

An Analytical Study of the Concept of Social Justice under Indian Constitution

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Abstract

The Indian Constitution, through its various manifestations which reflect in the municipal laws and provisions of India, aims at providing equality of status and opportunity and eliminating disparities between different sections of the society. The architects of Indian constitution were very well aware of the distressed condition of these downtrodden sections of the society. They left no stone unturned and put their best efforts for the upliftment of marginalised sections of society by providing them some auspicious provisions in the Constitution for instance, equality under article 14, prohibition on discrimination under article 15 and many more. A nation cannot flourish if a significant portion of its population falls behind in the development race and, as a result, is unable to benefit from the equality of opportunity granted to all Indian citizens as a fundamental right. India, with all its boasts and all its expectations, can't be free in true sense until all its citizens are free- socially, economically and politically.

Key words: Social justice, Underprivileged, Affirmative Action, Discrimination.

1. Introduction

What social justice truly means is equal treatment of all citizens without any social discrimination on any grounds whatsoever. It means the absence of favour being extended to any particular section of the society, and enhancement in the conditions of backward classes (SCs, STs, and OBCs) . Social Justice is the cornerstone of the Indian Constitution. The Constitution framers were well known for the use and minimality of colorful principles of justice. They wanted to search similar form of justice which could fulfill the prospects of the whole revolution. In this quest Pt. Jawahar Lal Nehru put forward an idea before the Constituent Assembly. "First work of this assembly is to make India independent by a new Constitution through which starving people will get complete mess and cloths, and each Indian will get the stylish option that he can progress himself."¹

¹ Constituent Assembly debate - Volume II Wednesday, the 22nd January, 1947.

According to Justice Gajendragadkar “In this sense, social justice holds the points of equal occasion to every citizen in the matter of social & provident conditioning and to help inequalities”. The Constitution of India has solemnly promised to all its citizens judges-social, profitable and political; liberty of study expression, belief, faith and deification; equivalency of status and occasion; and to promote among them all fraternity assuring the quality of the individual and the concinnity of the nation. The Constitution has tried to reconcile the supposedly disagreeing claims of socio-profitable justice and individual liberty and abecedarian rights by putting some applicable vittles.²

The social justice script is to be examined in the environment of two aqueducts of entitlements (a) sustainable livelihood, which means access to acceptable means of living, similar as sanctum, apparel, food, access to experimental means, employment; education, health, and coffers; (b) social and political participation, which stands on the guarantee of abecedarian rights, and creation and commission of the right to participation in the government, and access to all available means of justice, and on the base of which “ justice as a political programme” becomes a feasible reality. We bear thus a study grounded on select illustrations of colorful issues relating to government programs on motifs similar as (a) the right to food and water; (b) casing, which includes resettlement and recuperation; (c) access to education, (d) access to vittles of health and healthcare, (e) right to work, and (f) access to information and the right to communication.³

2. Challenges in Social Justice

Social justice is far from reality after 75 years of independence, Twelfth Five Year Plans, and hundreds of laws leading to a veritable forest of rules providing a variety of special facilities to the underprivileged, ranging from scheduled castes and tribes to i

n areas such as education, employment, housing, and so on. Over 965 million people live in poverty, with 53% unable to spend even a dollar per day on essentials. Only 16% of families have access to the luxury of power, running water, and toilets. If just rural households are considered, the number rises to 3.9 percent. Only a few states, like Kerala and Tamil Nadu, have rural health care.⁴

Then there’s the issue of millions of educated jobless people. Though some degree of inequality is unavoidable in any community, the continuance of large-scale economic gaps and the deplorable living situations of millions of Indians is an unavoidable truth. The fulfillment of a set of basic needs must take precedence because a person does not become a human being without food, shelter, clothing, health care,

² <https://www.legalserviceindia.com/articles/sojt.htm> (last visited on October, 09, 2023).

³ S.M. Mehta, A Commentary on Indian Constitutional Law, Deep & Deep Publication, New Delhi, 1990.

⁴ <https://www.iipa.org.in/cms/public/uploads/452091650967496.pdf> (last visited on October, 09, 2023).

and elementary education. Caste prejudices are common, and discrimination against the lower castes persists, posing a threat to social stability and peace.⁵

3. Social Justice under Indian Constitution

The Indian Constitution solemnly pledges to its people social, economic, and political fairness; freedom of expression, belief, faith, and worship; equality of status and opportunity; and to foster among all fraternity the dignity of the individual and the nation's togetherness. With inclusion of some essential sections, the Constitution has endeavored to reconcile the seemingly contradictory concerns of socio economic justice and individual liberty and fundamental rights.

