



# DEMOCRACY, CONSTITUTION AND SOCIAL JUSTICE: CONTEMPORARY CHALLENGES AND FUTURE DIRECTIONS

Prof. (Dr.) Indulal G  
Dr. Paul Jacob and Ms. Rani George

# **DEMOCRACY, CONSTITUTION AND SOCIAL JUSTICE: CONTEMPORARY CHALLENGES AND FUTURE DIRECTIONS**

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**St. Aloysius College Edathua**



DEMOCRACY, CONSTITUTION AND SOCIAL JUSTICE:  
CONTEMPORARY CHALLENGES AND FUTURE  
DIRECTIONS

Prof. (Dr.) INDULAL G  
2025

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## **Preface**

Democracy, the Constitution, and social justice are the cornerstones of a just and progressive society. As Dr. B. R. Ambedkar rightly stated, "Democracy is not merely a form of government. It is primarily a mode of associated living, of conjoint communicated experience." This book brings together insightful articles presented at the National Seminar sponsored by the Institute of Parliamentary Affairs, Government of Kerala, held at St. Aloysius College, Edathua, under the coordination of Dr. Paul Jacob, Assistant Professor, Department of English and Ms. Rani George, Assistant Professor, Department of Physics. The seminar provided a vital platform for academicians, scholars, and policymakers to engage in meaningful discussions on how democratic principles and constitutional mandates shape the pursuit of social justice in contemporary India.

The collected works in this volume explore various dimensions of the Indian Constitution—its vision, evolution, and continuing relevance in addressing inequalities and ensuring inclusive governance. Mahatma Gandhi's belief that "the best way to find yourself is to lose yourself in the service of others" echoes throughout these discussions, as contributors examine how constitutional provisions can translate into tangible justice for marginalized communities. From the significance of fundamental rights and duties to the challenges faced in preserving democratic institutions, these articles

provide valuable perspectives on the ideals that sustain a fair and equitable society.

As we present this compilation, we acknowledge the contributions of all those who participated in the seminar, enriching the discourse with their scholarship and insights. The ideals of democracy and justice, deeply rooted in our Constitution, demand continuous reflection and commitment. It is our hope that this book serves as a meaningful resource for students, researchers, and citizens who seek a deeper understanding of the constitutional principles that guide our nation toward justice and equality.

**Prof(Dr.) Indulal G  
Principal**

**St. Aloysius College, Edathua**

## **Preface**

This book, "Democracy, Constitution, and Social Justice: Contemporary Challenges and Future Directions," is a compilation of research papers presented at the National Seminar held at St. Aloysius College, Edathua, on the 10th of January, 2025. The seminar, organised by the Social Justice Cell of the college, in collaboration with the Institute of Parliamentary Affairs (INPA), Government of Kerala, and Mahatma Gandhi University, Kottayam, sought to explore the complex interplay between democracy, the constitution, and social justice in contemporary India.

The seminar brought together scholars, legal practitioners, policymakers, and students from across the country to engage in rigorous academic discourse on this important theme. The papers presented at the seminar, and now compiled in this book, offer diverse perspectives on the challenges and opportunities facing India's democracy, constitution, and social justice framework.

The book analyzes the Indian constitution and its relationship to democracy and social justice, addressing both foundational principles and contemporary challenges. It examines the implementation of constitutional provisions and explores potential future directions for the nation.

We hope that this book will be a valuable resource for scholars, students, policymakers, and anyone interested in understanding the complex issues facing India's democracy, constitution, and social justice framework. We also hope that it will contribute to the ongoing national conversation on these critical issues.

**Paul Jacob, Assistant Professor of English &  
Rani George, Assistant Professor of Physics**

**Coordinators**

National Seminar on "Democracy, Constitution,  
and Social Justice"

St. Aloysius College, Edathua

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## **Chapter 1**

# **Constitutional Vision, Democratic Mission, and the Pursuit of Social Justice in India**

### **Introduction**

India is not merely a modern democratic state but a country which is traditionally inclined towards democracy. A democratic constitution was adopted after independence. The Indian constitution seeks to establish a popular government in the country based on democratic principles. The constitution is the fundamental law of a land, which include the powers and functions of

the government and the duties and responsibilities of the citizens. Our constitution established a Republic, which means that we have an elected head of State called the President. Every individual is guaranteed and given equal status and opportunity. To achieve the vision, mission and objectives of our democracy, the preamble, fundamental rights, directive principles of state policy, fundamental duties, etc, are incorporated in the constitution of India.

