

## NEHRU ON EQUALITY AND COMPENSATORY DISCRIMINATION

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JAWAHAR LAL NEHRU must be acknowledged to have been one of the greatest egalitarians of our age. As early as in 1938 he wrote that the political freedom was not an end in itself but was a means to an end "the end being the raising of the people...to higher levels and hence general advancement of humanity."<sup>1</sup> He said that "service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to *wipe every tear from every eye*. But that may be beyond us, but as long as there are tears and suffering, so long our work will not be over."<sup>2</sup>

Nehru was acknowledged in the Congress as its leading constitutional thinker, well read in political theory. He was unanimously elected the Chairman of the Congress Expert Committee on July 8, 1946 to prepare the materials for the Constituent Assembly and "it was the Congress Expert Committee that set India on the road to her present Constitution".<sup>3</sup> In the Constituent Assembly Nehru told the members that its first task was to free India through a new Constitution, to feed the starving millions and to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity.<sup>4</sup> He said that if the socio-economic inequalities were not eliminated through the instrumentality of the Constitution, then:

[A]ll our paper constitutions will become useless and purposeless....  
If India goes down all will go down, if India thrives, all will thrive.<sup>5</sup>

The Objective Resolution moved by Nehru on 13 December, 1946 provided the blue print for the future Constitution which was to be dedicated to the goals of social revolution. He believed that the political revolution ended with India's Independence, but it was the social revolution and the social reconstruction on which depended the survival of India. The social reconstruction meant the disestablishment of India's traditional social structure and the creation of a new society based on the foundation of

1. Jawahar Lal Nehru, *The Unity of India* (1938).

2. Granville Austin, *The Indian Constitution : The Cornerstone of a Nation* 26 (1966).

3. *Id.* at 33. Other members of the Committee elected by the Congress Working Committee were K.M. Munshi, Asaf Ali, Humayun Kabir, Dr. R. Gadgil, K.T. Shah, and N.K. Ayyangar.

4. II *Constituent Assembly Debates* 316.

5. *Id.* at 317-18.

egalitarianism and individual achievement regardless of one's caste or religion. Nehru firmly believed that the social inequalities created by the caste system was opposed to the ideal of equality. Caste system was anti-model to an egalitarian social order. He wanted the Indian Constitution to embrace equality as the cardinal value against the background of a social structure in which the social inequality was sustained by religious and ritual conceptions of purity and pollution. That the presence of caste system constituted a barrier to the attainment of 'real' equality was described by him in the following words:

The conception and practice of caste embodied the aristocratic ideal and was obviously opposed to democratic conceptions. It had its strong sense of *noblesso oblige*, provided people kept to their hereditary stations and did not challenge the established order. India's success and achievements were on the whole confined to the upper classes; those lower down in scale had very few chances and their opportunities were strictly limited. These upper classes were not small limited groups but large in numbers and there was a diffusion of power, authority and influence. Hence, they carried on successfully for a very long period. But the ultimate weakness and failing of the caste system and the Indian social structure were that they degraded a mass of human beings and gave them no opportunities to get out of that condition, educationally, culturally and economically. That degradation brought deterioration, all along the line including in its scope even the upper classes.<sup>6</sup>

Nehru believed that in the context of contemporary society, the caste system was "incompatible, reactionary, restrictive and barrier to progress."<sup>7</sup> And there could be no equality in status and opportunity within the framework of the caste system, nor could there be political democracy, much less economic democracy.<sup>8</sup> There was an inherent conflict between caste and equality and only one of them could survive. It is a great tribute to Nehru, that in the recent decision of the Supreme Court in *K.C. Vasanth v. State of Karnataka*<sup>9</sup> Justice Venkataramiah relied heavily upon the above quoted passage for the proposition that the aim of the Constitution is to overcome the inequalities created by caste system.<sup>10</sup> Justice Desai,<sup>11</sup> after referring to Nehru's futuristic vision of the Indian society observed that the goal of a casteless and classless society could be achieved only by taking steps

6. Jawahar Lal Nehru, *The Discovery of India* 256-57 (1974).

7. *Ibid.*

8. *Ibid.*

9. (1985) SCC (Supp) 710.

10. *Id.* at 781.

11. *Id.* at 731-32.

to "weaken and progressively eliminate caste structure."<sup>12</sup>

According to Austin the debate on Nehru's Objective Resolution clearly established that the Constitution must be dedicated to some form of socialism and to the social regeneration of India.<sup>13</sup> Nehru was the Assembly's idealist and the intellectual atmosphere therein was greatly influenced by his ideas on Indian social thought.<sup>14</sup> Out of the four members of the oligarchy within the Constituent Assembly,<sup>15</sup> Nehru always predominated because he felt an emotional and intellectual obligation to attack India's social problems. Nehru and Patel were the focus of power. Patel was interested in princely states, public services and the working of the Home Ministry and Nehru on fundamental rights, problem of minority rights and social reform aspect of the Constitution.