The preamble itself says: “We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist and democratic Republic and to secure to all its citizens Justice, social, economic and political” Apparently, social justice in all its forms and to all citizens was recognized as fundamental to the set-up which our founding fathers prescribed for the country; it is mentioned on top of the other equally sound concepts. The words, Socialist, secular, democratic and republic have been inserted in the preamble. Which reflects it's from as a social welfare state. The term 'justice' in the Preamble embraces three distinct forms- social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles. Social justice means the equal treatment of all citizens without any social discrimination based on caste, colour, race, religion, sex and so on. Economic justice denotes non-discrimination between people on the basis of economic factors. It involves the elimination of flagrant inequalities in wealth appropriation, income and property. A combination of social justice and economic justice denotes what is known as 'distributive justice'. Political justice implies that all citizens should have equal political rights, equal voice in the government.⁶

In the year of 2001 *Oriental Insurance Co. Ltd. vs. Hansrajbai V. Kodala*⁷ the Apex Court held that “The object is to expeditiously extend social justice to the needy victims of accidents curtailing delay - If the question of determining compensation of fault liability is kept alive, it will result in additional litigation and complications in case claimants fail to establish liability of defendants - Wherever the Legislature wanted to provide additional compensation, it will result in additional litigation and complications in case claimants fail to establish liability of defendants Wherever the Legislature wanted

⁵. Amaresh Chandra Sahoo, Protective Discrimination Under the Constitution of India, (AJMRR) Vol. 2 Issue 5 November 2021.

⁶. M.P. Jain, *Indian Constitution Law*, Wadhwa and Company Law Publishers, Nagpur, 2018.

⁷. 2001(5) SCC 175.

to provide additional compensation, it will result in additional litigation and complications in case claimants.”

3.1 Constitutional Provisions regarding Reservation

Equality has been and is the single greatest craving of all human beings at all points of time. The doctrine of equality has been referred to in the Preamble and the Articles under the sub-heading “Right to Equality”. Article 14 enjoins upon the State not to deny to any person “equality before the law” or the “equal protection of the laws” within the territory of India. Of course, Article 7 of the Universal Declaration of Human Rights had also declared both of the concepts. The significance attached by the founding fathers to the right to equality is evident not only from the fact that they employed both the expressions “equality before the law” and “equal protection of the laws” in Article 14 but proceeded further to state the same rule in positive and affirmative terms in Articles 15 to 18. It was necessary to adopt positive measures to abolish inequality. The positive preferential treatment of the depressed classes or weaker sections of the society is called reservation.⁸

Various Types of Reservation

[A] Political Reservation of all the preferential policies

The most prominent is the reservation of seats in elective legislative bodies. Under political reservation, a certain number of seats in Parliament and in the State legislatures are reserved for members of the Scheduled Castes and the Scheduled Tribes but not for the Other Backward Classes. Political reservations are specified under the Indian Constitution and the provisions reveal the ambivalence of the makers of the Constitution as well as of policy makers in contemporary India. The constitutional provisions for political reservations for the Scheduled Castes and the Scheduled Tribes are mandatory. The Indian Constitution provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the Lower House of Parliament and in the State Legislatures [Article 330 and Article 332 respectively]⁹.

The reservation of seats is specifically provided in the Indian Constitution in proportion to their number for Scheduled Castes in the Lok Sabha and the Vidhan Sabha reserving no seats in the Upper Houses, Central or State. The reason behind providing reservation of seats in the Legislature was that they [Weaker Sections of the society] had neither the resources nor the experience for entering into an open competition for the purpose of the participation in the political process. The Scheduled Castes because of their disadvantageous position could not have competition with the advanced section of the society on the

⁸ David B. Oppenheimer, and Sheila R. Foster “*Comparative Equality and Anti-Discrimination Law*”, Third Edition Edward Elgar Publishing, U.K. 2020.

