, *The World Bank*, available at: <https://data.worldbank.org/indicator/SL.POV.GINI?locations=IN> (last visited on June 26, 2020)

32 India, *Global Hunger Index*, available at: <https://www.globalhungerindex.org/india.html> (last visited on June 18, 2020).

33 Oxfam India, available at: <https://www.oxfamindia.org/workingpaper/davos-2020-time-to-care#:~:text=The%20combined%20total%20wealth%20of,Switzerland%20on%20%20January%202020.>> (last visited on June 18, 2020).

expected to squander natural resources belonging to the country. Court agreed to compensate the national loss as per the suggestion by the Attorney General.³⁴ Instead of applying harsh punishment with confiscation of property court simply accepted the compensation proposal of offender (Union Government). Likewise in *Subramanian Swamy v. A.Raja*³⁵ on August 24, 2012, Supreme Court of India held the allocation of spectrum “unconstitutional and arbitrary” and cancelled 122 licenses issued in 2008 by prime accused A. Raja, then Minister of Communications and Information Technology. Supreme Court ruled in this case that any citizen of India has the right to seek prosecution of any official accused of corruption. Time magazine placed Indian 2G scam in the list of top 10 abuses of power. On account of lack of evidence, the special CBI court acquitted all the accused of 2 G spectrum case including prime accused A. Raja and Kanimoyji after seven year long trial. Although CBI and ED both filed appeals against the decision of special CBI court in the High Court of Delhi but chances are scarce due to corruption friendly policing dependent court process. In *Subramanian Swamy* Supreme Court had already proved the unconstitutionality and arbitrariness of allocation of licenses issued by A. Raja but court could not take *suo moto* action in a matter of national loss of Rs. 1.76 trillion. Strangulation of justice is fairly visible in this case.

According to article 75 (3) of the constitution the Council of Ministers shall be collectively responsible to the House of the People but this has not been observed in practice especially in corruption cases. Contrary to this Congress led UPA government deliberately tried to shield those who were involved in the scams. Court held that Union Government did not entertain in more than one-third cases of requests for granting permission for the prosecution of public servants in corruption matters.³⁶

New economic policy putting forward public-private-partnership model was adopted during finance minister ship of Man Mohan Singh and maximum number of corruption incidents have also been recorded during tenure of his prime minister ship. Today corruption is a grave danger to the economic justice and rule of law. It is most important mode of violation of directives of articles 38 and 39 by the organs of state, of course judiciary is also not free from the menace.

The miserable situation can be illustrated by considering article 41.³⁷ It directs that State within its economic capacity shall make effective provision for securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Governments often complain

34 (2014) 2 SCC 532.

35 (2012) 9 SCC 257.

36 *Ibid.*

37 Constitution of India. 1950, art. 41.

about lack of funds but they facilitate outflow of public funds towards selected private persons who are directly or indirectly either related with them or their political parties. Like *T.N. Sheshan and Lingdob's* (former chief election commissioners of India) administrative reforms, Indian higher judiciary could not develop a revolutionizing judicial process through which it would have checked crime, corruption and concentration of wealth. Consequently, the parallel economies can be seen under tycoons of crime, corruption and capitalism leading to widespread economic injustice. In the system of rule of law authenticated by seven decade old judicial process, honest common man is hungry while dishonest special man is benefitted by multiple mechanisms. Although Indian judiciary has passed numerous orders in order to ensure economically just society but it has not yet developed any *mechanism of strict implementation of those directions*. Moreover, due to high cost, illiteracy, poverty and ignorance a vast section of population cannot approach to the courts for obtainment of justice. Mechanism of public interest litigation could not be an individual interest litigation in matters of economic injustices.

Supreme Court while dealing with the issue of eviction of slum dwellers in *Olga Tellis*³⁸ case remarked, “no one has the right to use a public property for private purpose without requisite authorization and held that it is erroneous to contend that pavement dwellers have the right to encroach upon the pavements by constructing dwellings thereon.” However in several judgments apex court has recognized right to shelter as a fundamental right under the ambit of article 21. This contradiction could be abolished by ordering the government to provide dignified shelter before eviction of slum dwellers.

IV Justice and economic equality

High grade income and prosperity divide among individuals and groups cannot be proved ‘just’, ‘rational’ and ‘fair’ especially when millions of citizens face blood sucking inequalities. Modern concept of ‘justice’ in globalized world and justices under the thrust of economic power redefining the terms of ‘equality’ and ‘inequality’. Democratic interpretation of equality (economic) does not correspond to mathematical expression of *left hand side equals to (=) right hand side*. Likewise justice (economic) no more connotes equity, impartiality and fairness in sharing of wealth of the nation or globe. Birgit Christensen writes, “The processes associated with globalization have increased inequalities among human beings with respect to their political, economic, cultural and social opportunities”.³⁹ John Rawls’s *difference principle* propounds that departures

38 *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545.

