

Indian Constitution and The Various Perspectives of Justice



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Abstract

The Indian Constitution has ensured justice to all the sections of the society and has been successfully safeguarding the democratic values since its inception. Justice is an important concept in the realm of political theory. Though, it has been variously defined by different political scientists yet, it is an important notion which forms the basis of the political philosophy and theory of all the ages and times. As, in the history of political thought it has been interpreted differently, so there have been different perspectives of justice. The present study seeks to understand the different perceptions of justice, which are found in the field of political science. On the basis of this understanding and through an in-depth study of the Indian Constitution the paper seeks to examine the nature of justice which the Indian Constitution desires to establish and the different perspectives of justice which influenced the making of the Indian Constitution.

Keywords: Justice, Liberal, Democratic Socialist, Libertarian, Marxists, Feminist, Subaltern.

Introduction

The Indian Constitution in the Preamble clearly declares its objective as the establishment of Justice: Social, Economic and Political, in the Indian society. It has made several provisions in this regard. The framers of the Indian Constitution believed that in the absence of justice, democracy cannot thrive in a country like India having diverse social, economic and political stratifications, favoring the haves as against the have-nots, thereby creating inequality. J.L. Nehru, the first Prime-Minister of Independent India, believed that for the establishment of a fair society, justice and equality through democratic socialism should be propagated.¹

It is difficult to offer a precise definition of the term Justice. Justice is a dynamic concept. It has continuously evolved in the history of political theory. Different meanings have been given to it by different people at different times. What was considered as just in the past may be now considered as a great injustice or vice versa. Further the notion of Justice changes from place to place. For example, a thing which is considered as just in the Middle East may be considered as unjust in the western world. Another difficulty in defining Justice is that it is a relative idea. It changes with the change in the cultural, social, economic and moral outlook of the society.

Justice connects the political values of Liberty, Equality and Rights. As Barker says "it is the reconciler or the synthesizer of political values; it is their union in an adjusted and integrated whole."¹ So again a precise definition of justice can't be given because it depends on these three political values. Violation of any of these three political values will lead to violation of justice in a given society.

Though it is difficult to give a precise definition of justice but it has certain implications on the basis of which the idea of Justice can be understood.

Firstly, Justice is concerned with both the liberty and rights of individual and also with proper order in society as a whole. As Raphael says "Justice is the foundation of social morality, and is concerned with the general ordering of society."²

Secondly, Justice involves a sense of proper distribution of favors and losses. Thirdly, Justice is aligned with the rationality of the society.

Objectives of the Study

The paper seeks to analyze and examine the various perspectives of justice, with a view to discover the real nature of the notion of justice, according to these different perceptions. On the basis of these perspectives, the study seeks to find out the elements of justice in the

Indian Constitution and the perspectives of justice covered by the Constitution.

Methodology

The study uses Descriptive and Diagnostic methods to examine the various perspectives of justice. Further, the paper employs Historical and Analytical approach to understand the nature of justice, through the study of the different perspectives of justice. For determining the presence and influence of these perceptions on the Indian Constitution, the study uses Scientific and Empirical methods.

Review of Literature

Austin, Granville (1999): *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, London. This classic work describes the formation of the Indian Constitution and the factors which influenced the views and ideas of the constitution framers, in the making of the constitution. It discusses in detail the values which forms the basis of the Indian Constitution.

Barker, Ernest (1951): *Principles of Social and Political Theory*, Oxford University Press, London. The book highlights the views of author on different concepts of Social and Political Theory. In the book he has discussed in detail the principles and problems of democratic governments. The author regards justice as the supreme notion. He highlights the relationship between liberty, equality and justice.

Raphael, D. D. (1979): *Problems of Political Philosophy*, Macmillan. This book provides a detailed explanation of the various notions in the realm of political philosophy. The author has discussed in detail the meaning and nature of different aspects of political philosophy, so as to present a clear picture of them to the reader. He has also highlighted the various issues, which has entangled the subject matter of political philosophy.

