

INTRODUCTION

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The caravan of history marches slowly and steadily through several vicissitudes of human life leaving behind in every nation and in every society a caput mortuum of human beings. This unfortunate and worthless residue of human beings in every society has been the result of the full play of the doctrine of survival of the fittest. In every society the economically and socially stronger sections have invariably and mercilessly suppressed the weaker sections and tried to keep them under subjugation throughout. They have been ably aided in their efforts by the doctrine of laissez faire economy, norms of social hierarchy and the concept of 'police state'. Quantitatively the 'social residue' or the weaker section increased and qualitatively the position of persons who came under this category deteriorated from time to time. These people have had to live under great disabilities imposed by the society. India has not been an exception to this phenomenon. By its rigid caste system and archaic social norms the Indian social order imposed additional strains on the weaker sections; and some groups of people, who had been kept out of the pale of caste system, lived under inhuman conditions.

However, the modern concepts of Welfare economy, social service state, "social engineering", etc., have compelled the

statesmen and Constitution makers to think in terms of rendering social justice to the downtrodden in the society. It is, therefore, not surprising that the framers of the Indian Constitution, who were great statesmen, liberals and social reformers, made ample provisions in the Constitution in favour of weaker sections of the people. The main purport of the provisions incorporated in the Constitution for their benefit is to grant initial advantages to them and to continue to grant such advantages to them till they reach a stage when they would be able to march forward in dignity and as equals with others.

The Preamble of the Constitution lays stress on socio-economic justice, equality of status and of opportunity and the promotion among the people of India "fraternity assuring the dignity of the individual". The realisation of these ideals necessarily involves the upliftment of the downtrodden, and for this purpose the State has to provide sufficient advantages or to give discriminatory treatment in favour of weaker sections of the people for a reasonable period by way of atonement for the past injustice perpetrated on them. Therefore, the Constitution declares in Article 46 that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".

Article 46 is a provision in Part IV of the Constitution which is entitled "Directive Principles of State Policy". Since the framers of the Indian Constitution were influenced by the Irish Constitution in formulating the directive principles, naturally the provisions of Article 46 of the Indian Constitution bear to certain extent a kinship to provisions of Article 45(4)(1) of the Irish Constitution, which states: the State pledges itself to safeguard with special care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirms, the widow, the orphan and the aged". There are certain differences between the provisions stipulated in the two Constitutions. While the Irish Constitution pinpoints a few groups of people who deserve economic assistance, the Indian Constitution particularises "Scheduled Castes and Scheduled Tribes" for the purpose of Article 46; and the Irish Constitution mentions the "economic interests of the weaker sections of the community", whereas the Indian Constitution uses the expression "the educational and economic interests of the weaker sections of the people". It is said the word "educational" was added in Article 46 of the Indian Constitution to emphasize the importance of education to the weaker sections, for without that any economic assistance rendered might not be fruitful or effective. Besides, it is said that it was the lack of education amongst them that was responsible for the perpetuation of social injustice on

them.¹ No doubt, by adding the word "educational" in Article 46, the framers of the Indian Constitution showed a great sense of pragmatism. But, the framers of the Constitution failed to provide a precise definition of the expression "weaker sections of the people". Ascertainment of the meaning of this expression is necessary for a comprehensive discussion of constitutional provisions made for the benefit of such people. Even the Irish provision does not throw much light on the meaning of the expression "weaker sections". So, meaning of the expression used in Article 46 of the Indian Constitution must be gathered from the other provisions of it.

The expression "weaker section" is not mentioned in other provisions of the Constitution. But, in Part III of the Constitution, which embodies fundamental rights, provisions have been made in three places to enable the State to make protective discrimination in favour of certain categories of people. The first provision is Clause (3) of Article 15, which authorises the State to make special provisions in favour of "women". The second provision is Clause (4) of Article 15, which enables the State to make special provisions in favour of "socially and educationally backward classes of citizens" and "Scheduled Castes and Scheduled Tribes". Though, Article 15(1) prohibits the

1 K.C. Markandan, Directive Principles in the Indian Constitution, (Allied Publishers Private Ltd., Bombay), 1966, p.208.

state from making any discrimination against any citizen on any ground of religion, race, caste, sex or place of birth, the above mentioned provisions permit expressly the State to show concessions or to make special provisions in favour of the specific groups of people mentioned therein. The third provision is Clause (4) of Article 16 which enables the State to make reservations of posts or appointments in the Government service in favour of "Backward Classes" of citizens notwithstanding the fact that Clauses (1) and (2) of Article 16 ensure equality of opportunity in matters relating to appointments or posts in service under the State by prohibiting discrimination against any citizen based on religion, race, caste, sex, place of birth or descent while filling up such posts.