The Indian Constitution, democracy, and social justice are interconnected pillars that shape the nation's governance and societal structure. The Constitution provides a framework for democracy, ensuring every citizen enjoys rights, equality, and justice. Social justice aims to bridge gaps in society by eliminating discrimination and promoting equitable opportunities for all. In India, the constitution, democracy, and social justice are deeply interwoven in shaping a just and inclusive society. While India has made significant progress in ensuring democratic participation and equitable rights, challenges such as corruption, social inequalities, and economic disparity persist. A collaborative effort from the government, civil society, and citizens is necessary to uphold the democratic and social justice ideals enshrined in

the Constitution and create a society where **justice, liberty, equality, and fraternity** truly flourish.

### **An introduction to the constitution of India**

The Constitution of India, adopted on 26th November 1949 and enforced on 26th January 1950, serves as the supreme law of the country. It provides the framework for governance, defining the political principles, powers, and responsibilities of the government while ensuring fundamental rights and freedoms for all citizens. The Constitution is unique in its blend of rigidity and flexibility, allowing for amendments to adapt to evolving societal needs.

Drafted under the leadership of Dr. B.R. Ambedkar, the Indian Constitution draws inspiration from various global legal frameworks while being deeply rooted in India's historical, cultural, and socio-economic realities. It establishes India as a sovereign, socialist, secular, and democratic republic, committed to justice, liberty, equality, and fraternity.

### **Preamble of the Constitution**

The **Preamble** serves as the guiding philosophy of the Indian Constitution. It embodies the vision of the nation and the fundamental values and aspirations that the Constitution aims to achieve. It reads:

**“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:**

- **Justice**, social, economic, and political;
- **Liberty** of thought, expression, belief, faith, and worship;
- **Equality** of status and of opportunity; and to promote among them all
- **Fraternity** assuring the dignity of the individual and the unity and integrity of the Nation;

**IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”**

The Preamble reflects the essence of the Constitution and lays down the guiding principles for governance and social justice in India. It embodies several fundamental philosophical concepts that define India's constitutional vision, such as: *Sovereignty* – India is an independent nation, free from external control and capable of making its own laws and policies; *Socialism* – Ensures economic and social equality by reducing

disparities in wealth and eliminating exploitation; *Secularism* – Guarantees freedom of religion and the separation of religion from the State, treating all faiths equally; *Democracy* – Establishes India as a government of the people, by the people, and for the people, ensuring participation and representation; *Republic*– The head of the state is elected rather than hereditary, ensuring a government accountable to the people; *Justice* (Social, Economic, and Political) – Aims to remove inequalities and ensure fair treatment for all sections of society; *Liberty* (of thought, expression, belief, faith, and worship) – Protects individual freedoms essential for personal and societal growth; *Equality* (of status and opportunity) – Guarantees equal rights for all citizens, eliminating discrimination; and, *Fraternity* (Assuring Dignity and National Unity) – Promotes a sense of brotherhood, ensuring national integrity and individual dignity. These philosophical principles shape the governance and legal framework of India, ensuring an inclusive and progressive society.

### **Indian Constitution: The Foundation of Democracy and Social Justice**

The Indian Constitution, adopted in 1950, lays the foundation for a sovereign, socialist, secular, and democratic republic. It embodies the principles of justice, liberty, equality, and fraternity,



ensuring that democracy functions effectively while promoting social justice.

### **Key Provisions of the Constitution**

1. Preamble – Declares India as a sovereign, socialist, secular, and democratic republic committed to justice (social, economic, and political).
2. Fundamental Rights (Articles 14-32) – Ensure equality before the law, freedom of speech, and protection against discrimination.
3. Directive Principles of State Policy (DPSP) (Articles 36-51) – Guide the government in establishing social and economic justice.
4. Reservations & Affirmative Action (Articles 15(4), 16(4), 330-342) – Provide special provisions for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs) in education, employment, and political representation.