Beauvoir, Simon – De (1989): *The Second Sex*, Vintage Books, New York. This work of Simon-De Beauvoir is regarded as amongst the most influential book on feminism. She has highlighted the gross injustice prevalent in the society, which women have to face in different aspects of her life. She has strongly argued for women rights in the society and has highlighted the fact that justice can be established only when women are treated equally with men, in the society.

Nozick, Robert (1974): *Anarchy, State and Utopia*, Basic Books, New York. This book excellently manifests the libertarian perspective of justice. In this work, Nozick have criticized the liberal theory of justice as given by John Rawls. Nozick have given his theory of justice, as an alternate to Rawlsian theory, in support of Libertarianism. He has given a detailed account of how procedural justice can be ensured to every individual in the society.

Different Perspectives on Justice

Different political scientists have given different interpretations of the concept of Justice. This has given rise to different perspectives on Justice.

Liberal Perspective

Liberal perspective regards liberty as an important constituent of justice. It believes that

individual freedom in every field will ensure justice. The state in order to create just environment should ensure that basic liberties of all the individuals should be protected. Liberalism believes in the notion of 'procedural justice', that is there should be just procedures for the allocation of social goods and the outcomes from such just procedures will automatically be accepted as just.

Political justice demands that the government should not be arbitrary and absolute, rather it should be governed by laws. The government should consider all its citizens as equal and should be based on the consent of the people. John Locke, the father of liberalism, by supporting limited government has advocated the notion of political justice. The Government is the result of the social contract concluded by all the people. After the contract people have the same set of rights, which are guaranteed to all. Locke believes that government is based on the consent of the people. The people are the real sovereign, who has given the sovereign authority to the government within certain limits. The Government should protect the individual rights and if it fails to do so, people have the right to change the government.

J.S. Mill was a great supporter of individual liberty. He believed that liberty is essential for the moral development of the individual. The state should provide various liberties to all the individuals so that they can fully develop their personalities. The state should not interfere in the 'self-regarding' sphere of the individual though, it can stop individual from doing those things which endanger the liberty of his fellow-beings. Mill³ is also a strong advocate of the representative government. Mill believes that the representative government should be accountable to the people. According to Mill, representative government can be given ideal character through universal adult suffrage with weightage given to the votes of intelligent and educated people, female - franchise, minority representation, periodic elections, equal participation of the peoples in political matters etc. The ideas of political justice are reflected in these views of Mill.

T.H. Green does not believe that liberty means absence of restraint rather he described freedom as the positive power of doing or enjoying something worth doing or enjoying in common with others. He tried to give a more positive conception of freedom and believed that state must create such conditions which make moral development of the individual possible. Green believed that "the real function of government is to maintain conditions of life in which morality shall be possible and morality consists in the disinterested performance of self - imposed duties."⁴ He believed that will, not force is the basis of the state. The state should promote individual freedom and should remove the obstacles which stand in the way of the individual's moral development. The notion of legal and political justice can be seen in Green's philosophy as he emphasizes on representative government based on the will of the people, civil and political liberties of all the individuals etc.

Apart from this Green, mainly assigns state negative function of hindering the hindrances to good life. He believed that through freedom individual can develop his personality, in this the state has no role to play. According to Green, state should not promote morality directly because moral development can be attained by the individual himself. However, Green believed that state should eradicate evils like ignorance, pauperism etc. According to him, state should promote education, health, provide employment opportunities improve labor conditions and the like because unless the state performs these functions, the promotion of morality among the citizens would not be possible. Thus, here we can see the element of economic justice in the views of Green.

In conclusion, it may be said that the Liberal perspectives of justice is mainly concerned with political justice. The heart of Liberalism lies in the liberty of the individual hence liberalism promotes representative government, rule of law, equality before law, civil and political liberties and the like which are the major ingredients of Political justice. Liberalism believes that state should ensure political liberty and equality and should not interfere in the economic domain. The individual should be given basic liberties and then according to his ability and work he may attain other resources of the society, in this state should not play any role. Thus, liberalism believes that ensuring political justice will ultimately create a just society because the free individuals can openly compete for resources and could attain them according to their ability.

