

Revisiting the Idea of Social Justice: An Assessment of EWS reservation in India

Mr. Kundan Kumar

Ph.D research scholar, Centre for Political studies at Central University of South Bihar, Gaya(Bihar).

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ABSTRACT

Society is considered as an organism in which the flourishing of each element requires the co-operation and coordination of all members. Backwardness of one person leads to a backward society. The aim of social justice is to specify the institutional arrangements that will allow each person to contribute fully to social well-being. The modern idea of social justice is concerned with introduction of a new social order which could secure rights and advantages for the different sections of society in general and for the disadvantage sections of society in particular. It is simply understood as the distribution of benefits and burdens. But, in the process of distribution of resources three basic problems occur. Firstly, what are the things, whose distribution/allocation is concern of social justice? Secondly, who will distribute the things? Lastly, among whom will the distribution be done? It was being provided to Scheduled castes, Scheduled tribes, Other backward castes, Divyangs, Women etc. in India in the form of reservation and some other benefits. A new group i.e. Economically Weaker Section (EWS) has been introduced as a beneficiary this year by Modi government. This paper examines the debate among political philosopher as to how fair distribution could happen. It also examines the reflections of Indian scholars on the idea of social justice.

1. Introduction

Reasonable distribution of profit of development is a significant part of development. Genuine development can occur simply by tackling the issues, everything being equal, and of all shades of individuals, people, high and low, advantaged and burdened. So development is inadequate without building up all the areas of society. Backwardness of one area prompts a retrogressive society. Thought of social justice assumes a significant part during moving the products of advancement to various areas in the public arena. Social justice basically represents only appropriation of advantages and weights inside society. At the point when one talks and discussions about social justice, he typically examines how the great and awful things in life ought to be dispersed among the individuals from a human society.¹ It is resolved to eliminate all social, monetary and political imbalances and segregation and to give equivalent occasions to all people in social, political and financial issues. The possibility of Social justice includes the formation of an equitable and reasonable social framework and gives equity to each individual from the network. It resembles an adjusting wheel between the wealthy and the have not's. It needs to guarantee balance of status and occasion to all.

The idea of social justice is multi-dimensional and has been seen diversely by various scholar. There are some significant hypotheses of social justice, which is used for equivalent and reasonable dissemination of the advantages of improvement, i.e. the principle of equality, the principle of compensatory justice, Rawlsian principle of 'justice as fairness,' etc. and so forth These speculations of equity decipher the method of distribution of benefits and burdens among the citizenry. The rule of formal balance make 'desert' as their premise of dispersion of assets. Benefits and burdens in compensatory equity has been conveyed by one's 'need' while the Rawlsian origination of social equity recommend a type of

bargain among need and desert hypotheses. Indian scholar Dr. Ambedkar shows his anxiety for the socially backward classes.

2. Western Conception of Social Justice

Among the western scholars, a group of political thinkers believes that desert or merit should be the basis of distribution of resources. Desert theory has been initially propagated by great economist Adam Smith and another scholar Herbert Spencer. Neoliberal/Libertarian political thinkers also strongly supported the desert theory. Robert Nozick has formulated the idea of social justice as entitlement. He doesn't support any kind of redistribution.² His theory doesn't justify very unequal distributions of resources that may not respect what people deserve. He doesn't give any kind of priority in distribution to people who are worse off. Nozick advocates that each person's talents and abilities belong to them. Therefore they have the right (or whatever they want) for them to possess whatever talent and abilities they possess. Forcible redistribution of whatever they earn will fail to respect their autonomy. He suggests any distribution of resources just as long as it comes according to three principles³:

- a. Original acquisition of holdings: the process by which unheld things may come to be held
- b. Transfer of holdings: process of acquiring a holding from another who holds it
- c. Rectification: any unjust transfers are to be rectified by compensation

Another neoliberal scholar, F. A. Hayek bolsters with the expectation of complimentary market belief systems and contends unequivocally for the security of individual freedom of residents. He attests that it is the market which ensures singular freedoms. He examines about dissemination of assets in second volume of his significant work 'Law, Legislation, and Liberty'. He captioned the second volume of his work as '*The Mirage of Social Justice*'. He says that the appeal to 'social

justice' has by and by at this point become the most broadly utilized and best contention in political discussion.⁴ Hayek certifies that the idea of 'social justice' is essentially inane and fanciful with regards to an unconstrained market request. Hayek likewise suggested that the consideration of additionally 'social' as a descriptor makes uncertainty corresponding to the conditions to which it was applied. He unequivocally expressed that the utilization of descriptors, for example, 'social', alluding to the 'social condition of law', 'social market economy' and 'social justice' filled no valuable need and regularly actuated disarray in the contentions of political talk.

