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## MAPPING THE CONSTITUTIONAL VISION OF JUSTICE AND ITS REALISATION

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*The Constitution of India nowhere defines the term justice except categorising it into social, economic and political. However various theories of justice put forth by scholars of different hues find reflection in the Constitution. Aspects of various ideological traditions may also be located in the Constitution. The author maps such terrain constituted by varied reading of the Constitution by different scholars. The author further delves into working of the Constitution with respect to realisation of the goal of justice embodied therein. He specifically analyses the operationalisation of the right to education, food, housing, healthcare and livelihood through legislative measures and executive initiatives and emphasises the need to keep marching towards search for complete justice and in the process secure mitigation of existing injustices.*

### I. INTRODUCTION

The topic of the paper draws inspiration from the solemn resolve to secure to all our citizens “JUSTICE, social, economic and political” which marks the very beginning of our Constitution in the form of its Preamble. The paper examines our position on this resolve after over sixty-five years of its making, while at the same time analyses the constitutional approach to justice from the perspective of the theories of justice and maps the terrain constituted by the position of scholars with respect to the vision of justice enshrined in the constitution.

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The paper is based on the Prof. Ghanshyam Singh Memorial Lecture delivered by the author in the National Law University, Delhi. As mark of respect for the invaluable contribution of Prof Ghanshyam Singh to the cause of legal education the opening words of the lecture are being reproduced here in verbatim. “A lecture in memory of a student is like reading an obituary for one’s child. Professor Ghanshyam Singh was my student at Delhi University. Later he became a colleague at the same University and continued for a number of years before he moved to NALSAR, Hyderabad and later to NLU Delhi. During all these years we remained close friends and interacted on a number of issues,

The title of the paper also provokes us to think and question: Are constitutions concerned with justice or they primarily lay down a framework for the operation of different organs of the state with the addition of the relationship between the citizens and the state. Generally, the constitutional theory and practice supports the latter view. The Constitution of India, however as noted above, begins with the promise of securing “JUSTICE, social, economic and political” to all its citizens.<sup>1</sup> “JUSTICE” also precedes “LIBERTY”, “EQUALITY”, “FRATERNITY” and “the dignity of the individual”. The Constitution also requires the state “to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life.”<sup>2</sup> It also talks of justice at other places such as Article 142, not of immediate interest to us.<sup>3</sup> Nowhere, however, it defines or explains justice except categorizing it into three, as quoted above. The categorization helps in appreciating its reach and dimensions but does not explain the meaning or concept of “JUSTICE”. In my understanding justice is an ideal with which man has remained engaged since time immemorial. For Amartya Sen “Justice is an immensely important idea that has moved people in the past and will continue to move people in the future.”<sup>4</sup> Notions of justice can be traced even in ancient Indian conceptions of law such as dharma or *rita* or also in Islamic law.<sup>5</sup> Notable in this regard is what Dr. Chhatrapati Singh states. I quote what he says:

It will be of interest to note here that the word ‘justice’ derives its linguistic roots from the Sanskrit root term *yu* or *yuj* which means

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but he always maintained our age old tradition of student and teacher and made sure that he did not do or say anything that was unbecoming of a good student vis-à-vis the teacher. Soft and sweet speaking was his universal quality for which he was loved by all and shall always be remembered by everyone who ever came in his contact. His untimely and unexpected departure from our midst has been an irreparable loss not only to his friends and family members but also to legal education and society in general. He had become such a sound and mature architect of laying down and working out foundations and designs of good law schools with hard as well as soft ware that he would have been a great asset in modernising our legal education. It is our misfortune that we have been prematurely deprived of what he would have done to us and to our society. I have to give this lecture with a very deep sense of loss and grief. In view of the fact that my main class interaction with Professor Ghanshyam Singh was in constitutional law and comparative jurisprudence respectively in LLB and LLM, I have thought of speaking on something which combines both and takes us back to our roots.”

<sup>1</sup> Constitution of India 1950, Preamble.

<sup>2</sup> *ibid* art 38(1).

<sup>3</sup> *ibid* art 142(1).

<sup>4</sup> A Sen, *The Idea of Justice* (Allen Lane 2009) 401.

<sup>5</sup> See W Menski, *Comparative Law in Global Context: The Legal Systems of Asia and Africa* (Platinum London 2000) 186, 277, 288.