### **Democracy in India: Governance for the People**

Democracy in India is based on free and fair elections, the rule of law, and participatory governance. The parliamentary system ensures representation for all sections of society while

independent institutions safeguard democratic values. The Indian Democracy face a variety of challenges, such as, *Corruption & Criminalization of Politics*, which weakens democratic institutions and reduces public trust; *Voter Apathy & Misinformation*, which Affects electoral participation and informed decision-making; *Federalism & Center-State Conflicts* – Tensions between the central and state governments impact governance; and *Judicial Delays* – Millions of pending cases weaken the justice system and democracy. All these challenges negatively affect the smooth functioning of our democracy and the pursuit of social justice.

### **Pursuit of Social Justice in India**

Social justice aims to create an inclusive society by eliminating inequalities and ensuring equal rights for all. In the directive principles of state policy, the directives are given to the government which emphasis that the ideas, which the constitution aims at, are that of a social welfare state. The government is, therefore, enjoined to work for the promotion of the welfare of all and to look after all its citizens like an impartial parent. The state has to establish a social order 'in which

justice, social economic and political, shall inform all the institutions of the national life’.

## **Key Areas of Social Justice**

The key aspects of social justice in India are; caste based social justice, gender justice, economic justice, Rights of Minorities & Marginalized Groups, etc.

### **1. Caste-Based Social Justice**

- *Abolition of Untouchability* (Article 17) – Declares untouchability illegal and punishable.
- *Reservations in Education & Jobs* – Affirmative action policies for SCs, STs, and OBCs.
- *Prevention of Atrocities Act, 1989* – Provides protection against caste-based violence and discrimination.

### **2. Gender Justice**

- *Laws Against Discrimination & Violence* – Legislation such as the Dowry Prohibition Act (1961), Protection of Women from Domestic Violence Act (2005), and the Sexual Harassment of Women at Workplace Act (2013).

- *Political Representation* – The Women's Reservation Bill (2023) ensures 33% reservation for women in legislatures.
- *BetiBachaoBetiPadhao* – A government initiative to improve the status of girls in society.

### 3. Economic Justice

- *MGNREGA* (2005) – Guarantees 100 days of wage employment to rural households.
- *Right to Education (RTE) Act* (2009)– Ensures free and compulsory education for children aged 6-14 years.
- *Food Security Act* (2013) – Provides subsidized food grains to millions of poor families.

### 4. Rights of Minorities & Marginalized Groups

- *Special Rights for Religious and Linguistic Minorities* (Articles 29 & 30) – Protect their culture, language, and educational institutions.
- *Prime Minister's 15-Point Program for Minorities* – Focuses on education, employment, and welfare.

- *Rights of Persons with Disabilities Act (2016)* – Ensures equal rights and reservations for differently-abled persons.
- *Decriminalization of Homosexuality (Section 377 Verdict, 2018)* – Recognizes LGBTQ+ rights and dignity.

### **Challenges in Achieving Social Justice**

Despite constitutional safeguards and policy measures, several challenges hinder the realization of true social justice: Caste-based discrimination and violence, especially in rural areas; Gender inequality persists in wages, education, and decision-making roles; Economic disparity with a widening gap between the rich and the poor; Slow implementation of social policies and corruption in governance; Religious intolerance and communal violence, which threaten national harmony; and Judicial delays that deny timely justice to marginalized communities.

### **Way Forward for Strengthening Democracy and Social Justice**

To ensure effective governance and social justice, the following steps are essential: Strengthening Education & Skill Development Programs – To empower weaker sections with knowledge and skills; Judicial & Legal Reforms – Fast-tracking cases related to social

justice issues; Inclusive Economic Policies – Promoting equitable wealth distribution and employment generation; Awareness Campaigns – Encouraging societal change regarding caste, gender, and minority rights; Strict Law Enforcement – Ensuring accountability and action against discrimination and injustice, etc are to be taken care of.

### **Vision of Indian constitution**

The vision of the Indian Constitution is rooted in the principles of justice, liberty, equality, and fraternity, as enshrined in the Preamble. It aims to establish a sovereign, socialist, secular, and democratic republic that ensures the dignity of individuals and unity of the nation. The key Visions of the Indian Constitution are:

1. Sovereignty & Democracy – The Constitution establishes India as a sovereign and democratic nation where power rests with the people.
2. Justice (Social, Economic, and Political) – The vision is to create an equitable society by eliminating discrimination and ensuring fair opportunities for all.
3. Liberty of Thought, Expression, Belief, Faith, and Worship – It guarantees fundamental rights to individuals to express themselves

freely and follow their faith without restrictions.