Second principle of distribution of benefits and burdens of development is 'distribution according to need'. This methodology advocates that there are a few people in the public eye who can't get fundamental thing material needs. So, fundamental thing here is material needs ought to be ensured by Government to the individuals who can't meet them through their own endeavors. This standard is essentially upheld by communist masterminds. Kropotkin is one of the main supporters of this methodology. He says that prosperity for everything isn't a dream.⁵ It is conceivable, feasible, attributable to all that our progenitors have done to expand our forces of creation. He proposed a framework dependent on shared trades made in an arrangement of deliberate collaboration. He accepted that a general public ought to be socially, socially, and mechanically grew enough to deliver all the products and ventures needed by it. In such society there will be no hindrance forestall everybody to take what they need from the social item, for example, special dispersion, evaluating or money related trade will. He upheld the possible cancelation of cash or badge of trade for products and ventures. His principle contention in this hypothesis is that the methods for creation have been aggregately masterminded by the general public. So the item ought to be by and large circulated among the individuals from the general public. He was against the individual property. All things have a place with all since all men have attempted to deliver them and all men have require of them.

John Rawls attempted to build up a harmony among 'desert' and 'need' hypothesis. It is otherwise called 'correspondence' hypothesis. Rawls discusses a lot of standards based on which division of preferences and appropriate dissemination of rights and obligations will be done.⁶ He has given two guideline of equity. In his first standard he focused on the freedom and supports 'desert' while he likewise worried about the 'need' of disservice areas in his second guideline of social equity. Nonetheless, Rawls gives need to 'desert' over the 'need'. The fundamental reason for his second rule of social equity is to keep disparities inside the headed and for this dissemination of some 'social primary goods' is in its core interest. 'Social primary goods' incorporate salary, abundance, openings and so on Rawls contends that once a specific degree of material prosperity is made sure about, it ought to consistently take need throughout the subsequent guideline with respect to distributive equity. Freedom is a higher priority than the circulation of social and monetary imbalances. Both of Rawlsian standards direct in allocating rights and obligations in the fundamental organizations of society and characterize the fitting dispersion of the advantages and weights of social co-activity. The essential subject of the standards of social equity is the

fundamental structure of society, the game plan of significant social establishments into one plan of cooperation.⁷ He thinks about equity as reasonableness.

Another western researcher David Miller doesn't depend on a solitary hypothesis. He considers social equity as additionally challenging and socially pluralistic. He says that social equity relies upon the unique circumstance and circumstance where it needs to apply. He accepts that a hypothesis joins rule of need; desert and correspondence can meet the diverse social conditions.⁸ He proposes three social conditions where need; desert and equality hypothesis ought to be apply:

- 'Need' in solidaristic networks
- 'Desert' in instrumental affiliations
- 'Equality' in citizenships

3. Indian conception of social justice

Indian scholar Dr. B. R. Ambedkar wanted to create a just society. He considers social justice a means to create a just society. He has proposed three basic elements of social justice: liberty, equality and fraternity. Justice, according to him, was 'simply another name for liberty, equality and fraternity'. In caste-based Indian society a person's relationship with its other members is already fixed. But relations have to be based on liberty, equality and fraternity in the society visualised by Ambedkar. Among the three basic elements the first element is liberty. There are two types of liberty: (A) Civil liberty and (B) political liberty. Civil liberty refers to (1) Liberty of movement which is another name for freedom from arrest without due process of law (2) Liberty of speech (which of course includes liberty of thought, liberty of reading, writing and discussion) and (3) Liberty of action. The first kind of liberty is of course fundamental. Not only fundamental it is also most essential. The second kind of liberty which may be called freedom of opinion is important for many reasons. It is a necessary condition of all progress intellectual, moral, political and social. Where it does not exist the status quo becomes stereotyped and all originality even the most necessary is discouraged. Liberty of action means doing what one likes to do. It is not enough that liberty of action should be formal. It must be real. So understood, liberty of action means effective power to do specific things. Real liberty of action exists only where exploitation has been annihilated, where no suppression of one class by another exists, where there is no unemployment, no poverty and where a person is free from the fear of losing his job, his home and his food as a consequence of his action. Political liberty consists in the right of the individual to share in the framing of laws and in the making and unmaking of governments. According to Dr. Ambedkar liberty provides human beings the freedom of expression in his action. Through liberty the hidden talents of the individual are expressed. It enables human beings to fix his destiny.⁹

Indian scholar Dr. B. R. Ambedkar needed to make an equitable society. He considers social justice a way to make a fair society. He has proposed three fundamental components of social justice i.e liberty, equality and fraternity. Justice, as indicated by him, was basically another name for liberty, equality and fraternity. In a rank based Indian culture an individual's relationship with its different individuals is already fixed. In any case, relations must be founded on liberty, equality and fraternity in the general public pictured by