‘to join’. The words ‘justice’ and ‘join’ thus have the same roots. *Yuj* becomes *ius* in later Latin and changes through *jus* to *joust* in old French, which retains the meaning ‘to join’. *Yukti* in Sanskrit means a principle which is instrumental in joining a means to an end, and *yojna* is a plan to that end. Yoga in its basic sense means that which joins man to the transcendent being. Justice, as opposed to yoga, in its basic sense, then means ‘that which joins man to man’.<sup>6</sup>

The absence of a categorical and explicit enunciation of the connotation of the term justice in the Constitution of India necessitates delving into various theories of justice which have been put forth by thinkers of different hues and their possible reflection in the Constitution. For this purpose the next section presents different conceptions of justice and analyses the Constitution in the light of these theories.

## II. THEORIES OF JUSTICE AND THE CONSTITUTION OF INDIA

Aristotle divided justice into “corrective” and “distributive”. While corrective justice is represented by the law of torts in doing justice between two parties, distributive justice is concerned with distribution of goods in the society which must be based on relative claims of each individual such as his needs, deserts or moral virtue. The current debate on justice is about such distribution. Among these debates Rawls’ *Theory of Justice* continues to lead ever since it was first published in 1972. Even though a revised edition of it appeared in 1999 and further clarifications were made in his *Political Liberalism* in 1993, the basic concept of justice presented in the form of the following two principles continues to be the same. The two principles of justice according to Rawls are:

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and Economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.

He goes on to explain that:

[T]he two principles are a special case of a more general conception of justice that can be expressed as follows:

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<sup>6</sup> C Singh, *Law from Anarchy to Utopia* (OUP 1985) 196-97.

All social values – Liberty and opportunity, Income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to every one's advantage.

Injustice, then, is simply inequalities that are not to the benefit of all.<sup>7</sup> Several other notions of justice have been developed since then like Nozick's plea for minimalist state, Amartya Sen and Martha Nussbaum's notion of human capabilities and core human entitlements as requirements of human dignity, Ronald Dworkin's grounding of justice in rights, several economic and feminist theories of justice, etc. In *The Idea of Justice* Amartya Sen relying upon the *sastric* notions of *Nyaya* and *Niti* has also recently stressed the role of public reason in making societies and the world less unjust by reducing the non-availability of basic entitlements as requirements of human dignity.<sup>8</sup> Thus the process of search for justice is never ending. For example, in a continuing dialogue on justice, Michael Sandel thinks that *Justice involves cultivating virtue and reasoning about the common good*.<sup>9</sup> He adds:

A just society can't be achieved simply by maximizing utility or by securing freedom of choice. To achieve a just society we have to reason together about the meaning of the good life, and to create a public culture hospitable to the disagreements that will inevitably arise. ... Justice is inescapably judgmental. ... Justice is not about the right way to distribute things. It is also about the right way to value things.<sup>10</sup>

Although the Constitution precedes all the modern theories or concepts of justice, all of them may be found reflected in it in some measure. To me the most dominant of them, namely, Rawls' theory of justice seems to be best reflected in our Constitution. Besides the broad principles of justice, liberty, equality, fraternity and human dignity, which represent both principles of Rawls' theory of justice, the fundamental rights specifically incorporate the first principle of the theory insofar as it guarantees to every person an equal right to basic liberty compatible with similar liberty for others in the form of fundamental rights. Although some of the fundamental rights are restricted to citizens and some others are available only to weaker sections of the society or the minorities, they do so for satisfying the second principle – the difference principle. Accordingly wherever social

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<sup>7</sup> J Rawls, *A Theory of Justice* (Harvard University Press 1972) 60, 62.

<sup>8</sup> Sen (n 4) 20-22.

<sup>9</sup> MJ Sandel, *Justice: What's the Right Thing to do?* (Penguin Books 2009) 260.

<sup>10</sup> *ibid* 261.

and economic inequalities are arranged in the reasonable expectation of everyone's advantage and attached to positions and offices open to all, they satisfy the second principle of justice. Thus wherever special provisions are authorized for women<sup>11</sup> and children<sup>12</sup> or for the Scheduled Castes (SCs)<sup>13</sup> and the Scheduled Tribes (STs)<sup>14</sup> or for other socially and educationally backward classes<sup>15</sup>, untouchables<sup>16</sup>, bonded labourers<sup>17</sup> or minorities<sup>18</sup> they are reasonably expected to be to everyone's advantage. Similar provisions among the directive principles of state policy may also be justified because Rawls' principles of justice require that "All social values – liberty and opportunity, income and wealth, and the bases of all respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage" and thus all inequalities that are not to the benefit of all must be removed. That is what the Constitution does by making special provisions for certain classes mentioned above. These provisions may equally be justified under the capabilities requirement of justice advanced by Martha Nussbaum and Amartya Sen.