4. Equality – It ensures equality before the law and prohibits discrimination based on religion, caste, sex, or place of birth.
5. Fraternity & National Integration – The Constitution promotes brotherhood among citizens, ensuring dignity for all and maintaining the unity and integrity of the nation.
6. Secularism – India follows a secular path, ensuring that the state treats all religions equally without favoring any particular one.
7. Socialism – The aim is to reduce inequalities in wealth and provide fair economic opportunities for all, ensuring a welfare state.
8. Fundamental Rights & Duties – It grants rights like freedom of speech, education, and religion while also expecting citizens to perform duties like respecting the Constitution and national symbols.
9. Directive Principles of State Policy (DPSP) – These are guidelines for the government to establish social and economic democracy,

including welfare policies like free education and better public health.

10. Republicanism – The vision includes an elected head of state (President) instead of a hereditary monarch, ensuring governance through representatives chosen by the people.

The Indian Constitution envisions a nation that is inclusive, democratic, and progressive, ensuring the well-being of all citizens while upholding human dignity and national unity.

### **Challenges in Fulfilling the Vision of the Indian Constitution**

The vision of the Indian Constitution aims to create a society based on justice, equality, liberty, and fraternity. However, several challenges hinder the realization of this vision in its fullest form. These challenges are social, economic, political, and institutional in nature.

#### **1. Social Challenges**

- Caste Discrimination – Despite constitutional safeguards, caste-based inequalities and discrimination continue, especially in rural areas.



- Religious Intolerance – Communal tensions and religious violence threaten the vision of secularism and fraternity.
- Gender Inequality – Women face unequal opportunities in education, employment, and political representation.
- Illiteracy & Lack of Awareness – A lack of political awareness among certain sections of society limits their participation in democracy.

## 2. Economic Challenges

- Poverty & Unemployment – Widespread poverty prevents marginalized communities from accessing basic rights like education, healthcare, and employment.
- Income Inequality – The gap between the rich and the poor is widening, contradicting the goal of economic justice.
- Lack of Social Security – Inadequate social welfare schemes prevent the upliftment of vulnerable sections of society.

## 3. Political Challenges

- Corruption – Corruption in public offices and among politicians weakens trust in democratic institutions and in politics.

- Criminalization of Politics – The involvement of candidates with criminal backgrounds affects the integrity of the political system.
- Weak Implementation of Laws – Although laws exist for equality and social justice, their implementation remains weak.

#### 4. Institutional Challenges

- Judicial Delays – A large number of pending cases in courts delay justice, violating the principle of justice for all.
- Autonomy of Institutions – Concerns over the independence of institutions like the Election Commission, CBI, and Judiciary weaken democratic structures.
- Bureaucratic Inefficiency – Corruption and inefficiency in bureaucracy hinder the delivery of government services.

#### 5. Environmental Challenges

- Pollution & Climate Change – Environmental degradation threatens the right to a clean environment and affects vulnerable communities the most.

- Resource Exploitation – Unequal distribution of natural resources leads to social unrest and conflicts.

## 6. Digital & Technological Challenges

- Digital Divide – Unequal access to the internet and technology excludes rural and marginalized communities from digital services.
- Cyber security Threats – Misinformation and cybercrimes threaten the integrity of democracy.

While the Indian Constitution provides a progressive framework, the vision of justice, equality, liberty, and fraternity faces significant obstacles. Overcoming these challenges requires: Strengthening democratic institutions, promoting inclusive development, ensuring transparent governance, empowering marginalized communities, increasing citizen participation, etc. A collaborative effort between the government, civil society, and citizens is essential to fulfill the vision of the Indian Constitution and build a truly democratic and inclusive society.

## **The Mission of Indian Democracy**

The mission of Indian democracy is to uphold the core values of the Constitution and

ensure governance that is participatory, inclusive, and accountable. It aims to empower citizens, protect fundamental rights, and promote social and economic justice. The key Missions of Indian Democracy are:

1. Ensuring People's Participation – Indian democracy follows a parliamentary system where citizens elect representatives at all levels (local, state, and national) to make governance truly by the people, for the people, and of the people.
2. Protecting Fundamental Rights – Safeguarding the freedom of speech, religion, equality, and life for all individuals, ensuring dignity and human rights.
3. Upholding the Rule of Law – Establishing a legal system where everyone is equal before the law, ensuring justice without discrimination.
4. Ensuring Social & Economic Justice – Addressing inequalities in society, uplifting marginalized communities (such as Scheduled Castes, Scheduled Tribes, and Other Backward Classes), and providing access to education, healthcare, and employment.