39 Birgit Christensen, “Equality and Justice: Remarks on a Necessary Relationship” 20 (2) *Hypatia*, tr. Andrew F. Smith, ‘*Contemporary Feminist Philosophy in German*’ (Spring, 2005, Wiley on behalf of Hypatia, Inc.), available at: <https://www.jstor.org/stable/3811169> (last visited on Aug. 27, 2019).

from equality can be justified on the ground of benefitting the least advantaged maximally.⁴⁰ Critics of egalitarianism believe that economic equality jeopardizes efficiency by its suppressing effect on incentives.⁴¹ According to G.A. Cohen, socialist egalitarians feel that equality is not a fundamental value but a means to make the badly off better off. Thus inequality can be mandated if it makes badly off, better off.⁴² While socialist egalitarians believe not in strict equality but Rawls difference principle rely that socio-economic inequalities are of greatest importance for the benefit of least advantaged members of society.⁴³ In Cohen's view extra burden may be compensated with extra income and hence greater compensatory reward is an egalitarian principle. He opposes only unequalizing incentives.⁴⁴ Highly paid talented people make it true that they produce more when they are paid more....They are unwilling not, unable to work as hard for less money.⁴⁵ This fact gives some clues for high productivity in private sector and low productivity in contemporary public sector in India. High earnings and superior standard of living of private entrepreneurs often provoke public sector employees to commit corruption.

Cohen describes three kinds of economic distributions D1, D2 and D3. D1 is characterized by equality of social primary goods (income, working hours, equal efforts *etc.*) while D2 and D3 recognize inequalities *i.e.*, extra advantage to the talented. D1 system does not offer extra income for the extra productivity of talented individuals. Rawls recommends D2 over D1 because everyone is better off due to differential income distribution. Cohen prefers to D3 over D2 because it improves position of untalented.⁴⁶

In Cohen's opinion, Rawls recommend that talented producers receive an above-average income which they secure by bargaining power associated with their superior talent.....it is necessary to benefit the worst off, it is an unjust but perhaps expedient

40 John Rawls, *A Theory of Justice* 83 (Cambridge: Harvard University Press 1971).

41 Andrew Williams, "Incentives, Inequality, and Publicity" 27 (3) *Philosophy & Public Affairs* 225 (1998).

42 Paul Smith, "Incentives and Justice: G.A. Cohen's Egalitarian Critique of Rawls" 24 (2) *Social Theory and Practice* 205 (1998), available at: https://www.jstor.org/stable/23557125?read-now=1&refreqid=excelsior%3A972ab1cfd67b5c82b118789e46674b7&seq=1#references_tab_contents (last visited on Aug. 15, 2019).

43 G.A. Cohen "Incentives, Inequality and Community" Grethe B. Peterson (ed.), *The Tanner Lectures on Human Values* 267-268 (Salt Lake City: University of Utah Press, 1992) 267-268; See also John Rawls, 'Political Liberalism' 6 (New York: Columbia University Press, 1993), available at: <https://www.jstor.org> (last visited on Aug. 15, 2019).

44 *Id.* at 272, 296.

45 *Supra* note 42 at 207.

46 G.A. Cohen, "The Pareto Argument for Inequality" 12 *Social Philosophy and Policy* 169-171 (1995).

inequality.⁴⁷ As soon as the globalization characterized by privatization strengthens, so as the gap between rich and poor widens. This new development based welfare ideology leads to more imbalanced equation of equality.

V Socio-economic jurisprudence

During British rule socio-economic rights of local people were dependent upon mercy of colonial rulers. They framed and implemented callous and exploitative policies for their own economic benefit. Although they codified various laws for their own convenience but *justice* was quite distant from common British Indian man. They aimed at economic exploitation, the antithesis of economic justice. So hope of justice emerged among Indians only after advent of new human rights oriented constitution. Supreme Court protects socio-economic rights (subsistence level) by defending people from social and economic jeopardy. This constitutional goal prepared the way for evolution of new *socio-economic jurisprudence* and put heavy load upon the shoulders of judiciary to develop an egalitarian social order. Through its number of tools; principles of tortious (vicarious) liability, public interest litigation, judicial activism and judicial review and harmonious interpretation, Indian judiciary has tried to extend economic justice to the aggrieved parties. Supreme Court endeavours to maintain harmonic relationship between political and socio-economic rights. Unfortunately *minimum, basic, subsistence and adequate* adjectives have been prefixed in place of *equal* before *fundamental economic rights of human livelihood*, making the whole concept of justice futile. However Supreme Court has searched a series of social, political and economic rights embedded in article 21.