⁹ Constituion of India, 1950.

footing of the equality. So, they have been guaranteed representation in order to assure social justice. In order to enhance political participation by Scheduled Castes, the constitutional provision of reserved seats is complemented by statutory provisions.¹⁰

[B] Job Reservation

The second type of reservation which is even more controversial than the first is known as reservation in public employment. The Constitution makers were of strong belief that unless downtrodden and depressed people of the country actually participate in the administration and governing process, the constitutional safeguards and the developmental schemes will be of no use for them in the country. Therefore, according to them, it was now the main object to provide depressed classes of persons with special treatment, at least as a temporary measure, with the purpose of removing the hindrance to the development of the country and to bring them [Scheduled Castes and Scheduled Tribes] at par with the rest of the section of the society in order to create an egalitarian society wherein justice, social, economic and political prevail. So, in order to achieve this object, the Indian Constitution has provided the reservation of seats in public employment¹¹.

The provisions for reservation in public employment apply not only to the Scheduled Castes and Scheduled Tribes but also to the Other Backward Classes as well. Over the years, there has been an extension of reservation in public employment for the benefit of the Other Backward Classes. This has now become the most contentious issue of positive measure in India. The question is whether or not the wholesale extension of reservation in public employment for the Other Backward Classes accords with the spirit of the Indian Constitution. For reservation in public employment, unlike political reservations, the provisions are not mandatory, they are enabling provisions.¹²

It is specifically held by Justice Krishna Iyer in *State of Kerala vs. N.M. Thomas*¹³ that the preferential treatment through the technique of classification could be accorded only to those sections of people in whose case backwardness was such a high degree that they deserved benign discrimination and also he says that: "If we search for Backward Class, we just find Scheduled Castes and Scheduled Tribes as the large segment but not any other section of the society."

[C] Educational Reservation

Finally, there is what may be called reservation in education. The provisions for reservations in educational institutions to depressed and deprived sections of the Scheduled Castes and Scheduled Tribes

¹⁰. V.N. Shukla, *Constitution of India*, thirteenth edition, E.B.C, Lucknow, 2017.

¹¹. Constituent Assembly Debates On 25 November, 1949.

¹². <https://documents.doptcirculars.nic.in/D2/D02adm/ImportantOUqbX.pdf> (last visited on October, 10, 2023).

¹³. 1976 AIR 490.

have been provided in Article 15[4]¹⁴. According to Article 15, the State is specifically barred from making any kind of discrimination towards its citizens on the bases of race, caste, citizenship, sex, place of birth or any of them. But Clause [4] of the same article provides that the State is empowered to make any special provision for the advancement of any socially and educationally Backward Classes. Reservations are possible under Article 15[4] for the advancement of any backward class of citizens or for Scheduled Castes and Scheduled Tribes. Rejecting the argument that Article 15[4] envisages “positive action” while Article 16[4] is a provision warranting programmes of “positive discrimination”, the Supreme Court has observed in *Indra Sawhney vs. Union of India*¹⁵ “We are afraid we may not be able to fit these provisions into this kind of compartmentalization in the context and scheme of our constitutional provisions. By now, it is well settled that reservation in educational institutions and other walks of life can be provided under Article 15[4] just as reservations can be provided in services under Article 16[4]. If so, it would not be correct to confine Article 15[4] to programmes of positive action alone. Article 15[4] is wider than Article 16[4] is as much as several kinds of positive action programmes can also be evolved and implemented thereunder [in addition to reservations] to improve the conditions of Socially and Educationally Backward Classes [SEBCs], Scheduled Castes and Scheduled Tribes, whereas Article 16[4] speaks only of one type of remedial measure, namely, reservation of appointments/posts.” Reservation for a backward class is not a constitutional mandate.

[D] Socially and Educationally Backward Classes

A significant problem raised by Article 15[4] is regarding the determination of who are “socially and educationally backward classes”. This is not a simple matter as sociological and economic considerations come into play in developing a proper criteria for determination of socially and educationally backward classes. However, article 15[4] lays down no criteria to designate “backward classes”; it leaves the matter to the state to specify backward classes, but the courts can go into the question whether the criteria used by the state for the purpose are relevant or not.

The Supreme Court in number of cases has considered the question of defining backward classes. As the bottom line, the Supreme Court’s approach has been that state resources are limited; protection to one group affects the constitutional rights of other citizens to demand equal opportunity, and efficiency and public interest have to be maintained in public services because it is implicit in the very idea of reservation that a less meritorious person is being preferred to a more meritorious person. The Court’s consideration is also to guard against the perpetuation of the caste system in India and the inclusion of advance classes within the term backward classes.