Thus, four groups of people, namely "women", "Scheduled Castes and Scheduled Tribes", "Backward Classes" and "Socially and educationally Backward Classes", have been mentioned for the purpose of special treatment. Evidently, these four groups have been treated as "weaker sections". The first and foremost weaker sections is "women", who virtually constitute one half of the population. Women in this country, as also elsewhere, did not occupy in society a position equal to men. Due to certain historical facts and social norms created by men and the laws, which kept pace with the thinking of the past ages, women occupied a servile position in society. Their rights regarding

marriage, property, succession, education etc., were very much curtailed and they were obliged to live always under the protection and tutelage of men. So they lived a life which might be a grain better than the life of slaves. The long period of suppression of women robbed them of their initiative, their power and the confidence in their ability to face life independently; and, consequently, they became weak both mentally and physically. The constraints-ridden social environment in India not only sustained their weakness but also accelerated it. Naturally, therefore, the Constitution makers thought of ameliorating their conditions and of making amendments for the past injustice by granting initial advantages or adventitious aids to women till they gain sufficient confidence and strength to compete with men in all spheres of life as equals.

The second group of "weaker section" is "Scheduled Castes and Scheduled Tribes". The meaning of the phrase "Scheduled Castes and Scheduled Tribes" is given in Clauses (24) and (25) of Article 366. The "Scheduled Castes", according to Article 366(24), means, "such castes, races or tribes or part of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for purposes of this Constitution". Article 341 says that the President may with respect to any State or Union Territory, by public notification specify the castes, races or tribes or parts of or groups within

castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes" in relation to that State or Union Territory. The President issued under Article 341 of the required notifications² specifying a number of castes, races or tribes which were for the purposes of the Constitution deemed to be Scheduled Castes in relation to various States³ and Union Territories.

Similarly Article 366(25) defines the "Scheduled Tribes" to mean "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution". Then Article 342 states that the President may, with respect to any State and any Union Territory, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled "Tribes" in relation to that State or Union Territories. The

2 See the Constitution (Scheduled Castes) Order, 1950, and the Constitution (Scheduled Castes) (Part C States) Order, 1951.

3 For example, in relation to the old Madras the following castes, tribes, etc., have been mentioned: Adi Andhra, Adi Dravida, Arunthathiyar, Baira, Bandi, Bariki, Bavuri, Bellara, Byagari, Chachati, Chakkiliyan, Chalavadi, Chamar, Chandala, Cheruman, Dandaso, Devandrakulanathan, Ghasi, Godari, Kadan, Kalladi, Kanakkan, Karimpalan, Kudumban, Kuravan, Kuruchchan, Madari, Maila, Mala, Mavilan, Moger, Muchi, Nalakeyava, Nayadi, Pagadal, Paky, Pallan, Panidi, Panan, Panchama, Panniandi, Paraiyan, Paravan, Pulayan, Puthiraivanan, Raneyar, Samban, Sennan, Tiruvalluvar, Valluvan, Valmiki, Vettuvan, etc.

President issued required notifications⁴ under Article 342, specifying a number of tribes and tribal communities which were deemed to be Scheduled Tribes for the purpose of the Constitution in relation to several States⁵ and Union Territories. Thus, there is no difficulty in identifying the Scheduled Castes and Scheduled Tribes for the purpose of favourable treatment under the Constitution.