### III. LIBERALISM, SOCIAL JUSTICE AND THE INDIAN CONSTITUTION: MAPPING THE TERRAIN

It may be argued that how could the Constitution of India, which was made by persons predominantly of socialist ideology and now it incorporates the word 'SOCIALIST' in the preamble too, could incorporate these liberal theories of justice within its body. One answer could be found in Granville Austin's formulation that even though the Constitution of India aims at social revolution, it is in line with Euro-American liberal traditions of constitutions and not of the then USSR<sup>19</sup>. It is based on liberal traditions insofar as it is the supreme law of the land, provides for representative government through periodical elections based on universal suffrage, restricts the power of the legislators to make laws in contravention of rights of the people or any other provision of the Constitution and authorizes the courts to invalidate laws that go against the Constitution. All these features of the Constitution promote "JUSTICE, social, economic and political" which the Constitution

<sup>11</sup> Constitution of India 1950, art 15(3).

<sup>12</sup> Ibid art 15(3).

<sup>13</sup> Ibid arts 15(4), 15(5), art 16(4A).

<sup>14</sup> Ibid.

<sup>15</sup> Ibid art 15(4).

<sup>16</sup> Ibid art 17.

<sup>17</sup> Ibid art 23.

<sup>18</sup> Ibid arts 25, 26, 29, 30.

<sup>19</sup> G Austin, *The Indian Constitution* (15th impression, OUP 2010) 32.

assures to its citizens. At the same time in its history and background India and its Constitution could never be categorized as a bourgeoisie state or constitution.

Developing a thesis of justice as equity, Mithi Mukherjee explains the concept of justice in the Preamble to the Constitution as follows:

In sharp contrast to Western constitutions based on the category of freedom, anchored either in collective identity or individual property, the Indian Constitution was grounded, as the Preamble makes clear, on the category of justice as the sovereign legislative principle. The primacy of justice over freedom was not, however, just a philosophical matter for the framers of the Indian Constitution. They laid out how the category was to be deployed in practice in very precise terms in Part IV of the Constitution, a section called the Directive Principles of State Policy that was to be the framework of the entire legislative practice of the postcolonial Indian State..... [W]hat the directive principles reveal is the determination of the Indian National Congress to convert its philosophy as already expressed in the Preamble into a practical guide for legislation in the future.<sup>20</sup>

Tracing the background to the Constitution specifically through Gandhi, Rabindranath Tagore, Abanindranath Tagore, Nehru and Ambedkar, who were all directly or indirectly part of the struggle for freedom from British rule and instrumental in conceiving post-colonial India in the light of the long traditions of the country and at least two of them played prominent role in the making of the Constitution, Ananya Vajpeyi says:

This new India – whose key text, the Constitution of 1950, Ambedkar shepherded into its inaugural form – had to be imagined on the basis of a kind of selfhood that would appeal as much to Hindus as to minorities, to upper castes as to Sudras and Untouchables, and to those in the mainstream as to those on the margins.

Recently the Supreme Court has also notified the constitution of a Social Justice Bench in the following words:

“Under the domain of ‘Social Justice’, several cases highlighting social issues are included. To mention summarily, about the release of surplus food grains lying in stocks for the use of people living in the drought affected areas; to frame a fresh scheme

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<sup>20</sup> M Mukherjee, *India in the Shadows of Empire* (OUP 2010) 188.

for public distribution of food grains; to take steps to prevent untimely death of the women and children for want of nutritious food; providing hygienic mid-day meal besides issues relating to children; to provide night shelter to destitute and homeless; to provide medical facilities to all the citizens irrespective of their conditions; to provide hygienic drinking water; to provide safety and secured living conditions for the fair gender who are forced in prostitution, etc., these are some of the areas where the constitutional mechanism has to play a provocative role in order to meet the goals of the constitution.”