Clauses 5 and 6 of the Objective Resolution constituted the bedrock on which the provisions relating to preamble, fundamental rights, rights of the minorities and compensatory treatment for the backward classes were based. Clause (5) provided:

Wherein shall be guaranteed and secured to all the people of India, Justice, social, economic and political, equality of status, of opportunity, and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.

Clause (5) provided:

Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.

While commending the resolution for acceptance Nehru delivered an eloquent speech and described the resolution as a declaration, a firm resolve, a pledge, and undertaking and, for all, dedication. He urged the members to rise above the party and think of the nation and of the service of the masses. Nehru's speech gave a thrill and resolution was adopted by the Assembly in a solemn manner, all the members standing.

Nehru strove for ideals of secularism, egalitarianism and equality in a less doctrinaire, in a more empirical fashion. He once again said, that the real problems for him were "problems of individual and social life; he had no time for the fine points of doctrine."<sup>16</sup> Nehru was dedicated to ideas of

12. *Id.* at 732.

13. *Supra* note 2 at 41.

14. *Id.* at 42.

15. *Id.* at 19. The other three members of the oligarchy who had dominating influence in the making of the Constitution were, Rajendra Prasad, Patel and Azad.

16. See *supra* note 6 at 27 (1956 edn.) cited by Austin, *supra* note 2 at 42.

democracy and economic betterment of the masses but he never adhered to any particular ideology or philosophy. Acharya Narendra Dev, writing about Nehru's socialism has this to say :

He (Nehru) is not wedded to any particular "ism" nor is he temperamentally fit to be the leader of a group. He believes in some of the fundamental principles of scientific socialism. Yet he is not prepared to swear by everything taught by Marx or Lenin. He does not subscribe to any, rigid ideology. He considers himself free to examine the claim of every system of ideas which professes to serve the social purposes and he is always revising his ideas in the light of new experiences gained.<sup>17</sup>

According to Brecher, Nehru was greatly influenced by Marx and Fabianism in the early days of his life but at the time of the making of India's Constitution he changed from Marxist or a Laski style socialist to an empirical gradualist.<sup>18</sup> Any ideology that was conducive to the economic betterment of the masses was favourable to Nehru. In his speech on the Objective Resolution Nehru proclaimed that the Constitution "will lead us to the real freedom that we have clamoured and the real freedom in turn will bring food to our starving people, clothing for them, housing for them and all manners of opportunities and progress."<sup>19</sup> Nehru, thus assigned primacy to law as an instrument of social change. And it is Nehru who nurtured the pre-independence "political culture" of dedication to the service of the masses as an essential attribute of political leadership and politics.

It is a little known fact that it was Nehru who laid the foundation of community oriented concept of social and economic rights in the Indian constitutional jurisprudence, now reflected in the chapter on the directive principles of state policy. He was the author of the resolution on fundamental rights and economic and social change adopted at the Karachi session of Congress in March 1931.<sup>20</sup> The Karachi Resolution's main stance was to emphasise the affirmative obligation of the state to provide the necessary social and economic conditions to the weaker sections of the society so that the fundamental rights could more meaningfully and effectively be realised.

The Karachi Resolution stated that "in order to end the exploitation of the masses, political freedom must include the *real economic freedom of the starving millions*."<sup>21</sup> The state was to safeguard the interest of the industrial

17. Acharya Narendra Dev, *Socialism and the National Revolution* 205-06 (1946).

18. Michael Brecher, *Nehru: A Political Biography* 48 (1959).

19. I *Constituent Assembly Debates* 57-65.

20. See Michael Brecher, *supra* note 18 at 175. Brecher writes that Nehru himself had said that he drafted the Karachi Resolution and he himself had given its general background.

