

## A STUDY ON THE EMERGENCE OF RIGHT TO SOCIAL JUSTICE AND ECONOMIC EMPOWERMENT IN THE INDIAN CONSTITUTIONAL JURISPRUDENCE

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### ABSTRACT

The Indian Constitution recognizes a number of rights and freedoms. The Fundamental Rights have the highest status among all rights. The Constitution with the noble vision of achieving high ideals, as enumerated in its Preamble, also incorporates various Directive Principles of State Policy in its Part IV to guide and support the Government in framing its policies and laws. The directives principles are, however, expressly non-enforceable which delimits their practical value for the citizens. In a 1997 judgment of the Supreme Court of India, the Court recognized ‘right to social justice and economic empowerment’ as a Fundamental Right. It, therefore, appears paradoxical that terms viz. ‘social justice’ and ‘economic empowerment’, which are normally more associated with Directive Principles of State Policy are given the high status of fully enforceable Fundamental Rights. The current paper is an attempt to acknowledge this paradox by delineating the development and emergence of ‘right to social justice and economic empowerment’ in the Indian constitutional jurisprudence.

### I. INTRODUCTION

The Constitution of India, being the supreme law of India, always holds a place of eminence in the expansive Indian legal regime. It forms the fountain of laws, lays the structure of the ideal Indian polity and enshrines all the cherished ideals and principles which are indispensable in characterizing this nation.

A defining feature of the Indian Constitution rests in its guaranteeing to its citizens a compelling gamut of rights, freedoms and liberties. Of them the most significant are the Fundamental Rights that are the symbol of the citizens enjoying an expansive body of modern civil rights and liberties. The Constitution also enumerates certain Directive Principles of State Policy which though non-enforceable yet serve as a beacon light in guiding the government policy in making true the dream of ideal ‘Bharat’ – an ideal country.

The Indian Constitution recognizes a multitude of rights. Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and Right to Constitutional Remedies are the main broad categories of rights under which the Fundamental Rights in the Constitution are grouped<sup>1</sup>. Besides the Fundamental Rights, there are also many other rights that are duly recognized by the Constitution. Fundamental Rights, however, are supreme. The current paper is written with the main objective of extensively researching on a particular right recognized in the Indian law regime. This right – ‘Right to social justice and economic empowerment’, forms the prime focus of this research paper.

‘Right to social justice and economic empowerment’ is no ordinary right. A number of reasons are behind distinguishing right to social justice and economic empowerment from other rights in the Indian Constitution. First of all, no such right is expressly mentioned in the text of the Constitution. Thus, a question arises pertaining to the source of such a right. Secondly, the key terms used in this right viz. ‘social justice’ and ‘economic empowerment’, are more in relation to the ‘Directive Principles of State Policy’ which, though holding no inferior worth but on account of specially being made ‘non-enforceable’ by the Constitution and carrying just the status of mere ‘directives’ without real teeth, unequivocally fall short of the status accorded to ‘rights’ that are fully enforceable as a matter of fact. However, ‘right to social justice and economic empowerment’ is more than an ordinary right. It has been observed by the Supreme Court of India that right to social justice and economic empowerment is not only a fundamental right but is also a significant component of the Right to Life, one of the most crucial of all the fundamental rights. Therefore, a very pertinent question arises regarding the instances causative of the above paradox. This paper is an attempt to adeptly acknowledge the above questions by delineating the development of the ‘right to social justice and economic empowerment’ and consequently its emergence in the modern Indian constitutional jurisprudence.

## II. BACKGROUND

The objectives to be achieved and the principles instrumental in the formation of the Constitution of India can be approached with relative ease by referring to the Preamble of the Constitution. The Preamble, the key to the minds of the framers of the Constitution, holds indispensable significance whenever the wording of the Constitution demands further interpretation. It clearly sets out the goals and objectives that are sought to be achieved by the Indian polity and the Constitution; thereby also functioning as an important guiding light for the Indian Government.

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<sup>1</sup> The Constitution of India.

These grand goals and objectives, as in the golden words of the Preamble, are “...to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.”<sup>2</sup>

The Preamble mentions securing of justice in all forms viz. social, economic and political as a foremost goal of the Indian polity. The Hon’ble President of India beautifully explained these concepts in his Constitution Day address on 26-11-2018. To quote words from the memorable President’s address –

“In the Preamble, justice is not seen as unidimensional. It is viewed as having implications across political, economic and social spheres. Political justice implies the equal participation of all adults in the political process and the just formulation and implementation of laws. Economic justice implies the ultimate eradication of poverty, equal opportunities to earn a livelihood, and fair wages. As such the expansion of economic, entrepreneurship and job opportunities are among examples of economic justice... Given the diverse history of our people, and given imbalances and hierarchies that have sometimes marked our past, social justice remains a touchstone of our nation building. At the simplest level, it implies the removal of societal imbalances and the harmonisation of rival claims and needs of different communities and groups. Social justice is about providing equal opportunities.”<sup>3</sup>

Thus, ‘social justice’ is undoubtedly a grand goal of the Constitution.