Prior to that in several cases starting with *N.M. Thomas v. State of Kerala*, in 1996 the Court in *M. Nagaraj v. Union of India*<sup>21</sup> observed:

‘Social Justice’ is one of the sub-divisions of the concept of justice. It is concerned with the distribution of benefits and burdens throughout a society as it results from social institutions - property systems, public organizations, etc.... [t]he problem is – what should be the basis of distribution? Writers like Raphael, Mill, Hume define ‘Social Justice’ in terms of right. Other writers like Hayek and Spencer define ‘Social Justice’ in terms of deserts. Socialist writers define ‘Social Justice’ in terms of need. Therefore, there are three criteria to judge the basis of distribution, namely, rights, deserts or need. These three criteria can be put under two concepts of equality- “formal equality” and “Proportional Equality”. “Formal Equality” means that law treats everyone equal and does not favour anyone either because he belongs to the advantaged section of the society or to the disadvantaged section of the society. Concept of “proportional equality” expects the states to take affirmative action in favour of disadvantaged sections of the society within the framework of liberal democracy.... [u]nder the Indian Constitution, while basic liberties are guaranteed and individual initiative is encouraged, the state has got the role of ensuring that no class prospers at the cost of other class and no person suffers because of drawbacks which is not his but social...”<sup>22</sup>

On the other hand, however, there were some members of the Constituent Assembly also who were dissatisfied with the Constitution either because it was too liberal or because it was non-Indian. Also some people like Sir Ivor Jennings from the very beginning predicted too many difficulties to be overcome in the Constitution. Perhaps Granville Austin was the first foreign

<sup>21</sup> [2006] 8 SCC 212.

<sup>22</sup> *ibid* [250].

scholar who comprehensively and closely examined the nature and traditions of India and its people, background and making of the Constitution as well as its working during the first fifteen years. Among the many goals that the Constitution was expected to foster he saw three – social revolution, democracy, and the unity of the nation – as transcendent.<sup>23</sup> According to him the Constitution was a success because “the ends it has proclaimed and the means it has laid down for achieving them have been popularly accepted” and again, he says, its success lies principally in its having been framed by Indians, and in the excellence of its framing process to which its makers applied two unique Indian concepts of consensus and accommodation.<sup>24</sup> Referring to the characterization of the Constitution by some of its makers and others as non-Indian, he said “but it is different from being un-Indian, or being inconsistent with Indian ways of thought and action.”<sup>25</sup> Defending the Constitution from several other allegations, he finally concludes:

The Indians’ sense of their rich cultural heritage, their record of professional achievements in the arts and sciences of the modern world, and their faith in their ability to govern themselves, combined to give them a national maturity that allowed a reasoned approach to the creation and working of government. Equipped with the basic qualifications, attitudes, and experience for creating and working a democratic constitution, Indians did not default their trust with destiny.<sup>26</sup>

Writing nearly half a century after the commencement of the Constitution, in his second book titled *Working a Democratic Constitution*, Austin notes that the seamless web of social revolution, democracy and unity of the nation incorporated in the Constitution has met India’s needs, but capitalism in India is in a very exploitative stage which has the potential of bringing conflict between social revolution and democracy and similarly there is a possibility of conflict between the executive and the judiciary on issues concerning “haves and have-lesses” which require extensive social and economic reform.<sup>27</sup>

Professor Baxi writing a monographic review of Austin’s first book strongly denounced it for almost every description and conclusion.<sup>28</sup> He has done the same to his second book too in a recent paper that was supposed to

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<sup>23</sup> Austin(n 19) Introduction.

<sup>24</sup> *ibid* 310.

<sup>25</sup> *ibid* 326.

<sup>26</sup> *ibid* 330.

<sup>27</sup> G Austin, *Working a Democratic Constitution* (OUP 1999) 668.

<sup>28</sup> U Baxi, “‘The Little Done, The Vast Undone’: Reflections on Reading Granville Austin, *The Indian Constitution*’ (1967) 9 *Journal of Indian Law Institute* 323.

be an obituary of or tribute to the departed author.<sup>29</sup> He refers to Austin as ‘Red’ or ‘St. Granville’ and is unsure of his background because he introduces himself only as ‘independent scholar’. In Baxi’s view “the political history that the second book offers is the history of *un* (often *anti*) constitutional people in power and things they do *to* and *with* the logics and languages of Indian Constitution.”<sup>30</sup> Contesting among others, Austin’s conclusion that the Constitution has opened the door to national rebirth and “India is among the handful of modern democracies that has not descended into absolutism and risen again to freedom, having learnt the lessons of vigilance”,<sup>31</sup> Baxi concludes:

Contemporary globalizing Indian constitutional politics is not an economy of a ‘survival society’. Rather, it is a history of excesses of the politics of governance desires, shaping variegated tendencies and forms of constitutional fascism, manifest in the cultic honouring of leaders as sacred personages, the artfully staged mass rituals, the manifestly violent and hypnotic elements, the breach of legality, the renunciation of even the appearance of democracy and all egalitarian values.<sup>32</sup>

But for Baxi ‘Red’ is not the only red rag for bull, he is equally critical otherwise too of the Constitution in a number of his other writings.<sup>33</sup> His criticism and deep dissatisfaction with the Constitution is, however, based on a noble concern for subalterns who find no place in its text or practice. Opinions may differ and doubts may be expressed even on the use of term subaltern in the Indian context, but Baxi is not alone in such perception of the Constitution. Others have also strongly and woefully expressed similar opinions though they may have not used as strong words as Baxi does. For example, Ranbir Samadar in his editorial note to *Key Texts on Social Justice in India* edited by him and Sanam Roohi observes:

It seems, for instance, from a primary reading of the Indian Constitution, that the issue of justice appears to the sovereign

<sup>29</sup> U Baxi, ‘Granville Austin: A Tribute’ (2014) 5 *Journal of Indian Law and Society* 173.

<sup>30</sup> *ibid* 178.

<sup>31</sup> *ibid* 189.

<sup>32</sup> *ibid* 190.

<sup>33</sup> See U Baxi, ‘The (Im)possibility of Constitutional Justice Seismographic Notes of India Constitutionalism’ in Zoya Hasan, E Sridharan and R Sudarshan (eds), *India’s Living Constitution: Ideas, Practices and Controversies* (Permanent Black 2005); U Baxi, ‘Violence, Constitutionalism and Struggle: Or How to Avoid Being *Mahamoorkha*’ in SP Sathre and S Narayan (eds), *Liberty Equality and Justice: Struggles for a New Social Order* (EBC 2003).

as an extraneous one, not intrinsic to rule, though advices to the sovereign have been always that the sovereign must be just towards his subjects. Thus the problem for the Indian Constitution was not simply laying down certain advice to the sovereign, but also enacting rules of government, which meant among others the rules for ensuring justice for those who occupy marginal positions. It is this moral framework that the great encounter between the governmental forms of justice and the popular idea of justice takes place. In a more precise and institutional sense, the court, the executive, the legislature, the bureaucrats and the policy makers—all start discovering the limits to ensuring justice. All start saying now in defence of the limits that justice must be balanced with considerations of security.<sup>34</sup>

Similarly taking a few aspects of social justice in the making of the constitution Samir Kumar Das says:

The philosophical debates on justice therefore are different from the CAD [i.e. the Constituent Assembly Debates]. Justice, cast in the constitutional mould, looks unrecognizably different from what the great philosophers want us to believe. Justice is crafted differently in the enterprise of crafting the Constitution and constituting the social body. The constitutional mirror, as we argued, was after all a magic mirror where realities, in order to be reflected, were to observe all its magical rules and protocols. Or else, the mirror will crack and there will be a dismembering of the body.<sup>35</sup>

There are others such as Gopal Guru who finds that the “constitutional provisions are necessary for positional good but not sufficient for achieving cultural goods like recognition and dignity” and accordingly while the Constitution has succeeded in assuring positional goods in terms of political representation or representation in education and administration of all classes or even in improvement of economic conditions, it has failed to achieve Ambedkar’s exhortation for one man one value despite Article 17 and laws in pursuance of it or Article 15 (2).<sup>36</sup>

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<sup>34</sup> Ranabir Samaddar, ‘Introduction’ in Sanam Roohi and Ranabir Samaddar (eds), *Key Texts on Social Justice in India* (Sage 2009) 23.

<sup>35</sup> SK Das, ‘The Founding Moment Social Justice in the Constitutional Mirror’ in A Aggrawal and B Bhushan (eds), *Justice and Law: The Limits of the Deliverables of Law* (Sage 2009) 97-98.

<sup>36</sup> G Guru, ‘Constitutional Justice Positional and Cultural’ in R Bhargava (ed), *Politics and Ethics of the Indian Constitution* (OUP 2008) 230.