¹⁴. Constituion of India, 1950.

¹⁵. AIR 1993 SC 477.

From the several judicial pronouncements concerning the definition of backward classes, several propositions emerge.¹⁶

- *First*, the backwardness envisaged by Article 15[4] is social and educational. This means that a class to be identified as backward should be both socially and educationally backward. In ***M.R. Balaji vs. State of Mysore***,¹⁷ the Court equated the “social and educational backwardness” to that of the “Scheduled Castes and Scheduled Tribes”. The Court observed: “It was realized that in the Indian society there were other classes of citizens who were equally, or may be somewhat less, backward than the Scheduled Castes and Scheduled Tribe and it was thought that some special provision ought to be made even for them.”
- *Secondly*, poverty alone cannot be the deciding factor for backwardness in India because by and large people are poor hence, a major sections of population would fall under the backward category and thus the whole object of reservation would be frustrated.
- *Thirdly*, backwardness should be comparable, though not exactly similar, to the Scheduled Castes and Scheduled Tribes.
- *Fourthly*, “caste” may be a relevant factor to define backwardness, but it cannot be the sole or even the dominant criterion. If classification for social backwardness were to be based solely on caste, then the caste system would be perpetuated in the Indian society. Also this test would break down in relation to those sections of society which do not recognize caste in the conventional sense as known to the Hindu society.
- *Fifthly*, poverty, occupations, place of habitation, all contributes to backwardness and such factors cannot be ignored. *Sixthly*, backwardness may be defined without any reference to caste.

[E] Article 15[5]

Article 15[5] of the Indian Constitution provides that the State is not prevented from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions other than the minority educational institutions referred to in Article 30[1]. Clause [5] in the Article was added by the Constitution 93rd Amendment, 2005.

¹⁶ Ahmad, S. Waseem, and M. Ashraf Ali. “Social Justice and The Constitution of India.” The Indian Journal of Political Science, vol. 67, no. 4, 2006, JSTOR, <http://www.jstor.org/stable/41856262>. (last visited on October, 09, 2023).

¹⁷ 1963 AIR 649.

The Constitution 93rd Amendment was in response to the Supreme Court's explanation in *P.A. Inamdar*¹⁸ of the ratio *T.M.A. Pai*¹⁹ that imposition of reservation on the non-minority aided educational institutions, covered by Sub-clause [g] of Clause [1] of Article 19, to be unreasonable restrictions and not covered by Clause [6] of Article 19. The purpose of the amendment was to clarify or amend the Constitution in a manner that what was held to be unreasonable would now be reasonable by virtue of the constitutional status given to such measures. It has been held the provision under Article 15[5] of the Constitution is to be taken as an enabling provision to carry out certain constitutional mandate and thus it is constitutionally valid and it does not exclude Article 15[4] of the Constitution. Further, the Constitution [93rd Amendment] Act, 2005 does not violate the "basic structure" of the Constitution so far as it relates to aided educational institutions subject to the exclusion of "creamy layer". The provisions of new Clause [5] of Article 15 do not purport to take away the power of judicial review, or even access to Courts through Articles 32 or 226.

Article 15[5] of the Constitution excludes the minority educational institutions from the ambit of State's power to make any provision by law for the advancement of any socially or educationally backward classes of the citizens or for Scheduled Castes and Scheduled Tribes in relation to their admission to educational institutions including private educational institutions whether aided or unaided. The aforesaid article is susceptible to very wide interpretation and vests the State with power of vast proportions to achieve the purpose stated in the article. But, the framers of the Constitution have consciously excluded minority educational institutions from the operation of this clause.²⁰

Exclusion of minority educational institutions from Article 15[5] is not violation of Article 14 of the Constitution as the minority educational institutions by themselves are a separate class and their rights are protected by other constitutional provisions. Principle of strict scrutiny does not apply to affirmative action under Article 15[5] but a measure that disadvantages a vulnerable group defined on the basis of characteristic that relates to personal autonomy shall be subject to strict scrutiny.

[F]Article 16 [4–A]

In *Indra Sawhney*, as stated above, eight out of nine Judges opined that Article 16[4]²¹ was confined to ritual appointments only and it did not permit or warrant reservation the matter of promotion

¹⁸. (2005) 6 S.C.C. 537.

¹⁹. (2002) 8 SCC 481.