There are number of international instruments and agencies which express their commitment for realization of economic justice to all people of the world. Universal Declaration of Human Rights 1948, International Covenant on Social, Economic and Cultural Rights 1966,⁴⁸ United Nations Organization, International Monetary Fund and World Bank are significant among them. Modern peace loving era of democratic and socialistic governance is successor of autocratic and exploitative regimes established after long history of wars and annexations. Judiciary has superior role in democratic system. New equality based world order prescribes for “free compulsory education” instead of *equal education* (education to all children in same standards and atmosphere), “free legal aid to poor” instead of *equal legal aid to all* and “differential health care, nutrition and sanitation” instead of *equal health care, nutrition and sanitation*. Right to health and nutrition to all, has been recognized as part of right to life by the Supreme Court but their implementation has been tardy and unwholesome in our experience.⁴⁹

47 *Id.* at 174, 162, 173-174, 184; see also *supra* note 43 at 326.

48 See arts. 3, 7 and 11.

49 Professor Ved Kumari and others, *Concept Note*, International Conference on Socio-Economic Justice after Seventy Years of India's Independence: Domestic and Global Challenges 4 (Faculty of Law, Delhi University Nov. 2016).

K. Ramaswamy J. cites economist V.K.R.V Rao in *Air India Statutory Corporation* case “Changes in property relations, taxation, public expenditure, education and the social services are necessary to make a socialist State under the constitution, a reality”.⁵⁰ But Indian society after liberalization and privatization policies of 1991, retrograding again towards police-corporate state from welfare state, where every service is going to be privatised and paid. Paid health, paid education, paid legal aid and paid other services (toll tax, road tax, water tax, house tax *etc.*) when join with bribe and other corrupt practices give rise to economic injustice or *justice on payment*.

Jurisprudence of property right

The most important and rational fundamental right to property [articles 19 (f) and 31] enshrined in the original Constitution has been repealed by the Constitution (Forty-fourth Amendment) Act, 1978. Right to property (in the sense of means of livelihood) is not simply a civil right. It is a natural and inherent human right necessary to maintain human dignity. Concepts of public and private property represent its natural and unnatural components respectively. This ill-gotten private property yields happiness to some and sorrow to many. A person cannot be deprived of his property except through due process of law, no matter it is ill-gotten or honestly acquired. State does not take any responsibility upon it, to provide positive right of getting suitable property (or job) to the citizens. According to *Mitakshara* principle of succession prevalent in most parts of India, an individual (male) is entitled to get share in inherited family property since birth but at national level he has no such property right. Though he or she is entitled to be a bonafide citizen of the country. Thus a child born to poor parents becomes poor by birth and child born in rich family becomes rich by birth. In both the situations child contributes nothing but either suffers from poverty or enjoys material happiness just on the basis of misfortune or good luck. Under the *Dayabhaga* School, each coparcener has complete right of separation of his exclusive share in the joint family property.⁵¹ Nation state is a bigger family structure where individual citizen must inherit rational fundamental economic right since birth.

The present legal or constitutional property right is concerned with already owned, possessed or to be acquired property by lawful means. Every person has certain indirect rights on public property of nation, however he or she cannot use that voluntarily. On the other side, all people have universal right to private property, often a times at the cost of happiness of millions of downtrodden people. This disputed nature of institution of property has given rise to unlimited litigations among individuals and between state and citizens in the selfish, materialistic and immoral society.

50 *Air India Statutory Corporation v. United Labour Union*, AIR 1997 SC 645.

51 Schools of Hindu Law, *Shodhganga*, available at: <<https://shodhganga.inflibnet.ac.in/bitstream/10603/189726/6/chapter%202.pdf>> (last visited on Aug. 2, 2019).

After independence, Union and state governments made many laws in order to reconstruct agrarian economy, tried to confer right to property on tillers, to abolish *zamindari* system, to give security of tenure to tenants, to fix a ceiling limit on personal holding of agricultural land and to redistribution of surplus land among landless people. In urban areas too governments acquired lands, for providing houses and clearance of slums, imposition of ceiling and to plan and control purposes. For regulation of private enterprises and nationalization of certain commercial undertakings, various legislative measures were undertaken to effectuate accepted goal of establishing a socialistic pattern of society. Hence articles 31 and 19(1) (f) were repealed.⁵² Articles 31-A and 31-B were introduced to make the land reforms and abolition of *zamindari* legislations effective.⁵³ Justice RF Nariman expressed the view that the right to property should have been retained as a fundamental right... Abolition placed the “little man” at a huge legal disadvantage. “Rights of the little man must be protected”.⁵⁴

VI Justice and culture: Gist versus defacement

Dharma has been the holistic theory of law and justice meant for social order in the ancient India. Whatever bears the subjects and escape them from degradation, is the Dharma.⁵⁵ It is divine or cosmic law ingrained in man and characterized by spirit of sacrifice, service and charity. This in turn has humanized the animality of man. Notion of Dharma or righteousness includes both the rightful conduct of individuals as well as of the state (king). Due allocation of money, honor and status to everyone was administered by the principles of Dharma. Lord Krishna in Gita preached justice in the form of concept of Karma (rightful duty) under the strict observation of Dharma. S.K. Purohit writes, “Karma or duty to subserve the common good is the theory of natural justice. It is the expression of law and justice both.”⁵⁶ Performance of Dharma oriented duty without assessing its outcome is the just human action required for establishment of just social order.