21. The text of the Karachi Resolution is to be found in the *Report of the 45th Indian National Congress, 1931* at 139-41. It is reprinted in D. Chakrabarty and C. Bhattacharya, *Congress in Evolution* 28 (1940).

workers, ensuring that "suitable legislation" should secure them a living wage, healthy conditions, limited hours of work and protection from "economic consequences" of old age, sickness and unemployment.<sup>22</sup> Women and children were to be protected by ameliorative legislations. Franchise was to be based on adult suffrage, titles were to be abolished and there was to be no capital punishment in India.<sup>23</sup> The resolution also called for social reform and the reform of the systems of land tenure, revenue and rent. The state was to own or control key industries, mineral resources, railways, water ways, shipping and other means of public transport.<sup>24</sup>

Recalling the contribution of Nehru in creating the doctrine of positive state obligation to achieve socialism, Austin writes:

The humanitarian cast of the provisions concerning the welfare of the workers and of the people generally, *the placing of the primary responsibility of social reform on the State and the emphasis on the legislative approach*,...reflect Nehru's ideas and read as if he had written them.<sup>25</sup>

The Karachi Resolution did not separate fundamental rights and the directive principles because during the freedom struggle no distinction was drawn between positive and negative rights and both "types of rights had developed as a common demand; products of the national and social revolutions."<sup>26</sup> The rights and the directives were separated later by the *Sapru Committee Report*, 1945. Nehru, therefore, must be given the credit for developing the concept of affirmative state action to equal up the conditions of the unequals. Through the Karachi Resolution Nehru expressed the people's demand that the state had the positive obligation to provide its people with economic and social conditions in which the negative fundamental rights would become meaningful.

As Prime Minister, he advocated the view that the directive principles represented a dynamic movement towards the socialistic goals whereas the fundamental rights represented something static, preserving certain rights which already exist. During the debate on the Fourth Amendment Bill, 1955 Nehru observed:

There is an inherent contradiction in the Constitution between the fundamental rights and the Directive Principles of State Policy. Therefore, again it is upto this parliament to remove the contradiction and make fundamental rights subserve the Directive Principles.<sup>27</sup>

22. *Ibid.*

23. *Ibid.*

24. *Id.* at 29.

25. Austin, *supra* note 2 at 57.

26. *Id.* at 52.

27. II *Parliamentary Debates*, Part II, cols. 1949-57, pp. 4833-46, (March 14, 1958 and April 11, 1955 respectively).

Nehru was aware of the inherent tension between the justiciable fundamental rights and the non-enforceable directive principles:

We come up against the difficulty, that on the one hand, in our Directive Principles of State Policy we talk of removing inequalities in raising people up in every way, socially, educationally and economically, reducing the distances which separate the groups or classes of individuals from each other on the other hand, we find ourselves handicapped in this task by certain other provisions in the Constitution.<sup>28</sup>

When in 1976 Parliament amended article 31C by 42nd amendment to make the "fundamental rights subserve the Directive Principles" it fulfilled the desire of Nehru expressed in his speech on the Fourth Amendment Bill, 1955. Although in *Minerva Mills* case<sup>29</sup> the majority of the Supreme Court struck down the decision of Parliament to give primacy to directive principles over the fundamental rights, both the majority and minority opinions referred to Karachi Resolution, Nehru's Objective Resolution and his speeches in Lok Sabha for the proposition that the genesis of both the fundamental rights and the directive principles was to be found in the freedom struggle. Justice Bhagwati in his dissenting opinion referred to the history of the directive principles which never rendered these principles as non-fundamental. He referred to Nehru's speech in which he had said that if the obligation to feed the hungry and clothe the naked was not discharged "all our paper constitutions will become useless and purposeless."<sup>30</sup> Nehru had also said that the directive principles represented a dynamic movement while the fundamental rights represented something static and sometime, somehow the dynamic movement might not fit into the static standstill. The entire planning process, geared to the attainment of the ends contained in the directive principles was Nehru's alternative to class struggle.

It may be submitted that in *Kesavananda*,<sup>31</sup> Justice Chandrachud (as he then was) simply reiterated Nehru's idea when he observed:

The freedom of a few have then to be abridged in order to ensure freedom of all....If the State fails to create conditions in which the fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish.<sup>32</sup>

The Chief Justice deviated from this view in *Minerva Mills* which Justice Bhagwati followed in his dissent and concluded that the dynamic principle

28. XII-XIII *Parliamentary Debates*, Part-II, pp. 8820-22 (16 May, 1951).

29. *Minerva Mills Ltd. v. Union of India*, AIR 1988 SC 1789.

30. *Id.* at 1844.

31. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

32. *Id.* at 2050.

of egalitarianism fertilised the concept of social and economic justice and it was one of its essential elements and there could be no real social and economic justice where there was a breach of egalitarian principle. This holding was nothing but the reaffirmation of Nehru's views on egalitarianism and social justice.