Thus theory and practice, text of the Constitution and ground realities may differ, but the question is: Whether for that difference blame should be assigned to the Constitution or to those who administer it? I think those who are critical of the Constitution for its failure to realize justice blur this distinction and instead of blaming the practices under the Constitution blame the Constitution. In his treatment of the Constitution Austin has maintained this distinction and, therefore, while in his first book he primarily remained concerned with the Constitution making and its provisions and scheme, which in the context of social, economic and political background of the country and future projection he found sound, in the second book he examines its practice and warns against failure to implement social and economic goals of the Constitution. Such a failure in the working of the Constitution needs to be reminded and remedied time and again. To some extent Emergency could be attributed to such failure which immediately awakened the judiciary and in course of time also the legislature and the executive. Even though subject to retaining the social and economic justice provisions inserted in the Constitution by the Forty-Second Amendment during the Emergency, the Constitution was restored to its original form, fresh interpretation to the Fundamental Rights and remedies for their enforcement through public interest litigation or 'Social Action Litigation', as Baxi calls it, and their relationship with the Directive Principles of State Policy was the direct result of such awakening. Specifically recognition of social and economic rights as fundamental rights in *Francis Mullin's case*<sup>37</sup> and its follow up supported by public opinion compelled the legislators and administrators also to take necessary legislative and administrative measures.

#### IV. TOWARDS REALISATION OF CONSTITUTIONAL VISION OF JUSTICE

##### *A. Right to Education*

Introduction of Fundamental Right to free and compulsory education to all children of the age of 6 to 14 years in Article 21A introduced in 2002 in pursuance of which the Right of Children to Free and Compulsory Education (RTE) Act, 2009 was passed. After some litigation the Act has been in operation since April 2012. Before that the government had introduced an administrative scheme called *Sarva Shiksha Abhiyaan* in 2000-01 for achieving universalization of elementary education. The present position of children taking free and compulsory education as regards the enrolment

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<sup>37</sup> *Francis Coralie Mullin UT of Delhi* [1981] 1 SCC 608.

status as per the Annual Survey of Education Report 2014 is 97% that has been more than 96% enrolment rate since 2009.

### *B. Right to Food*

Though the court had recognized the right to adequate nutrition in *Francis Mullin's case* in 1981 and impliedly in subsequent cases in 1985<sup>38</sup> and again in 2001<sup>39</sup> the government in practice had introduced a public distribution scheme much before that which was converted into *Targeted Public Distribution System*. Besides that a National Program of Nutritional Support to primary education was launched in 1995 which was converted into *Cooked Mid-day Meal Scheme* in 2001 and has been expanded to all government or government supported schools in subsequent years. Finally parliament has enacted the National Food Security Act, 2013 which ensures the right to subsidized food grains to approximately two-third of country's population covering 75% of rural and 50% of the urban population to secure availability of food. In the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 special provisions for food security have been made by putting restrictions on acquisition of multi-crop agricultural land. Additional nutritional facilities are provided by the government under schemes such as *Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG)* or *SABLA* for adolescent girls (11-18 years) under which 100 gms food grains per day are provided per beneficiary for total 300 days in a year and under *Wheat Based Nutrition Program (WBNP)* food grains are allotted which are utilized under ICDS (Integrated Child Development Scheme) for feeding child below 6 years of age and the expectant or lactating women.

### *C. Provision for Housing*

*Indira Awas Yojana (IAY)* was launched in May 1985 and has been in operation since January 1996 for rural people below the poverty line belonging to SC/ST and freed bonded laborers. Another scheme called *Jawaharlal Nehru National Urban Renewal Mission (JNNURM)* was also introduced in 1993-94 having *Integrated Housing and Slum Development Programme (IHSDP)* as sub-mission added later in 2005 for improving the residential conditions and providing shelter for urban poor mainly slum dwellers through development of present infrastructure and creating new shelters. Again *Rajiv Awas Yojana (RAY)* was sanctioned by the government

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<sup>38</sup> *Kishen Patnayak v State of Orissa* [1989] Supp 1 SCC 258.

<sup>39</sup> *PUCIL v Union of India* Writ Petition (c) No 196 of 2001 order of 17 September 2001 (SC) and subsequent orders issued from time to time.

in 2013 for urban poor. Another scheme called *Rajiv Rinn Yojana (RRY)* was introduced in 2013 which provides for a subsidy of 5% on interest charged on loan amount to economically weaker sections and low income groups.