Ambedkar. Among the three fundamental components the main component is liberty. There are two sorts of liberty: (A) Civil liberty and (B) political liberty. Common liberty alludes to (1) Liberty of movement which is another name for independence from capture without fair treatment of law (2) Liberty of speech (which obviously incorporates freedom of thought, freedom of perusing, composing and conversation) and (3) Liberty of action. The first kind of liberty is obviously central. Not just principal it is additionally generally fundamental. The second sort of liberty which might be called opportunity of assessment is significant for some reasons. It is a vital state of all advancement scholarly, good, political and social. Where it doesn't exist the norm becomes generalized and all creativity even the most important is disheartened. Freedom of activity implies doing what one gets a kick out of the chance to do. It isn't sufficient that freedom of activity ought to be formal. It must be genuine. So comprehended, liberty of action implies successful capacity to do explicit things. Genuine liberty of action exists just where misuse has been destroyed, where no concealment of one class by another exists, where there is no joblessness, no neediness and where an individual is liberated from the dread of losing his employment, his home and his food as a result of his activity. Political freedom comprises justified of the person to partake in the outlining of laws and really taking shape and undoing of governments. As indicated by Dr. Ambedkar freedom gives people the opportunity of articulation in his activity. Through freedom the shrouded gifts of the individual are communicated. It empowers people to fix his destiny.⁹

The second component of social justice is equality. Each person has been viewed as equivalent by Ambedkar and everybody is qualified for similar crucial rights and to approach freedom. Ambedkar doesn't discuss numerical equality, anyway he accentuates on 'moral equality'. He rejects that prevalent physical quality has an ethical option to execute, eat, or abuse people just in light of the fact that it is predominant. To abilities and abundance, the ideal of good balance makes a comparative forswearing of right. The arrangement of rank and degree is, essentially another method of articulating the standard of inequality so it might be genuinely said that Hinduism doesn't perceive fairness. It is to be noticed that in antiquated social orders there is no equity since they depend on the standard of degree and rank. The antique society as additionally Hinduism prompts a corruption of human character as a result of refusal of social and strict uniformity. Ambedkar held that with social justice, equality would be the backbone of an advanced society.¹⁰

The third component of social justice is fraternity. There are two powers pervasive in the public arena, for example, Individualism and fraternity. Ambedkar accepts that fraternity assists with supporting the ethical request among person. Ambedkar says that fraternity implies a feeling of basic brotherhood, everything being equal, all Indians being one individuals. It is the guideline which gives solidarity and solidarity to public activity. Organization fortifies social orders and provides for every individual a more grounded individual enthusiasm for essentially counseling the government assistance of others. It drives him to distinguish his sentiments just as others. The benefit of other people becomes to him a thing normally and essentially to be gone to like any of the states of being of our reality. Every individual will have

compassion and regard for other people. This is what Dr. Ambedkar called social democracy.¹¹

Another Indian scholar Mohandas Karamchand Gandhi remains with four layer position arrangement of India against to Ambedkar. He considers four ashramas/positions an extraordinary commitment of Hindu religion to society.¹² He feels it as an amazing origination and furthermore thinks about it as his premise of social equity. In current world a large portion of origination of social equity depends on 'rights' while Gandhi's origination about social equity depends on 'obligations'. He accepts that if each resident follows their doled out part as per varnashram framework, it will prompt co-activity and intelligence in the public arena. Gandhi's origination of the position framework doesn't put together it with respect to pride or vain thoughts of social prevalence, yet on obligations allocated to them explicitly.

4. Evolution of the policy of reservation in India

Government assistance measures for in reverse/burdened area are not new in India. It has been begun in pre-freedom time. English standard in India officially presented the guideline of uniformity of all residents under the watchful eye of law. The Caste Disabilities Act of 1850 presented balance of all residents under the watchful eye of law. Later on, the common Madras government held situations for the non-Brahmins in taxpayer driven organizations after non-Brahmin developments. ChatrapatiSahuji Maharaj in Maharashtra, Maharaja of Kohlapur, presented reservation for in reverse classes in as ahead of schedule as 1902. In 1918, an advisory group has been shaped for the up-liftment of non-Brahmin areas by the Maharaja of Mysore.¹³ Sir Leslie Miller, the Chief Judge of the Chief Court, was the administrator of this board of trustees. The report of the Miller board was submitted to the administration in August 1919. Mill operator panel suggested that around half of the higher and 66% of the lower enrollment in each evaluation ought to be filled from discouraged and in reverse part of society inside seven years.