Moving on to the concept of economic empowerment, it is considered as a part of a three-pronged strategy, including social justice and social empowerment, which India has adopted to secure comprehensive socio-economic development of the various weaker segments of the society. It is one of the mechanisms employed to make true the goals of “equality of status and of opportunity” and assuring “dignity of the individual”. Economic empowerment has been defined by ‘Plan International’, a humanitarian organization, in the following words: “Economic empowerment involves both the ability to succeed and advance financially and the power to make and act on economic decisions.”<sup>4</sup> Thus Economic empowerment can be described as one of

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<sup>2</sup> The Constitution of India.

<sup>3</sup>Address by the President of India, Shri Ram Nath Kovind on the occasion of inauguration of Constitution Day Celebrations, available at <https://presidentofindia.nic.in/speeches-detail.htm?623> (last visited on August 7, 2021).

<sup>4</sup>Youth Economic Empowerment, available at <https://plan-international.org/eu/Youth-Economic-Empowerment-Main> (last visited on August 1, 2021).

the various strategies adopted to provide all citizens a level playing field and resources conducive in safeguarding their due rights and liberties.

The concepts of 'social justice' and 'economic empowerment' are also embraced in the constitutions and governance systems of many other modern day countries and democracies.

### III. PROVISIONS OF SOCIAL JUSTICE AND ECONOMIC EMPOWERMENT IN THE INDIAN CONSTITUTION

Before understanding right to social justice and economic empowerment, it is important to get a picture of the various provisions in the Indian Constitution relevant to the concepts of social justice and economic empowerment.

The prominent provisions in the Constitution, which mention the word 'social justice', include the Preamble and Article 38. 'Social Justice' also finds mention in parts of the Constitution regarding the Panchayats and the Municipalities. The concept of social justice in the Constitution of India, in the first instance, can be clearly outlined when the Preamble is read in conjunction with various Directive Principles of State Policy viz. Articles 38, 42, 43, 46 and 48A. However, Right to Equality enshrined in Articles 14, 15, 16 and 17 and also provisions enumerated in the Constitution for protecting the interests of various classes (for example Part XVI of the Constitution) all reflect the ideology of social justice. Article 51A (e) which imposes a 'Fundamental duty' on citizens "to promote harmony and the spirit of common brotherhood amongst all the people of India"<sup>5</sup> is also conducive to the goal of securing social justice.

Doctrine of economic empowerment of the weaker sections of the society has been developed by the Supreme Court by reading the Preamble and the Articles 14, 21, 38, 39 and 46.<sup>6</sup> Article 43 which is the provision for securing of living wage is a step for effective economic empowerment of all workers. Economic empowerment can also be conceived as a part of distributive justice contained in Article 46. Article 46 also enshrines the concept of promotion of both educational and economic interests of the weaker sections of the society. It also mandates the State with the duty of protecting the weaker sections from social injustice and exploitation in all forms.

The concepts of 'social justice' and 'economic empowerment' trace their roots in very firm ideals and principles which form the bedrock of the Indian Constitutional ideology. The Supreme Court of India, in *SR*

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<sup>5</sup> The Constitution of India, art. 51A(e).

<sup>6</sup> *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*, 1995 Supp (2) SCC 549.

*Bommai v. Union of India*<sup>7</sup>, included social justice amongst the unalterable ‘basic features’ of the Constitution, while, the concept of economic empowerment has been viewed by the Supreme Court as an ‘integral constitutional scheme’ and as a ‘basic human right’ in the case of *R Chandevaram v. State of Karnataka*.<sup>8</sup>

## DEVELOPMENT OF RIGHT TO SOCIAL JUSTICE & ECONOMIC EMPOWERMENT

Chief Justice Coke highlighted the role played by Judges as discoverers of law by emphasizing that judicial decisions are not a source of law but are in reality “the best proof of what the law is.”<sup>9</sup> In the Indian scenario also, the Courts in India are not habituated to churning out new laws themselves but strive to reveal and bring out that which is already present and implicit in the already existing legal framework. The same is true when the Supreme Court of India brought forth the doctrine of implied Fundamental Rights for implying a number of rights which are not even expressly written down in the Constitutional text.<sup>10</sup>

The doctrine of implied Fundamental Rights connotes that in order to treat a right as a Fundamental Right it is not necessary that the same should be mentioned expressly in the Constitution.<sup>11</sup> As observed by the Court in *Unni Krishnan, JP v. State of Andhra Pradesh*<sup>12</sup>, “Political, social and economic changes entail the recognition of new rights and the law in its eternal youth grows to meet the demands of society.” Thus, through the marvel of judicial creativity and to a large extent, due to the expanding dimension of Right to life i.e. Article 21 of the Constitution, the Supreme Court has accorded the status of fully enforceable rights on many directive principles. The transition has been visualized chiefly in the times following *Maneka Gandhi v. Union of India*<sup>13</sup> case. Right to food, Right to education, Right to free legal aid, Right to livelihood, Right to socio-economic justice including Right to social justice and economic empowerment are some of the many rights that are an outcome of judicial creativity.