Though, when liberal thinkers like Mill and Green advocate that state should interfere in the social and economic affairs such as regulating education, health, housing, employment, labor laws, basic salaries, there can be seen the element of social and economic justice as well. Thus, positive liberalism by supporting the concept of welfare state has not only tried to ensure political justice but also believe that in the absence of economic and social justice, political justice would be meaningless.

Democratic Socialist Perspective

Democratic socialism combines the features of democracy and socialism. It gives importance to liberty of individual, his obligations towards the society and equity among the various sections of the society. Thus, it tries to strike a balance between the claims of liberty and the necessity of equality for better standards of living for every individual. Democratic socialism signifies the use of democratic methods for achieving the socialist goals.

Democratic Socialism, like Liberalism, provides political liberty to its citizens. It emphasizes on an atmosphere of freedom which is essential for the development on an atmosphere of freedom which is essential for the development of individual personality. It supports freedom of thought and expression, freedom to participate in political processes, free and fair periodic elections, freedom to choose and remove the representative government and the like. It denounces any form of dictatorship or rule by any single party with no opposition. It believes

that there should be free competition for power in the political sphere.

However at the same time, like Socialism, Democratic socialism believes that political liberty has no meaning in the absence of social equality and economic decentralization. If society is ridden by the evils like poverty, ignorance unemployment, diseases etc. then political liberties can't be enjoyed by the backward section of the society in a fair and proper manner. So, in order to ensure political democracy it is essential that the state should play positive role in bringing about social and economic equity.

Democratic socialism tries to ensure that in society every member enjoys the privilege of liberty and equality; honor and dignity of all should be protected. No individual or section of society should be able to crush the basic rights of other individuals or sections of the society. Harold Laski, an important advocate of democratic socialism states that "..... no man shall be so placed in society that he can over reach his neighbor to the extent which constitutes a denial of the latter's citizenship."⁵ Laski emphasized on view that socialist ends should be achieved through liberal democratic means. According to him, the state should not only ensure political liberty to its citizens but should also establish social and economic justice in the society.

Also unlike Socialism, Democratic socialism does not support the case of complete nationalization of the means of production. It believes that only some of the important means of production should be nationalized so as to ensure the supply of essential goods and services to the bulk of population. The state should ensure that there is no exploitation of any section of society. The economic resources should not be concentrated in few hands rather the benefit of economic development attained by the state should reach to the backward section of the society. In the economic sphere, the democratic socialism promotes complete freedom of the individual but along with this, it supports the view that individual also have some responsibility towards the society which he must fulfill. It believes that state should ensure minimum standards of living for its citizens.

Thus, the Democratic Socialist perspective not only emphasizes on the political rights and civil liberties but it also emphasizes on the socio - economic rights of the citizen. So, the elements of political, social and economic justice can be seen in the democratic socialist perspective.

Libertarian Perspective

Libertarian Perspective gives importance to the liberty of the individual and hence believes that in a just society state should not interfere in the private affairs of the individual particulars the economic sphere. It believes that individuals should be guaranteed certain basic liberties and after that they can attain social and economic status in the society by their hard work. The state should only protect the rights of individual and should maintain law and order apart from this state has no role to play.

It is against the notion of welfare state. In modern times, the Libertarian perspective is best reflected in the views of Robert Nozick.

According to Robert Nozick⁶, Justice is entitlement. He has analyzed the problem of justice in terms of entitlement. According to him, entitlement is the claim of an individual upon certain social and economic goods. If this claim is based on the merit then the entitlement to a particular good is just otherwise it is unjust. Nozick believes that there are three ways through which various goods can be acquired by the individuals:

Their selves

It includes the body, mind, capacity and talent of the individual. Individual have full control over them and can use them as he likes.

The Natural world

It includes the natural resources like land, minerals, forest, water resources etc. Individual can acquire these natural resources according to the entitlement theory.