In 1919, the Montague-Chelmsford made arrangement for the portrayal of denied areas in a few neighborhood self-governments and public bodies. Puna settlement among Ambedkar and Gandhi turned into a significant draft toward reservation in India. Later on in 1935, Government of India Act gave reservation to the discouraged ranks in the administrative congregations of various provinces.¹⁴ The bookings for SCs had been accommodated the first run through in 1943 when 8.33% opportunities in taxpayer supported organizations were saved for them through a Government Order. This was raised to 12.5% to relate with their extent in the populace in June 1946. Extraordinary help to the regressive classes had been offered in instruction alongside a plan of the honor of post-metric grants which was presented in the year 1945 at first for the SCs and later reached out to STs in 1948-49.

Indian government shaped two commissions for the other in reverse segments as per guidance of its constitution Article 340 out of 1953 and 1978. Kaka kalelkar headed the principal commission framed in 1953 and B.P.Mandal headed second commission shaped in 1978. Kalelkar Commission's suggestions were dismissed by the then Government as due to contrasts of assessment among the individuals on the issue of distinguishing the retrogressive classes. Mandal Commission Report was executed in the year 1990 by V.P.singh

government. Mandal Commission recognized the Other Backward Classes (OBCs) based on position and advanced certain standard for deciding whether a specific rank is in reverse or not.¹⁵ 27% of government occupations have been held for these segments. This rate has been fixed by their populace in 1931 registration just as greatest saved share educated by Supreme Court of India. OBC reservation was notwithstanding the reservations gave 15% to the Scheduled Castes and 7.5% to Scheduled Tribes.

5. Economically weaker section(EWS) reservation in India

A person who hasn't been covered under the scheme of reservation for SCs, STs and OBCs categorised as EWSs (Economically weaker sections) in 2019 by Indian government. Following economic criteria have been fixed for the identification of a person belongs to EWS section: (1) their annual family income should be less than 8,00,000 rupees (eight lacs rupees). (2) they shouldn't have more than five acres of agricultural land(3)theirresidence doesn't cover area more than 1000 sq. ft.(4)They don't own residential plot of more than 100 sq. yards in notified municipalities (5) They don't have residential plot of more than 200 sq. yards in areas other than the notified municipalities. This section has been given 10% reservation in direct recruitment in government jobs as well as in admission in higher educational institutions. EWS bill has been passed by parliament by 103 amendment of Indian constitution.¹⁶ Article 15(6) and 16(6) have been added by this amendment by Indian government in Indian constitution.

6. Assessment of EWS reservation

John Rawls advocates welfare of disadvantaged section. In Rawlsian principle disadvantaged section has been selected on the economic basis. Kropotkin and other socialist thinkers idea of need is also based on economic backwardness. But, these scholars don't talk about idea of reservation. A staunch supporter of reservation, Dr Ambedkar talks about reservation on the basis social backwardness. EWS reservation has been introduced on the basis of economic backwardness. EWS reservation was a long time demand of especially upper caste section of India. Firstly, it was introduced by Narshimha Rao government in 1991, but it was

declared unconstitutional by Hon'ble Supreme Court of India later. Again, in the years to come, the same demand was either put on hold or was subjected to heated political debate discrediting the need of reservation for upper caste section, and as a result of which the vision of EWS reservation could not be materialised. The criticism against EWS reservation lies in the fact that this very constitution provision for upper caste section was not only thought of but also implemented without having any due regard for political debate, extensive survey, research etc. and if any such debate ever took place such, debate was either hasty or never resulted in popular consensus.

Although, EWS reservation has been approved by the central government and different states of India, this EWS reservation is yet to stand out the test by Hon'ble Supreme Court of India. Regarding the validity of EWS reservation, Indian scholars on the constitution are of the view that before EWS reservation is declared constitutional, it would have to be consistent with two indicators set by Supreme Court of India.¹⁷ First indicator of reservation, provided till now, is social backwardness or injustice. Scheduled castes, Schedule tribes and Other backward castes have a long history of social injustice. A great many studies have been done on the injustice inflicted on deprived sections by different sociologists and other scholars, and as a result of which reservation was eventually granted to the said sections. But, it seems and also there is recorded history which does not testify injustice, let alone gross injustice, perpetrated to upper castes. A second criterion of reservation decided by Supreme Court of India is 'inadequate representation' of any section according to population of that section. As per different research and statistics of government of India, SCs, STs and OBCs haven't adequate representation in different services and educational institution till now¹⁸. But there is not any data which claim that upper caste have inadequate representation commensurate with their population. Finally Supreme Court of India also affirms that there shouldn't be any reservation on economic basis way back in 1992 in Indira Sawhney case. So now it is upto central government to supply justified arguments before the Supreme Court of India so as to ensure the constitutional validity of EWS reservation.

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