²⁰. https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/16/162/186_2022_9_17.pdf(last visited on October, 12, 2023).

²¹. The Constitution (Seventy Seven Amendment) Act, 1997.

as such, as this gave rise to several untoward and iniquitous results. The Court however permitted the existing rules in that behalf to operate for a period of five years from the date of the judgment. Thus, Rangachari decision was overruled. Since then, however, the 77th Constitutional Amendment Act has been brought into effect permitting reservation in promotion to the Scheduled Castes and Scheduled Tribes. The following Clause [4-A] has been added to Article 16 in 1995, “Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State.”²² The Constitutional Amendment was brought into effect before the expiry of the time limit set by the Supreme Court, viz., five years from the date of the judgment for the rule permitting reservation in promotion to end. Article 16[4-A] came into force from 17th June, 1995.

The Promotion and Seniority Promotion of SC and ST employees out of turn because of the scheme of reservation raises several problems, especially, pertaining to seniority of such persons over the employees belonging to the general category. The Supreme Court has sought to deal with such problems keeping in view considerations of equity and fairness. In *Union of India vs. Virpal Singh Chauhan*,²³ A two Judge Bench of the Supreme Court reiterated what the Court had said in *Indra Sawhney* that providing reservation in promotion was not warranted by Article 16[4]. The rule of reservation in promotion factually created a very poignant and objectionable situation in Virpal, of the candidates being considered for promotion to 11 vacancies, all were SC/ST candidates. Not a single candidate among them belonged to the general category. The Court described the resultant situation arising out of reservation in promotion posts as follows: “Not only the juniors are stealing a march over the seniors but the march is so rapid that not only erstwhile compatriots are left far behind but even the persons who were in the higher categories at the time of entry of Scheduled Castes/Scheduled Tribes candidates in the service have also been left behind. Such a configuration could not certainly have been intended by the framers of the Constitution or the framers of the rules of reservation.”

[G]Article 16[4-B]²⁴

The Constitution 81st Amendment, 2000, has added Article 16[4-B] to the Constitution. Article 16[4-B] runs as follows: “Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under Clause [4] or Clause [4-A] as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the

²². Sukhadeo Thorat, “Dalits in India: Search for a Common Destiny”, SAGE Publishing India, February, 2009.

²³. 1996 AIR 448, 1995 SCC (6) 684.

²⁴. Constituion of India, 1950.

vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.”²⁵

The Amendment provides that the unfilled reserved vacancies in a year are to be carried forward to subsequent years and that these vacancies are to be treated as distinct and separate from the current vacancies during any year. The rule of 50 percent reservation laid down by the Supreme Court is to be applied only to the normal vacancies and not to the posts of backlog of reserved vacancies. This means that the unfilled reserved vacancies are to be carried forward from year to year without any limit, and are to be filled separately from the normal vacancies. This Amendment also modifies the proposition laid down by the Supreme Court in *Indra Sawhney*²⁶. The Amendment does increase the employment opportunities for the SC, ST and OBC candidates.

4. Abolition of Untouchability

Article 17 abolishes untouchability and forbids its practice in any form.²⁷ The enforcement of any disability arising out of “untouchability” is to be an offence punishable in accordance with law. Abolition of untouchability is complete in itself and its effect is all pervading which is applicable to acts or omissions by individuals as well as state action, institutions or juristic body of persons. Article 17 of the Constitution of India, in Part III, a Fundamental Right, made an epoch making declaration that untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. In pursuance of the power provided in second part of Article 17 and Article 35(a)(ii), the Untouchability (Offences) Act 1955 was made, which was renamed in 1976 as Protection of Civil Rights Act, for short 'the Act'. Despite the abolition of untouchability, it is being practiced with impunity more in breach. More than 75% of the cases under the Act end in acquittal at all levels. Apathy, indifference and lack of proper perspectives even by the courts in tackling the naughty problem is obvious.

The Act is not a penal law simpliciter but bears behind it monstrous untouchability continuously practiced for centuries dehumanizing the Dalits. The Constitution of India has a great conviction to have untouchability and social disparity eradicated and to assimilate 1/5th of Nation's population in the main stream of national life.²⁸ Therefore, I feel that it would be imperative to look into the problem not merely from the perspectives of criminal jurisprudence, but more so from sociological and constitutional angulations.

²⁵The Constitution (Eighty Fifth Amendment) Act, 2001 which added "consequential seniority" for SC/STs under 16(4B).