The products people make with the help of natural resources

It includes agricultural and industrial products etc. Individual should have complete ownership over the products made by him.

According to Nozick, the entitlement of an individual over the natural world and the products made from the natural resources will be considered as just if it is based on any of the three principles.

Initial Acquisition

It means that if an individual lays claim to a previously unowned resources, then his claim is just. Thus the people who settles on an unowned territory and use its resources, then they are the legitimate owner of those things. However, under this principle it is necessary that such an acquisition should not create scarcity for others. This view of Nozick is similar to John Locke's labour theory of right to property.

Voluntary Transfer

It means that an individual becomes a legitimate owner of any good if he pays to the previous owner for that good, according to market rates. However this transfer must be voluntary and should not be based on force or fraud. Thus Nozick is a supporter of market economy because generally market is the only place for such voluntary transfer. He further believes that in all such transfers individual should be regarded as an end in itself and not a means for other's ends.

Principle of Rectification

According to Nozick, the entitlement to various resources based on above two principles is just and if such entitlement results in social and economic disparities then also state should not interfere. But Nozick believes that if natural and economic resources are owned by the people in violation to the above two principles, then the state should interfere to rectify the injustice.

Thus, from Nozick's view it becomes clear that the Libertarian perspective gives importance to the liberty of the individual. It believes that in a just society state should ensure basic liberties to its citizens and rest could be attained by them on the basis of their talent. The state should not interfere in the socio-economic sphere. Libertarian perspective

believes that Justice and socio-economic inequality can co-exist.

Marxian Perspective

Marx has criticized the capitalist system as it is based on the exploitation of the proletariat class. In the capitalist system, the economic as well as political power is concentrated in the hands of bourgeoisie class and hence the bourgeoisie class, which is in minority, enjoys all the political and economic rights and social privileges. The proletariat class, which is in majority, does not have these rights and hence justice can't prevail in capitalist system.

Further, according to Marx, state and its various institutions like judiciary work for protecting the interest of the bourgeoisie class. The state makes laws which are in the interest of the ruling class and also the courts act in a manner that defends the interest of bourgeoisie class. Marx believes that judiciary is committed to protecting the interest of the ruling class and hence it has a 'committed character'.

Also, Marx believes that the capitalist system based on the notion 'to each according to his ability' perpetuates socio-economic inequality in the society and so it is based on injustice whereas the communist system based on 'to each according to his need' is morally superior and will establish socio-economic equality in the society. This will establish distributive justice in the society.

Therefore, Marx supports the abolition of the capitalist systems based on private property. Marx and Engels have stated that "The theory of the communists may be summed up in the single sentences: Abolition of private property."⁷ According to Marx, during the dictatorship of the proletariat, the state will act as an instrument in the hands of proletariat class and will help to establish a classless society. After the abolition of private property, nationalization of all means of production and distribution and establishment of socialist values in society, the state will cease to exist and this will lead to the establishment of communist society. In communist society, the individual will enjoy total freedom; he will be free to do whatever he wants to do. This will lead to not only individuals' material but also moral development. According to Marx, Justice can be established in society only in the communist system which is based on socio-economic equality.

Feminist Perspective

Feminist perspective demands justice for women who have faced discrimination since the ancient times. The gender discrimination against women is the result of artificial difference created by society between women and men. Women were accorded inferior status in social, economic and political field as compared to men. They have been exploited and discriminated for centuries and were not allowed to enjoy same set of rights as men. This condition remains more or less the same in the contemporary period, which is reflected in the following United Nation's report:

Women constitute half the world's population, perform nearly two thirds of its work hours, receive one tenth of the world's income and own less

than one hundredth of the world's property. (United Nations Report, 1980)

This discrimination against women is a universal phenomenon, it is found in all the societies of the world.

The need to develop feminist perspective of justice was felt because the women issues were not dealt by the other perspectives. The various theories of justice have not dealt with the questions of women rights, their participation in social, economic and political sphere, their equality with men and with other similar issues. As the questions of justice for women were not dealt with in a comprehensive manner, so the feminist perspective developed in order to deal with the issue of gender justice.