The other two phrases are "Backward Classes" and "socially and educationally Backward Classes". They have not been defined in the Constitution. The phrase "socially and educationally Backward Classes" is used in Article 340(1), which says that the President may by order appoint a Commission to investigate the conditions of "socially and educationally Backward Classes" within the territory of India. The Commission so appointed may in its report suggest, among others, steps that should be taken to improve their condition.⁶ This Article does

4 See the Constitution (Scheduled Tribes) Order, 1950 and the Constitution (Scheduled Tribes) (Part C States) Order, 1951.

5 For example some of the tribes and tribal communities listed in relation to old Madras State are as follows: Arandan, Bhattadas, Bhunias, Godabas, Goudus, Kosalya Goudus, Magatha Goudus, Kattunayakan, Konda Kapus, Kondareddis, Kondhs, Kota, Koya, or Goud with its subsects - Kudia Kurumans, Manna Dhora, Maune, Mukha Dhora, Muria, Paigarapu, Palasi, Paniyan, Porjas, Deddi Dhoras, Savaras, Sholaja Todda, etc.

6 Article 340(1) States: "The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally
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not furnish a definition of the phrase, nor does it give a clue to its meaning.

The phrase "weaker sections" mentioned in Article 46 of the Constitution is wide enough to include women, Scheduled Castes and Scheduled Tribes, socially and educationally Backward Classes, Backward Classes, children, "untouchables" and bonded labour. Therefore, any discussion on weaker sections and social justice must be in relation to all the above mentioned groups. But, here the discussion on social justice has been carried on mainly in relation to "protective discrimination" or "compensatory discrimination" stipulated in the Constitution. Therefore, the discussion has been confined in this work to four groups of weaker sections, namely, women, Scheduled Castes and Scheduled Tribes, socially and educationally Backward Classes and Backward Classes, in whose favour provisions have been made for the said protective discrimination in three Articles of the Constitution, namely, Articles 15(3), 15(4) and 16(4). No doubt,

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Backward Classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

Article 15(3) mentions children too.⁷ But, "Children" have been left out of the scope of this work for three reasons. First, children, unlike other weaker sections, are considered to be weaker group in society because of their age and not due to the result of economic and social suppression. Secondly, age can be a basis for classification and if children are treated as a class for special treatment, there is nothing in Article 15(1) to prevent it.⁸ Thirdly, the constitutional safeguards for children demands a separate and different discussion.

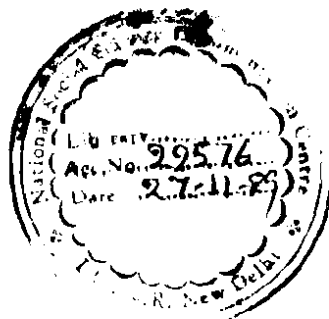
"Social justice and Weaker Sections" is a fascinating subject and a number of books and articles have already appeared on the topic. In this work an attempt has been made to examine the topic from an angle, which is not done hitherto. "Social Justice" is a subtle concept. Great jurists discussed it and arrived at different conclusions; the Preamble of the Constitution laid stress on it and Constitution makers explained its connotations; and the judiciary made deep analysis of it in various decisions. Necessarily, therefore, meaning and contents of "social justice" have to be ascertained after analysing the various theories

⁷ Article 15(3) States: "Nothing in this article shall prevent the State from making any special provision for women and children".

⁸ Article 15(1) States: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them".

advanced by the jurists, the views expressed by the framers of the Constitution and the judicial pronouncement.

The weaker sections, which are sought to be covered in this work, are "Backward Classes", socially and educationally Backward Classes", "Scheduled Castes and Scheduled Tribes" and women. The first two categories of weaker sections have not been defined in the Constitution. So, their meaning and the criteria to determine them have to be gathered from the reports submitted by various Backward Class Commissions and judicial decisions rendered in a number of cases. The main thrust in this work is to understand the meaning and contents of social justice, identify the relevant weaker sections and to examine the extent to which the social justice has been rendered to the said weaker sections. The scope of this thesis is confined to the examination of the role of the judiciary in this field. So, the enquiry has been focussed mainly on the decisions of the judiciary bearing on the subject with a view to assessing the role of the judiciary in rendering social justice meaningful to the weaker sections in particular and to the Indian Society in general.



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