52 See, G.S. Pandey, *Constitutional Law of India* 596-98 (10th edn. University Book House Private Ltd., Jaipur 2007); Ch. II, Right to Property under the Constitution of India: An Analysis, *Shodhganga* 39, 40, available at: <https://shodhganga.inflibnet.ac.in/bitstream/10603/48090/9/09_chapter%202.pdf> (last visited on Aug. 3, 2019).

53 P.N. Bhagwati, J. in *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

54 Samanwaya Rautray, “Supreme Court judges ponder over rights to property, vote” *The Economic Times* (Aug. 6, 2017), available at: <https://economictimes.indiatimes.com/articleshow/59946244.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> (last visited on Aug. 3, 2019).

55 Mahabharat, Karnaparva, Ch. 49, verse 50.

56 S.K. Purohit *Ancient Indian Legal Philosophy Its Relevance to Contemporary Jurisprudential Thought* xx-xxi (Deep & Deep Publication Pvt. Ltd. New Delhi 1994).

Constitution of India although is said to be borrowing bag of foreign legal provisions but it magnificently exhibits Indian art, culture, philosophy and jurisprudence. The calligraphy of *Ashokan* pillar in the form of national emblem and “*satyameva jayatey*” (Only the truth prevails) written in the form of ideal axiom on the front page of constitution give big message about India’s commitment of establishment of just society. Different scenes to depict historical eras not only illustrate our glistening past but also our future aims and ideals. Paintings of *Lord Rama’s victory on Lanka* and *Lord Krishna’s message of Gita* on the pages of constitution apprised founding fathers’ affirmation to eternal divine laws of Dharma and Karma. Ancient Indian state was controlled by *dharma-moksha* or moral-theological regulatory system. On the other side, interwoven framework of laws and jurisprudence along with Bible and Aristotelian writings are said to be three pillars of western culture.

None society of past and present has been absolutely free from economic exploitation of some by others however each of them had tools to check upon them. Ethics and religious teachings worked as effective means of allocation of reward. Societal norms and values are persistent and inseparable aspects of law and justice. Customs, traditions and conventions are still honored by judiciary in modern time of codified law. Judiciary has to consider past, analyze present and estimate future consequences of verdict. Indian Dharma influenced *sarve bhavantu sukhina* philosophy is a prototype of socialistic pattern of distribution of wealth and income while western materialistic approach of capitalism has encouraged concentration of wealth and income.

Quoting to the New World Wealth’s report Vice President Hamid Ansari in 2016 remarked:⁵⁷

After 70 years of legislating welfare laws and adjudicating measures India is the 12th most inequitable economy in the world, with 45 percent of wealth controlled by millionaires. Caste hierarchies continue to remain deeply entrenched and caste relations often result in violent outcomes.

On account of violation of age old moral ethical culture of Dharma and constitutional spirit, India is steadily going towards economically unjust society. Provided “almost half of India’s total wealth was in the hands of the richest one percent, while the top 10 percent controlled about 74 percent of it. The poorest 30 percent, meanwhile, had just 1.4 percent of the total wealth.”⁵⁸ Vice President questioned on the role of “*welfare laws and adjudicating measures*” in administration of social and economic justice and

57 PTI, “Ground reality of delivering social justice in India dismal: Vice President Hamid Ansari” *Firstpost* (Dec. 27, 2016), available at: <https://www.firstpost.com/india/ground-reality-of-delivering-social-justice-in-india-dismal-vice-president-hamid-ansari-3176032.html> (last visited on July 5, 2020)

58 *Ibid.*

observed significant contradiction between constitutional spirit and reality of social and economic justice.

Cultural globalization causes commercialization of culture. Multiple variants of production, consumption and accumulation of commodities and services can be seen in different fields of life. Common man, employee of public and private sector and judicial personnel all human beings want to increase their red tapes by any means fair or unfair. Dynastic trend in judiciary is worst illustration of moral ethical breakdown in the higher judiciary of Republic of India. Collegium culture of appointment of judges is mother of several evils giving rise to incompatible judicial process.