²⁶ AIR 1993 SC 477.

²⁷ Constituion of India, 1950.

²⁸ M.J. Antony, “*Dalit Rights : Landmark Judgements on SC/ST/Backward Classes*”, Indian Social Institute, New Delhi, 1998.

5. Article 21 of the Constitution provides protection of life and personal Liberty

Under Article 21 of the Constitution, the right to live with human dignity is the fundamental right of every Indian citizen. Therefore, the State, in the discharge of its responsibilities to the people, recognizes the need for maintaining establishments for the care of those deprived and unfortunates, both SC and ST, who are the castaways of an imperfect social order and therefore, necessary provisions must be made for their protection and welfare. Both humanity and considerations of law and order require the State to do so.

In order to abide by the constitutional standards recognized by well accepted principle, it is imperative for the State when assigning SC and ST to these establishments, to provide the basic minimum conditions ensuring human dignity. India is a welfare State governed by a Constitution which lays special emphasis on the protection and well-being of the weaker sections of society and aims to elevate their economic and social status. It shows a particular regard for SC and ST and notwithstanding the pervasive ethos of the doctrine of equality it contemplates special provisions being made for them by law.

6. Article 32 provides every citizen the right to constitutional remedies

A right without a remedy is of no consequence. The Fundamental Rights guaranteed by the Constitution would have been worth nothing had the Constitution not provided an effective mechanism for their enforcement. The significance of jurisdiction conferred by Article 32 is described by *Dr. B.R. Ambedkar* in the Constituent Assembly as follows:

“If you ask me to name one Article in the Constitution that is most important, I would definitely say Article 32. “This is the most important article without which this Constitution would be a nullity”. Further he has described as “the very soul of the Constitution and the very heart of it”.²⁹

Thus, it can be said that Art. 32 mainly preserves the principle of constitutionalism by limiting the government against any arbitrary act of the State. This right as provided under Art. 32 empowers the citizen to move the Apex Court and bring into its notice any social inequality and hence serve as a vehicle to impart social justice by restricting the government of any arbitrary act. There are numerous instances when the Apex Court has taken note of and acted upon in the cases of rampant injustice and ill treatment of poor and down-trodden citizen and hence called upon the State to undo the wrong and impart social justice to its people.

When a person or class of persons to who has suffered some legal injury by reason of his poverty, disability or socially or economically disadvantaged position and he/she is not able to approach the Court for judicial redress, any member of the public acting in good faith and not out of any otherwise motivation

²⁹. Constituent Assembly Debates On 20 August, 1949 Part II

may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons and the judicial process may be set in motion by any public spirited individual or institution even by addressing a letter to the court.³⁰

Where a person who has suffered some legal injury seeks judicial redress but due to the reason of poverty, disability or socially or economically disadvantaged position is unable to approach the court and the court is moved for this purpose, in good faith, by a member of a public by addressing a letter drawing the attention of the court to such legal injury, court would cast aside all technical rules of procedure and entertain the letter as a writ Petition on the judicial side and take action upon it.

7. Provision Under Directive Principles "Equal Pay for Equal Work"

The Supreme Court has deduced the principle of “equal pay for equal work” from Articles 14, 16 and 19[d] and the Preamble to the Indian Constitution. As the Supreme Court has explained in *State of Madhya Pradesh vs. Pramod Bhartiya*,³¹ the doctrine of “equal pay for equal work” is implicit in the doctrine of equality enshrined in Article 14, and flows from it. The rule is as much a part of Article 14 as it is of Article 16[1]. The doctrine is also stated in Article 39[d], a directive principle, which ordains the State to direct its policy towards securing equal pay for equal work for both men and women. The Court has enunciated the doctrine as follows:

“The doctrine of equal work for equal pay would apply on the premise of similar work but it does not mean that there should be complete identity in all respects. If the two classes of persons do some work under the same employer, with similar responsibility, under similar working conditions, the doctrine of ‘equal work equal pay’, would apply and it would not be open to the State to discriminate one class with the other in paying salary.” But it cannot be said that being a directive principle, it is not enforceable in a Court of law because it is also a part of Article 14.³²

7.1 Article 41 Right to Work

Article 41 requires the state, within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education, and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of unreserved want. It talks about equality, the right to a living wage or to secure a decent standard of living and the like become hollow unless every individual has the opportunity to earn these things by suitable employment. But every citizen

³⁰. <https://blog.ipleaders.in/right-to-constitutional-remedies/> (last visited on October, 09, 2023).