Though the Supreme Court had always held the concept and significance of social justice in high regard since the times of the dawn of Indian republic, it was, however, in *C.E.S.C. Limited v. Subhash Chandra Bose*<sup>14</sup> that the Apex Court laid down that right to social justice is a fundamental right. There is a huge difference in

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<sup>7</sup> AIR 1994 SC 1918.

<sup>8</sup> 1995 6 SCC 309.

<sup>9</sup> V.D. Mahajan, Jurisprudence and Legal Theory 199 (EBC Publishing (P) Ltd., Lucknow, 5th edn., 2016).

<sup>10</sup> M.P. Jain, Indian Constitutional Law 880 (LexisNexis, Haryana, 8th edn., 2018).

<sup>11</sup> *Ibid.*

<sup>12</sup> AIR1993 SC 2178.

<sup>13</sup> (1978) 1 SCC 248.

<sup>14</sup> AIR1992 SC 573.

plainly recognizing the significance of a certain concept and raising the status of the very same concept to the high pedestal of a Fundamental Right. The Court observed as follows:

“The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means... Socio-economic and cultural rights are their means and relevant to them to realise the basic aspirations of meaningful right to life...”<sup>15</sup> The Court then referred to various social and economic rights viz. right to food, clothing, housing, education, livelihood, leisure, fair wages, decent working conditions, social security, physical and mental health, the same being recognized by Universal Declaration of Human Rights and International Conventions of Economic, Social and Cultural Rights as integral facet of the crucial right to life. The Court outlined how the Indian Constitution provides for the very same rights by engrafting the concept of socio-economic justice.

“...Our Constitution in the Preamble and Part IV reinforce them (i.e. socio-economic and cultural rights including right to food, clothing, housing etc) compendiously as socio-economic justice, a bed-rock to an egalitarian social order. The right to social and economic justice is thus fundamental right.”<sup>16</sup>

Coming to the concept of economic empowerment, it can be easily be gauged by looking through the huge span of the judgments of the Supreme Court that the relevance of the concept was never dormant in the Indian Constitutional jurisprudence but the big transition occurred in 1995, when economic empowerment was recognized in *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*<sup>17</sup> case as a basic human right and a fundamental right of the various depressed sections in India. The portraiture given by the Supreme Court in this case regarding the significance of economic empowerment in Indian context is worth mentioning:

“Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and tribes to fulfill the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of cast, sub-caste, creed, religion, race, language and sex. Equality of opportunity and status thereby would become the bedrocks for social integration. Economic

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<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> 1995 Supp (2) SCC 549.

empowerment thereby is the foundation to make equality of status, dignity of person and equal opportunity a truism.”<sup>18</sup>

The Court observed economic empowerment as a key factor in bringing about a considerable improvement in the lives of the depressed sections. Steps taken for economic empowerment viz. providing adequate means of livelihood and distribution of material resources of society shall be highly conducive in the direction of improving the overall structure of the Indian community which had been scathed by the divisive malpractices of the yester years. The Court finally observed: “Economic empowerment to the poor, Dalits and Tribes, is an integral constitutional scheme of socio-economic democracy and a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, Dalits and Tribes.”<sup>19</sup> Quite similar were the observations of the Court in *R Chandevaram v. State of Karnataka*<sup>20</sup>.

Social justice and economic empowerment are concepts which are complementary and mutually conducive to each other. Both the concepts go hand in hand. Thus, both the concepts were again recognized as fundamental rights in the case of *Ashok Kumar Gupta v. State of U.P.*<sup>21</sup>. In the same case, both were also recognized to be a part of the highly cherished Right to Life and thus, also as one of the myriad dimensions of Article 21.

#### IV. CONCLUSION

The concepts of social justice and economic empowerment are integral to the Indian legal regime. While the concept of social justice is included in the grand goals of the Indian Constitution, economic empowerment presents a promising tool to make true many of the high constitutional aspirations. The concepts of social justice and economic empowerment are no longer restricted to the limitations that are inherent to the Directive Principles of State Policy expressly made non-enforceable by the Constitution. The Supreme Court of India has gradually, in due course of time, accorded the high status of fundamental right to the above concepts and has also observed the two as being significant parts of the highly cherished right to life. The most notable cases in this regard include *C.E.S.C. Limited v. Subhash Chandra Bose*<sup>22</sup>, *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*<sup>23</sup> and *Ashok Kumar Gupta v. State of U.P.*<sup>24</sup>. The above transition can be seen as a

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Supra* note 8.

<sup>21</sup> (1997) 5 SCC201.

<sup>22</sup> *Supra* note 14.

<sup>23</sup> *Supra* note 17.

<sup>24</sup> *Supra* note 21.

huge leap in the modern Indian Constitutional jurisprudence where non-enforceable Directive principles are given the teeth and weight characteristic especially of the Fundamental Rights. The best outcome in this transition, however, is that the same is progressive in the direction of giving more meaning and worth to the already enumerated Fundamental Rights of the citizens.