VII Judicial process and socio economic justice

Judicial policy and economic justice

Drastic inequalities pose social unrest and bring about threat to peaceful order. In modern context economic injustice is an outcome of unsatisfactory policies and politics. Apparently, executive policy is directly responsible for establishment of egalitarianism but role of judicial policy is also no less important in this matter. An objective and scientific judicial policy in democratic set up prepares way for availability of economic justice. While biased and pro politics judicial process fulfils the interests of rich dominant class.

Process of *rule of law* comprises of legislative process, executive process and judicial process. While former two processes are primarily responsible for realisation of economic justice, role of latter one is also significant especially through its just and humanitarian review mechanism. Judiciary in order to establish economic justice, synthesizes and integrates various principles of national and international law, natural and humanitarian law, constitutional and other territorial laws including customs and traditions, with its own mind and knowledge. In Indian context, judicial synthesis of fundamental rights and directive principles is of foremost attention to interpret law and to realize socio-economic justice to the people.

Article 39 A added by the Constitution (Forty-second Amendment) Act 1976, deals with *free legal aid* by the state to promote justice, in particular to provide free legal aid to poor, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Likewise article 39 (d), is available in the constitution to provide *equal pay for equal work* without standardization of *equality or inequality* of work. Instead of equal or rational allocation of national asset or income to the citizens, policy makers and executors raise illogical, irrational and exploitative slogans pertaining to hollow and baseless development and equality. Approach of post-independence judicial process has also not been very enthusiastic in order to wipe tears from the millions of eyes. Corruption, dynastic trend and inefficiency have disregarded the constitutional behest of economic justice. In spite of availability of

fundamental right to free legal aid, millions of poor cannot approach higher judiciary even in cases of bloodshed, who will dare to go for redressal of economic right in the system where corruption is a general and good governance, a particular fact. Due to defective implementation of economic charter in about seven decades' governance, economic justice has been a mirage in India.

When we discuss social and political justice, we talk about justiciable parameter of "equality of status and opportunity" but when we talk about "economic justice" our parameter turns unjusticiable that is *minimum requirements of livelihood*.

Menaces of corruption, black money, black marketing, nepotism, adulteration, tax thefts and other economic crimes are undemocratic means of economic exploitation in so called democratic system. Judiciary has been failed in checking these crimes, consequently a significant part of public money is misappropriated and concentrated by dominant class at the cost of economic justice. The illicit process of wealth drain is in contravention with the spirit of economic charter of the Constitution.

Privatization of PSUs

In British India, public sector undertakings (PSUs) had very limited role. Nehru led socialist model and Industrial Policy Resolution, 1956 played revolutionary role in the economic and industrial development in independent India. Nationalisations of 1960-1970 made public sector a significant partner in national GDP. Due to several underlying factors, PSUs in India have always underperformed. *"The stated government policy which had been strengthened by unambiguous court rulings, have evolved to embrace full privatization.....Socialist experiment of PSUs did not meet expectations in India or elsewhere in the world."*⁵⁹ Undoubtedly private sector is quite efficient and productive, and it generates sufficient revenue but its social corollary is neither democratic nor humanitarian. On account of liberalization and privatization, foreign investment and private enterprises have been expanded leading to proliferation of banking, telecommunications, information technology, media, and infrastructure and so on. Although these measures created few jobs, consumer satisfaction, autonomous regulatory agencies and specialized tribunals. But in views of Justice K.G. Balakrishnan:⁶⁰

Many economists have also argued that the progressive financial sector reforms have only benefited the traditional elite sections of society and that the 'trickle-down' benefits for the masses have been negligible.....Forces of economic globalization have widened the existing socio-economic inequalities."

59 Anil K. Makhija, "Privatization in India" *Economic and Political Weekly* 1947-1951 (May 20, 2006).

60 K.G. Balakrishnan J., "*Justice in the 21st century: The challenge of globalisation*", Introductory note for the plenary session Qatar Law Forum May 4, 29-31(Doha 2009), available at: <<http://www.delhihighcourt.nic.in>> (last visited on Aug. 11, 2019).

Judicial process

Justice Douglas,⁶¹ of the United States Supreme Court observed, “The problems before the Supreme Court require at times the economist’s understanding, the poet’s insight, the executive’s experience, the politician’s scientific understanding, and the historian’s perspectives.” In *S.P. Gupta v. Union of India*,⁶² it was held, “*judiciary is an equal branch of state which has responsibility of creating socioeconomic justice where will be equality of status to all.... It cannot remain as an umpire but it must be functionally involved in the goal of economic justice*”. The pledge of socialism mentioned in the Preamble can be fulfilled by socio-economic jurisprudence developed and implemented by competent and active judges. Madon J. of Indian Supreme Court rightly enunciated the aspiration of Indian society”

The collective will of the society today wants that if the rich sleep in luxury apartments, the poor should sleep with at least a roof over their head.....that if the rich can live in opulence, the poor should at least be able to afford basic comforts of life. If the law is to operate today, so as to secure social justice to all, who else can do it but the judges whose constitutional task is to interpret and apply the law.”