Let us now consider the contribution of Nehru on the meaning of compensatory discrimination and its compatibility with the idea of equality. Nehru believed that the unequal characteristics of human beings were not the result of innate inferiority or superiority but of unequal circumstances into which they were born and must live. Therefore, there was an imperative need to level up the conditions. He said:

Not only must equal opportunity be given to all, but special opportunities for educational, economic and cultural growth must be given to backward groups, so as to enable them to catch up to those who are ahead of them.<sup>33</sup>

Nehru realised that India's compartmental group structure could be destroyed only by reducing disparities derived from position in social hierarchy. And the communal and caste disparities could be reduced by compensatory measures which took into account the fact of backwardness of castes and communities. His ideas about equality and society was neatly echoed by him in his speech during the debate on the First Amendment adding article 15(4) as a result of *State of Madras v. Champakam Dorairajan*.<sup>34</sup> The entire debate on article 15(4) centred round the meaning of "backward classes" and the idea underlying the reservation clause. Nehru told the members that the need for prompt addition of article 15(4) arose "because the Government of State of Madras issued a G.O....by making certain reservation etc. for certain classes or certain communities rather for all communities-and the High Court of Madras said that the G.O. was not in order, was against the spirit and letter of the Constitution."<sup>35</sup> The amendment was necessitated because of *Champakam* which had caused a furore in Madras, Nehru told the House.<sup>36</sup>

To the suggestion that the words "for the educational, economic and social advancement of any backward classes of citizen" should be added to article 15 (3) which authorizes any special provisions for women and children, Nehru explained that the select committee chose the words "for the advancement of any socially and educationally backward classes of citizens" because these words occurred in article 340. When K.T. Shah

33. *Supra* note 6 at 553.

34. AIR 1951 SC 26.

35. XII-XIII *Parliamentary Debates*, Part-II, col. 9615.

36. *Ibid.*

asserted<sup>37</sup> on economic backwardness as the sole determinant of backwardness of the classes entitled to preferential treatment, Nehru expressing his unwillingness to accept an exclusive economic test of backwardness asserted:

But my difficulty is that when we chose those particular words, we chose them because they occur in Article 340 and we wanted to bring them bodily from there. Otherwise I would have had not the slightest objection to add "economically". But if I added "economically" I would at the same time not make it a kind of cumulative thing but would say that a person who is lacking in any of these things should be helped. 'Socially' is much wider word including many things and certainly including economically.<sup>38</sup>

It is clear that in rejecting K.T. Shah's proposal to add "economically" in article 15(4), Nehru vehemently asserted that the aim of compensatory discrimination was not to assist every economically poor classes but to help only those who were, both socially and educationally backward due to the discriminatory social structure. And in *Balaji v. State of Mysore*<sup>39</sup> the Supreme Court rightly insisted on a conjunctive reading of "socially and educationally" backward classes and in holding that the term "socially" included many things and certainly economic backwardness.

That the aim of the policy of reservation was to overcome historic inequalities was most forcefully asserted by Nehru in the following words:

We have to deal with the situation where for a variety of causes for which the present generation is not to blame; the past has the responsibility; there are groups, classes, individuals, communities... who are backward. They are backward in many ways—economically, socially and educationally, sometimes they are backward in one of these respects and not backward in another. The fact is, therefore, that if we wish to encourage them in regard to these matters, we have to do something for them...We want to put to an end to...all these infinite divisions that have grown in our social life.<sup>40</sup>

He was clear in his mind that equality was in fact promoted by measures to offset historically accumulated inequalities. The tension between equality and non-discrimination was poignantly expressed by him during the debate on the First Amendment:

We arrive at a peculiar tangle. We cannot have equality because in trying to attain equality we come up against same principles of equality laid down in the Constitution. That is a very peculiar

37. *Id.* at col. 8515.

38. *Id.* at col. 9830.

39. AIR 1963 SC 649.

40. *Supra* note 35 at col. 9616.



position. We cannot have equality because we cannot have non-discrimination for if you think in terms of raising those who are down, you are somehow affecting the status quo undoubtedly. You are thus said to be discriminating because you are affecting the status quo.<sup>41</sup>

The overall tenor of Nehru's ideas about equality and society suggests that the term "classes" under articles 15(4) and 16(4) were not restricted to economic classes familiar to modern social science but included those classifications otherwise forbidden by non-discrimination provisions contained in articles 15(1) and 16(2). To him the constitutional commitment to create a casteless and classless society could be achieved only by measures aiming at the overcoming of transmitted inequalities of past social distinctions.