In the initial phase of the feminist movement Mary Wollstonecraft⁸ demanded for the liberty and equality of women with men. She argued that like men, women are also rational beings and hence they also require equal rights for the development of their personality. During this phase the women activists demanded political rights for women particularly the right to vote. J.S. Mill⁹ stated that in no way women are inferior to men and that they should be given all legal and political rights. He supported greater participation of women in politics as it would improve the position of women in the society and also civilize politics.

The second phase of feminist movement believed that gender justice cannot be established merely by political equality rather state should play a positive role in the social sphere because discrimination against women starts from the social sphere and then it reaches out into political and economic sphere. Feminist like Simon - De - Beauvoir¹⁰ believes that the male dominated society, which wants that male dominance should continue, makes the child gender conscious. This attitude of society is extended to economic and political sphere also where women are hardly represented. So, feminists of this school demand that state should take affirmative action to improve the position of women.

The Socialist school of feminism regards the capitalist mode of production as the chief cause behind the exploitation and oppression of women. According to these scholars the position of women can be improved only by the establishment of socialist society. In a socialist society women will be treated equally with men in private as well as public sphere.

Thus, the Feminist scholars believe that justice can be established in the society only when women not only enjoy equal citizenships rights but also equal socio-economic status in the society. The state should ensure that women should be able to freely participate in political, social, cultural and economic sphere without any discrimination. The state in order to correct the past wrong doing should also take affirmative action to improve the position of women in society. This will ensure that women occupy high positions in social, economic and political field. Thus, the feminist perspective on justice calls for securing the overall development of women.

Subaltern Perspective

Subaltern Perspective on justice is concerned with the issues and problems of backward and marginalized sections of the society who have been exploited since the ancient times. Due to the rigid social structure this section of society has always been exploited, oppressed and marginalized from the mainstream and hence their position has always remained the same.

Antonio Gramsci, an Italian Marxist, was the first to introduce the concept of 'Subaltern'. Gramsci believes that the ruling class remains in power not only because it controls the political and economic power but also because it inculcates its value - system in the subordinate class. It inculcates the belief in sub-ordinate classes that it is ruling for the general public welfare. The subaltern groups are made to believe that the rule of elite is necessary for maintaining law and order and they are being ruled with their consent. Gramsci has used the word 'hegemony' to describe this ability of the ruling class and defines it as the capacity of the elite to convince the subordinate classes that the present rule is in their own interest.

According to Marxian theory, the society is divided into two classes- the dominant class which owns the means of production, distribution and exchange and the dominated class which works on them to earn livelihood. The dominant class exploits the subordinate class which is in majority. This belief of Marxian theory was challenged by the elite theory. According to elite theory the society is divided into elites and masses. The elites occupy high position in every sphere of life because of their talent, distinctive ability or organizational capacity and they deserve it because in the absence of elite rule there will be chaos in the society. The masses, on the other hand, are destined to be ruled by the elites. The masses can't rule themselves because such a situation will endanger law and order in the society. According to elite theory, a large share of all the benefit accruing due to the progress made by the society should be enjoyed by the elites and the masses should get lesser share. This view supports the market society model which exists in liberal economy.

The concept of subaltern contradicts the elite theory. The elite theory takes the division of society into elite and the masses as natural and functional whereas the subaltern theory regards it as artificial and exploitative. The elite theory believes that masses can't contribute to the development of the society. The elites only have played an important role in the development of various societies. On the other hand subaltern theory believes that in the development of society the subaltern groups play a more important role. It holds that masses contribute greatly towards the progress of the society and so a large share of benefits accruing from such progress should go to the subordinate classes. But as elites hold the political and economic power they deprive the masses of these benefits.