The validity of legal rules can be proved by principles of natural law, historical jurisprudence and norms of legal positivism.⁶³ Comprehensive and deductive application of the body of rules or law is termed as judicial process. A judge is a prime actor in judicial process working under certain codified and customary limitations. Justice Holmes of US Supreme Court defined law as “the prophecies of what the courts will do in fact”. Law is the court’s verdict on particular facts.⁶⁴ Social justice and equality are complementary to each other and rule of law is a potent instrument of social justice to bring about equality.⁶⁵ Supreme Court of India in *Randbir Singh v. Union of India*⁶⁶ reiterated, “*Though ‘equal pay for equal work’ is not a fundamental right but certainly a constitutional goal.*” Although it is a giant step towards establishing gender based economic equality but a survey conducted by ILO in 2017 reveals extreme levels of disparity in wages for women in India. It is clearly reflected that men earn more than their women counterparts for similar jobs.⁶⁷ This may be due to defective implementation but reality

61 William O. Douglas, “Supreme Court and its Case Load” *Cornell Law Review* 45(3) Spring (1960).

62 AIR 1982 SC 149.

63 K.C. Joshi, “Judicial Process: Recent Trends” 34 (1) *JILI* 71 (1992).

64 G.W. Paton, *Jurisprudence* 87-88 (Oxford Univ. Press 4th edn. 1973)

65 *Supra* note 5.

66 AIR 1982 SC 879.

67 IANS, “Equal pay for equal work still a distant dream for Indian women (March 8 is International Women’s Day)” *Business Standard* (New Delhi Mar. 8, 2018), available at: <https://www.business-standard.com/article/news-ians/equal-pay-for-equal-work-still-a-distant-dream-for-indian-women-march-8-is-international-women-s-day-118030800572_1.html> (last visited on Aug. 12, 2019).

behind enactment of such laws is to give effect to the constitutional goal of economic justice. The doctrine of *equal pay for equal work* is equally applicable to persons employed on daily wage basis. They are entitled to the same wages as other permanent employees in the department to do the identical work.⁶⁸ However government-judiciary nexus on various illogical grounds tries to disapprove the fundamental goal of economic justice. Retired public servants including judges having multiple economic resources are being reappointed to snatch the share of efficient unemployed candidates. Almost every public office keeps contract employees who are paid less than their permanent counterparts. Judiciary silently observes and often recognizes these injustices.

Shiksha Mitras (assistant teachers in government basic schools) in State of Uttar Pradesh were appointed by Gram Sabha and Municipal Councillors. They have been found ineligible by Indian highest Judiciary on account of violation of 'rules'. Shiksha Mitras were initially paid Rs. 2,250 and upgraded up to Rs. 39,000 and now dropped at Rs. 10,000 per month.⁶⁹ Laws in this country are highly partial, unequal and discriminatory in view of principles of natural justice and objectivity. A member of state and Union Legislature can be upgraded to different levels of ministry, irrespective of his or her below standard qualification and criminal antecedents but a peon or teacher with appropriate knowledge and good character cannot be appointed through due process by decentralised political power centres (local bodies). While millionaire MLAs, MPs and Governors become entitled to high amounts of pensions just after five years' service, poor countrymen serving as lifelong food givers, unemployed, general public and private employees, professionals and landless labourers cannot claim for any such economic benefit and other emoluments, however all possess equal voting right. Whether society lacks just laws or it does not apply just laws uniformly, or it implements wrongfully, all the situations contribute to miscarriage of justice. Supreme Court of India in a number of cases has held, "*if the state leaves the existing inequalities untouched by its laws, it fails in its duty of providing equal protection of its laws to all persons*".⁷⁰ Although apex judiciary has simultaneously stated in many cases that every law cannot be applied uniformly on different classes of people and in different

68 Ch.-II, "Equal Pay for Equal Work in India: A Socio-legal Imperative" *Shodhganga*, 38. Available at: <<https://shodhganga.inflibnet.ac.in/bitstream>> (last visited on August 12, 2019); *Daily Rated Casual Labour v. Union of India* (1988) SCC 122.

69 Siraj Qureshi, "UP: Shiksha mitras' future uncertain after Supreme Court cancelled their appointment as assistant teachers" *India Today* (Agra July 28, 2017), available at: <<https://www.indiatoday.in/india/story/shiksha-mitras-teachers-eligibility-test-govt-schools-supreme-court-allahabad-high-court-rte-1026730-2017-07-28>> (last visited on Aug.14, 2019).