³¹. AIR 1993 SC 286.

³². R.N Dhayal. “Dr. B.R. Ambedkar Ideas on Social Equality and Justice in Indian Perspectives”, An International Journal, Vol. XVI[12], February, 2018.

may have this opportunity to satisfy his needs through work only if there is sufficient work and employment in the state to which he belongs.³³

Each individual's right to work involves an obligation on the part of the welfare state to secure the necessary quantum of work by ensuring and promoting production, trade, and business hence, increased opportunities of employment. But there is a reasonable limit to this obligation which is the economic capacity and development of the "particular state for the time being, which is made clear by Art.41 of our Constitution. The aforesaid obligation of the State is, accordingly, a moral obligation, which cannot be enforced through a court of law as an immediate legal obligation. Although, under Art.41 it is a Directive Principle hence, a non justifiable right, still, the Supreme Court has made it meaningful, by making the necessary deductions, bearing in mind the scheme of socio-economic justice as envisaged by the constitutional framers and the goal mentioned in the Preamble of the Constitution and the other Directives embodied in Part IV. It is usual to refer to matters specified in this directive as a measure of social security.

7.2 Article 42 Humane Working Conditions

Article 42 requires the state to make provisions for securing just and humane conditions of work and for maternity relief. This directive is similar to (A) The International Charter of Universal Declaration of Human Rights, 1948, in which Arts. 23 says: "Art. 23(1) everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment. "Art. 23 (3) says that everyone who works has the right to just and favorable remuneration incurring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." Art. 42 largely provides the basis of labour laws in India.³⁴

8. Article 341, Scheduled Caste and Scheduled Tribes

The Constitution treats the scheduled castes and scheduled tribes in India with special favour and accords them with certain safeguards. The Constitution however, does not specify the tribes or the castes which are to be called as the scheduled castes or the scheduled tribes. It leaves the power to list these castes and tribes as scheduled castes and scheduled tribes to the President. The scheduled castes, according to Article 366 read with Article 341, are those castes, races or tribes, or parts thereof, as the President may notify. According to Article 341(1), the President may specify castes, races or tribes, or parts of groups within caste, races or tribes which shall be for the purpose of the Constitution be deemed to be scheduled castes in relation to that State. Thus, the classification of scheduled castes may vary with state and Union

³³. M.P. Jain, *Indian Constitutional law*, 8th edition, Lexis Nexis, Haryana 2018.

³⁴. Durga Das Basu, *Introduction to the Constitution of India*, 26th edition, Lexis Nexis, 2022.

territory.³⁵ As regards the states, the President issues the notification after consultation with the Governor of the state concerned. The purpose of this provision is to avoid disputes as to whether a particular caste should be specified as a scheduled caste or not. Only those castes can be characterised as scheduled castes which are notified in the Presidential Order under Article 341. Under Article 341(2), however, Parliament may by law include or exclude from the list of Scheduled Castes occupied in a notification by the President any caste, race or tribe or part of or group within any caste, race or tribe.³⁶

9. Conclusion

The Constitution of India via its various provisions aims at eliminating disparities between different sections of the society and providing equality of status and opportunity to all its subjects. There has been a long-debated dilemma of preservation of rights of the marginalized sections of society and the privileged class simultaneously. The stratified society like ours where a section of society has faced severe social disparities since thousands of years certainly requires some protection and special treatment in their favour. Where the essence of the right to equality is pervading throughout the Constitution, it also speaks of special treatment to a particular section.

Therefore, the Constitution of India, in order to secure justice to its historically oppressed and socially as well as economically backward classes of citizens has devised the scheme of Protective discrimination which seeks to offset systematic and cumulative deprivation. It comprises compensatory programmes to lift the deprived and exploited communities. Preferment is available to ensure a share of power and opportunity to the historically disadvantaged to promote their advancement until "they can hold their own without it". It thus represents a legislative devise to steer the process of mobility among the depressed classes.

³⁵. <https://documents.doptirculars.nic.in/D2/D02adm/Introductory.pdf>(last visited on October, 07, 2023).

³⁶. V.N. Shukla, *Constitution of India*, thirteenth edition, E.B.C, Lucknow, 2017.