All those groups in the society which have faced discrimination on the ground of class, caste, race, religion, language, region, culture, gender,

profession are included in the category of subaltern groups. These groups have been exploited and oppressed since the ancient times and have been deprived of their due share in the social, economic and political sphere. According to Subaltern theorists justice can be established in the society only when these backward and marginalized sections of the society enjoy equal political and civil rights with other groups of the society. Their contribution to the progress of the society should be recognized and properly rewarded and they should enjoy equal social status with the elites. Also the benefits of the economic progress made by the society should be equitably distributed between the elite and the masses.

The notion of Justice in the Indian Constitution

The Indian Constitution presents a unique blend of Liberal as well as socialist perspective of justice, in order to secure just environment for its citizens. The Indian Constitution, not only ensure political justice but it also focuses on the social and economic aspects of justice. It has been rightly observed by J.L. Nehru that "...political democracy, by itself is not enough except that it may be used to obtain a gradually increasing measure of economic democracy, equality and the spread of good things of life to others and removal of gross inequalities."¹²

The Indian Constitution ensures political justice to the people of India. It has provided various types of liberties, equally, to all the people, as Fundamental rights, for the development of the personality of the individuals. It has secured a democratic system in the nation, whereby, the people enjoys universal adult suffrage without discrimination based on artificial grounds. The Constitution ensures free, fair and periodic elections in which all the citizens enjoy equal rights to participate and form the government. In terms of public employment, also, the constitution has ensured the implementation of democratic values.

Social justice signifies that, in society, all the individuals should be treated equally and should enjoy the same set of rights. Also, the dignity and honor of every individual should be protected and everyone should be equal in the eyes of the law. The Indian Constitution has ensured social justice as it has mentioned 'equality' as one of its basic principles, included in the Preamble. Apart from this the Indian Constitution has ensured equality before law and abolition of such practices, as untouchability, which creates inequality in the society. It has made enough provisions to ensure the participation of underprivileged sections of the society in the administration as well as the politics of the nation.

The notion of Economic justice is closely related with the concept of social justice. It demands the eradication of evils like poverty, unemployment, starvation, economic exploitation and so on. The Indian Constitution in Article 38(2) has directed the Union as well as the state governments to minimize the inequality in income, status, facilities and opportunities, amongst individuals and groups.¹³

The Indian Constitution includes the basic tenets of all the perspectives of justice developed over the period of time. The Indian Constitution emphasis on political justice and individual liberty brings it within the realm of Liberal as well as Libertarian perspective. Though, it denounces the belief of Libertarian perspective that justice and inequality can coexist in the society and in this the state should not play any role. In fact, the Indian Constitution is closer to the Democratic Socialist perspective, which seeks to establish a balance between liberty of the individual and equality in the society. The framers of the Indian Constitution, influenced by this perspective, firmly believed that justice as a notion is based on the concepts of Liberty and Equality. Though, the Indian Constitution does not support the view of the Marxian perspective that state is an exploitative instrument and it should be completely abolished for the establishment of justice in the society. But, it belies in the end of economic exploitation of men by men in the economic sphere, like the Marxian perspective. The Feminist perspective demands justice for Women and the Subaltern perspective talks of justice for the backward and marginalized sections of the society. The Indian Constitution has also ensured proper participation of women and backward sections in the employment as well as in the politics by making provisions for reservation in these spheres. Through these provisions, the framers of the constitution wanted to integrate the women and marginalized sections in the mainstream of the society.

The Indian Constitution beautifully amalgamates the notion of procedural as well as substantive justice. The procedural justice seeks to develop just procedures, which will ultimately result in the fair distribution of the favors and losses. The Indian Constitution has also made just provisions for securing justice to all the sections of the society. The substantive justice does not give importance to procedures, rather it believes that the end result in itself should be just. The Indian Constitution has established a welfare state in order to ensure that the benefits of the development is not concentrated in the hands of few people, and as far as possible the fruits of progress are enjoyed by all the people.

Thus, the Indian Constitution as a document, in theory, incorporates all the basic ingredients of justice so as to ensure basic liberties to all the individuals as well as, at the same time, create a society based on the notion of equality.

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