70 *St. Stephen's College v. University of Delhi*, AIR 1992 SC 1630 at 1662; *Indra Sambhney v. Union of India* (2000) 1 SCC 168 at 202; G. Austin, *Working a Democratic Constitution: The India Experience* 669 (1999), B.N.Kirpal *et. al* (eds.), *Supreme But Not Infallible* 13 (2000), as cited by *supra* note 93 at 48.

circumstances.⁷¹ Thus equal treatment in unequal circumstances and unequal treatment in equal circumstances bring forth injustice. So in these situations, courts must rely on constitutional provisions and goals enshrined in the Preamble.

Article 14 prohibits state to deny any person, equality before law and equal protection of laws. This article though restricts upon class legislation but does not prohibit reasonable classification. Article 14 is applied where equals are treated differently in arbitrary, unreasonable and evasive manner. A large exercise of judicial process has been done on the social and political aspects of article 14 paying very less attention on economic equality. Bhagwati J. remarked that article 14 enunciates a vital principle pointing towards a goal of classless equalitarian order which we promised to build at the time of adoption of the constitution.⁷² Country's economic advancement does not guarantee freedom from discrimination. In modern Indian perspective, 'class justice' is replacing the age old 'caste justice'.

Fundamental rights versus DPSPs

Indian courts have interpreted Part III and IV of constitution broadly to defend socio-economic rights of poor and marginalized sections. They have made many directive principles justiciable through their progressive and egalitarian judicial process. Supreme Court has not limited the scope of various articles to what was laid and understood by the framers of constitution, as reflected in the Constituent Assembly Debates. For advancement of socio-economic justice and wellbeing of the nation as a whole, court has read directive principles in fundamental rights in order to protect human rights of the citizens.⁷³ Article 37, though declares that DPSPs would not be enforceable by any court but these principles would be fundamental in governance of country and state shall apply these principles in making laws.

While the United States Constitution has no provisions pertaining directly to socio-economic justice and the South African Constitution has enumerated socioeconomic rights, India's Constitution takes the middle ground and instead of making them binding, it lists them as DPSP.⁷⁴ During judging process, despite of simply declaring socio-economic policies unconstitutional, court creates and enforces its own policy solutions.⁷⁵ Fundamental rights and directive principles both are 'fundamental' and complementary

71 *Supra* note 69: *Chiranjit Lal v. Union of India*, AIR 1951 SC 41; *State of Bombay v. F.N. Balsara*, AIR 1951 SC 318; *Kedar Nath v. State of West Bengal*, AIR 1953 SC 404.

72 *M. Chhaganlal v. Greater Bombay Municipality* (1974) 2 SCC 402, 435, 436; AIR 1974 SC 2009, 2029.

73 Devdatta Mukherjee, "Judicial Implementation of Directive Principles of State Policy: Critical Perspective" 1.1 *Indian Journal of Law and Public Policy* 15 (2014-15), available at: <http://docs.manupatra.in/newsline/articles/Upload/8CEA8CDA-BCBD-4D03-B8EF-8C3E8FFD21E4.1-b_Constitution.pdf> (last visited on Aug.18, 2019).

74 *Id.* at 29.

75 *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

to each other in order to bring about socio-economic revolution. Mukherjee quotes Supreme Court's ruling:⁷⁶

Socioeconomic guarantees are judicially enforceable by interpreting this provision to encompass a broader right to 'live with dignity'..... rights to adequate food, education and shelter, inter alia, are essential for citizens to live with dignity and are justiciable under article 21.

Though fundamental rights and DPSPs have been kept apart in different chapters but the founding fathers drew no distinction between the positive and negative obligations of the state.⁷⁷ Granville Austin reiterated that directive principles aimed at making the Indian masses free in real sense. For this purpose members of Constituent Assembly made the subsequent governments responsible to find the middle path between individual liberty and public good.

Constitutional courts have authority of validating legislative and executive decisions. Through judicial review and judicial interpretation courts not only check arbitrary and unconstitutional actions of other two organs of government but they also make laws by filling the vacant space. In other words, judicial process often decides the nature of executive and legislative processes. Legislature make law so cautiously by keeping in mind the future expected challenges in the courts. Judicial independence and judicial review are two strengths as well as two weaknesses of Indian system of governance especially with reference to socio-economic justice to poor. "The judgments of the court were seen as potential hurdles in attaining social and economic justice in India".⁷⁸ Invalidation of Bihar enactment by the Supreme Court was proved disastrous for policies of social and economic reforms. Court though realized the public purpose of the Act but it struck down the legislation on basis of lacking provisions for compensation to landlords. Thus court based its decision to prefer fundamental right of rich landlords over economic rights (directive principle) of poor landless majority. Court relied on that *a person cannot be deprived of his property by executive action* instead of *all persons must be given right to own property by executive action*. Alarming, in a democratic set up Supreme Court gave more weightage to protection of fundamental right of few over right to livelihood of many. In *Saghir Ahmad v. State of Uttar Pradesh*,⁷⁹ nationalization of road transport by Uttar Pradesh government was challenged on the ground of violation of fundamental right of private transporter to carry on business. The issue

76 *Supra* note 73 at 31.