#### *D. Right to Health Care*

As regards right to health, apart from numerous cases decided by the court in support of this right, the Central Government introduced the *National Rural Health Mission or NRHM* (2005-12) with the purpose of improving and providing the basic health infrastructure initially in 18 lagging states having weak health indicators/infrastructure. The mission has integration of various other parallel schemes for optimal utilization of resources and funds for common aim of improving health access and facilities at rural level.

On similar lines recently *National Urban Health Mission or NUHM* was launched under *National Health Mission* (NHM) for urban residents focusing basically on urban poor and vulnerable by providing them basic health access through developing need based urban health care system and involving participation from various stakeholders in achieving its goal.

The government has also launched the *National Maternity Benefit Scheme* (NMBS) in 1995 and *Janani Suraksha Yojana* (JSY) in 2005 and in June 2011 another scheme called *Janani Shishu Suraksha Karyakram* (JSSK) was introduced providing support to pregnant women up to thirty days after the birth of the child.

*Nirmal Bharat Abhiyan* (NBA) previously called *Total Sanitation Campaign* (TSC) being a *Community-led Total Sanitation* (CLTS) programme was initiated by Government of India in 1999. As Census 2011 data shows out of total 246,692,667 households in 2011, 53.1% households do not have any type of Latrine facility. Situation has, however, improved considerably since then.

#### *E. Right to Livelihood*

In this regard what is notable is Mahatma Gandhi National Rural Employment Guarantee Act, 2005 or MNREGA which ensures right to work in rural areas by providing at least 100 days (for STs 150 days) guaranteed wage employment. Additional benefits are provided under the Act for women workers. Another, legislation in this regard is Unorganized Sector Workers Social Security Act, 2008 which provides for constitution of National Social Security Board at the Central level which recommends formulation of social security scheme for life and disability cover, health and maternity benefit, old

age protection, and any other benefit as may be determined by the government from time to time. It also authorizes the national Social Security Board to recommend appropriate schemes for the benefit of unorganized workers. For the protection of Scheduled Tribes and other traditional forest dwellers the Scheduled Tribes and other Traditional Forest Dwellers Act, 2006 gives them special rights on land and their habitation for their livelihood. In recognition of the right of street vendors and hawkers, the Street Vendors and Hawkers Act, 2014 has been enacted which assures their right through demarcation of vending zones and by laying down required conditions and restrictions on street vending.

The Prohibition of Employment as manual Scavengers and their Rehabilitation Act, 2013 prohibits manual scavenging as well as provides for special training for alternative jobs along with a payment of rupees 3000 per month along with additional support in terms of housing loans etc. A few schemes like *Prime Minister Rojgar Yojana* (PMRY) 1993 provides for self employment opportunities, *Swadhar Yojana* supports women in difficulties, *National Social Assistance Program* (NSAP) 1995 is a welfare program of the Ministry of Rural Development providing for monthly Pension to people of above 60 years. *Indira Gandhi National Disability Pension Scheme* (IGNDPS) provides support for disabled persons and under *National Family Benefit Scheme* (NFBS) a household is entitled to a lump sum amount of rupees 10,000 (Ten Thousand) on the death of a primary bread earner. Several Other schemes such as *Jawahar Rojgar Yojana* (JRY); *Jawahar Gram Samridhhi Yojana* (JGSY); *Sampoorna Gramin Rojgar Yojana* (SGRY) etc. provide social security to rural people.

## V. CONCLUSION

Although it is too early to assess the impact of these measures in the realization of social and economic justice, a few of them like the reservation provisions are old and have shown remarkable achievements by inclusion of these groups of people in public services as well as in higher education and skills learning. Reservation provisions, however, serve a limited purpose for a limited class of persons.

In conclusion, it may be said that the idea of justice in society, which is the foremost goal in our Constitution and an ideal for any society, must always be chased to the maximum possible extent by every organ of the state as well as by the people. May be realization of justice still remains a mirage because the day it is achieved it ceases to be an ideal. But there is always hope and possibility that even in chasing the mirage a reservoir of

sweet water may be found. Even if we fail in our search for complete justice mitigation of existing injustices in society, as Amartya Sen suggests, is no mean achievement. Therefore, let us use all our energy and resources for the realization of justice.