It is heartening to note that in the recent decision of the Supreme Court in *K.C. Vasanth Kumar v. State of Karnataka*,<sup>42</sup> the judges have interpreted the reservation clauses by relying on Nehru's ideas about equality and compensatory discrimination. Justice D.A. Desai referred to Nehru's observations for the proposition that the aim of the Constitution was to reconstruct the Indian society on equalitarian model by reducing caste and communal disparities. The judge said that Pandit Nehru, the first Prime Minister of India observed that Mahatma Gandhi had shaken the foundations of caste and the masses have been powerfully affected. But "an even greater power than Gandhi is at work—the conditions of modern life—and it seems at last this hoary and tenacious relic of the past must die."<sup>43</sup> He referred to the aim of Gandhi and Nehru to set up a casteless and classless society by taking measures to progressively eliminate caste structure.<sup>44</sup>

Justice Venkataramiah quoted a full passage from Nehru's *Discovery of India*<sup>45</sup> where he has described the social problems created by caste system and the incompatibility of the principle of equality to caste system. The judge, relying upon Nehru concluded that:

An examination of the question in the background of Indian social condition shows that the expression "backward classes" used in the Constitution referred only to those who were born in particular castes or who belonged to particular races or tribes or religious minorities which were backward.<sup>46</sup>

Justice Venkataramiah then referred to clause (6) of Nehru's Objective

41. *Id.* at col. 9617 (May 29, 1951).

42. (1985) SCC (Supp) 710.

43. *Id.* at 731. The quotation again, is from Nehru's *Discovery of India*, *supra* note 6 at 234.

44. *Id.* at 732.

45. *Id.* at 787. The quotation again, is from Nehru's *Discovery of India*, *supra* note 6 at 256-57.

46. *Ibid.*

Resolution, through which the Assembly pledged to make adequate safeguards in the Constitution for “minorities, backward and tribal areas and depressed and other backward classes.” According to the judge, the resolution and the history of articles 15(4) and 16(4) made it abundantly clear that the ‘backward classes’ were only those castes, races, tribes and communities which were backward due to historical reasons. Merely economically backward groups were outside the purview of articles 15(4) and 16(4). He further held that clause (6) of Nehru’s Objective Resolution confirmed that socially and educationally backward class should, in the matter of their backwardness, be comparable to the scheduled castes and scheduled tribes.

Nehru’s vision of the Indian Constitution as an instrument of social reconstruction and social revolution is writ large in the “populist” rhetoric of the proactive Justices of the Indian Supreme Court who repeatedly invoke the egalitarian and socialistic goals of the Constitution in the aid of the dispossessed and the deprived. Such populist rhetorics which abound after *Maneka Gandhi*,<sup>47</sup> are reminiscent of Nehru’s speech in the first session of the Constituent Assembly. Few instances will bring home the point. In *Kesavananda*, Justice Chandrachud observed:

[L]aw cannot be permitted to be transformed into weapons for defeating the hopes and aspirations of our teeming millions, half clad, half-starved, half educated. Those hopes and aspirations representing the will of the people can only become articulate through the voice of their elected representatives. *If they fail the people, the nation must face death and destruction. Then neither, the Court nor the Constitution will save the country.*<sup>48</sup>

And Justice Krishna Iyer said in *Azad Rikshaw Puller Union*:

The Judicial activism gets its highest bonus when its order wipes some tears from some eyes.<sup>49</sup>

Like a colossus Nehru dominated not only the Assembly, the Parliament and the Congress but also the minds of millions of Indians. On every occasion he prevailed because Parliament, the party and the country accepting his leadership approved all the policies and actions advocated by him. Perhaps one cannot make a better assessment of Nehru’s contribution than done by a foreign biographer who writing in 1959 observed:

For Nehru is a giant both as man and Statesman. If political greatness be measured by the capacity to direct events, to rise above the crest of the waves, to guide his people and to serve as a catalyst of

47. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

48. *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 255 at 968.

49. *Azad Rikshaw Puller Union v. State of Punjab*, AIR 1981 SC 14 at 15.

progress, then Nehru surely qualifies for greatness. Almost single handed he has endeavoured to lift his people into the twentieth century. He is indeed India's nation builder. He provided the philosophy for India's new Constitution with its emphasis on individual rights. He has succeeded in securing wide acceptance of the ideal of a secular and equalitarian society...And he began the task of social reform.<sup>50</sup>

Nehru, a giant both as man and statesman has left us. A nation cannot always have a Nehru to lead it. But Nehru's crusading tradition has to be carried by his successors. Only then India can survive.\*

50. Michael Brecher, *supra* note 20 at 629.

\*Some of these thoughts were expressed by me in a seminar on Nehru and the Indian Constitution organised by Law School, Banaras Hindu University, in February, 1986.