77 Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50 (Oxford: Clarendon Press, 1966).

78 Ch -III "The Supreme Court of India and Economic Policy Perspectives: Peeping through the Rear Window" 67 *Shodhganga*, available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/29989/11/11_chapter%203.pdf (last visited on Aug. 18, 2019).

79 AIR 1954 SC 728.

of not paying of compensation to victims was also raised. Constitution (Forty-second) Amendment Act, 1976, enacted during emergency has tried to redefine the constitutional jurisprudence by adding word 'socialist' in the Preamble and by deleting "right to property" from chapter III of the constitution. Wide spread executive-judiciary conflict was observed during 1970-1980. Many decisions of the court had frustrated the initiatives of the legislature to bring in socio-economic reform.⁸⁰ Emphasis on the public sector undertakings has resulted in adverse consequences for citizens, leading to monopoly of government by affecting adversely right to occupation. Public sector undertakings were taken as deleterious for preservation of fundamental rights of people.⁸¹ The apex court held that *socialism*, judicial review and a balanced relationship between fundamental right and directive principles are basic features of the Constitution.⁸² In *Bhim Singhji v. Union of India*⁸³ court expressed that socialism is economic policy of the country and welfare state is a basic structure of the constitution. Number of cases have been decided by the Supreme Court on socialistic guidelines. Moreover court left it to the executive to decide as to what should be the role of the private, public or joint sector in the economy of the country.....Each case must be judged on its own facts and circumstances in regard to economic activities and social development.⁸⁴ Supreme Court relied upon directive principle (article 39) and upheld nationalization of coking coal mines. In these cases, the nationalization was challenged on the plea that in a socialist society the material resources should be so distributed that there is no concentration of wealth in a few hands.⁸⁵ Court again decided in favor of nationalization of road transport.⁸⁶

VIII Conclusion

Although independent India has widespread successes in various fields but simultaneously exhibiting numerous failures. It still harbours largest number of hungry people of the world and approximately one-thirds of below poverty line population. This is all going on under supervision of Indian judiciary (Lords). This great divide between rich and poor is not only injustice with the expression *economic justice* in the Preamble but also open violation of constitutional goals prescribed in articles 38 and 39. Economic justice denotes equity, equality or fairness in allocation of national wealth among citizens but capitalist dominated judiciary has worked as very weak obstacle in the way of vested interests. Congregation of wealth, income, jobs and natural resources

80 *Supra* note 79 at 95, 96.

81 *Supra* note 79 at 99-100.

82 *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625.

83 AIR 1981 SC 234.

84 *Supra* note 79 at 109.

85 *Tara Prasad Singh v. Union of India* (1980) 4 SCC 179; *Bharat Coking Coal Ltd. v. State of Bihar* (1990) 4 SCC 557; *Sanjiv Coke* (1983) 1 SCC 147.

86 *State of Tamil Nadu v. Abu Kavur Bai*, AIR 1984 326.

is antithesis to egalitarianism. Seven decade long practice of judicial mechanism has not only been inadequate but also contrary to the tenets of justice wherein Gandhism could have not replaced indigenous colonialism.

Since judicial process plays supreme and decisive role in administration of justice so it must interpret the law and acts and omissions of legislative and executive organs for; rational decentralization of land, mines and other natural resources and jobs including reservation benefits (*primarily at least one for all and not many for any household*), progressive and effective system of taxation, wise and adequate bonus to the laborious and intelligent persons, equal health, education and nutritional services, restriction on spongering polity, population control, protection of indigenous skill, industry, culture and values and positive trade balance, and eradication of corruption and other financial crimes.

Ownership of natural resources, availability of suitable employment and assistance from state are basic indicators of economic distribution. Just and fair ownership of asset brings about economic justice and arbitrary ownership of asset (or employment) causes economic injustice. In absence of adequate income, people are kept away from access to justice. High Court of Hyderabad has propounded that equal treatment in unequal circumstances amounts to inequality.⁸⁷ *If this principle defines justice then why political justice through 'right to vote' is equally available to all unequals?* Someone may respond by explaining fundamental right status of voting but in reality economic right must be more fundamental than political right as far as fulfilment of biological needs is concerned. Voting right without economic right (necessary for human existence) is neither just nor fair. Of course ethics and morality are solution of hundreds of evils.

*Shiv Kumar Sharma**

87 *Abdul Rehman v. Pinto*, AIR 1951 Hyd. 11

* Research Scholar.