5. Promoting Secularism – Ensuring the state remains neutral in religious matters and treats all religions equally without favoring any.
6. Strengthening Federalism – Balancing power between the central and state governments, giving autonomy to states while maintaining national unity.
7. Empowering Grassroots Democracy – Strengthening Panchayati Raj institutions (village councils) and urban local bodies to encourage local governance and participation in decision-making.
8. Encouraging Political Pluralism – Supporting a multi-party system, allowing different political ideologies to coexist and compete in free and fair elections.
9. Eradicating Corruption & Promoting Transparency – Strengthening institutions like the Election Commission, Judiciary, and Lokpal to ensure accountability and clean governance.
10. Building a Welfare State – Ensuring government policies focus on poverty alleviation, education, employment, and social security, making development inclusive for all citizens.

The mission of Indian democracy is to create a society based on justice, equality, liberty, and fraternity, ensuring that every citizen has a voice and access to opportunities for a better life. It aims to uphold democratic values while adapting to modern challenges to ensure sustainable and inclusive development.

### **Challenges in fulfilling the mission of Indian Democracy**

Indian democracy, while strong and vibrant, faces several challenges in fulfilling its mission of justice, equality, and governance for all. These challenges arise from political, social, economic, and technological factors. The key challenges of Indian Democracy are:

#### **1. Electoral & Political Challenges**

- **Money & Muscle Power in Elections** – The increasing influence of wealthy candidates and criminal elements in politics weakens free and fair elections.
- **Use of Hate Speech & Fake News** – Misinformation, propaganda, and divisive politics impact voter choices and disturb communal harmony.
- **Defections & Weak Opposition** – The practice of party-switching (defection) and

the weakening of opposition parties reduce effective governance.

- Low Voter Turnout – Many eligible voters, especially in urban areas, do not participate in elections, affecting democratic representation.

## 2. Social Challenges

- Caste & Religious Divisions – Despite legal protections, caste-based discrimination and religious intolerance continue to create divisions.
- Gender Inequality – Women are underrepresented in politics, decision-making, and economic opportunities.
- Mob lynchings& Hate Crimes – Growing instances of mob violence, often based on religion or social identity, threaten social harmony.
- Illiteracy & Lack of Political Awareness – A large section of the population remains unaware of their rights, leading to manipulation by political parties.

## 3. Economic & Developmental Challenges

- Poverty & Unemployment – Large-scale poverty and lack of job opportunities lead to economic inequality and unrest.
- Rural-Urban Divide – Unequal access to education, healthcare, and infrastructure between cities and villages slows down balanced development.
- Corruption & Bureaucratic Red Tape – Corruption in government institutions and excessive bureaucracy hinder effective governance.

#### 4. Federalism & Governance Challenges

- Tensions Between Center & States – Conflicts over resource allocation, law enforcement, and political interference strain federal relations.
- Judicial Backlogs & Delays – Millions of pending court cases weaken public trust in the judicial system.
- Erosion of Democratic Institutions – Concerns about weakening autonomous institutions like the Election Commission, CBI, and judiciary impact democratic checks and balances.

#### 5. Technological & Environmental Challenges



- Cybersecurity Threats & Digital Misinformation – Social media manipulation, cybercrimes, and data privacy issues pose risks to democracy.
- Environmental Degradation & Climate Change – Unchecked pollution, deforestation, and lack of sustainable policies threaten livelihoods and resources, impacting marginalized communities the most.

While India remains the largest democracy in the world, these challenges hinder its mission of ensuring justice, equality, and effective governance. Addressing these issues requires stronger institutions, responsible political leadership, active citizen participation, and technological advancements to make democracy more transparent, inclusive, and resilient.

## **Pursuit of Social Justice in India**

Social justice is the foundation of an equitable society where all individuals have equal rights, opportunities, and access to resources, regardless of caste, gender, religion, or economic status. In India, the pursuit of social justice is deeply embedded in the Constitution, which provides legal, political, and economic safeguards

to uplift marginalized communities. Despite significant progress, challenges remain in ensuring inclusive development for all citizens.

## **Constitutional Framework for Social Justice**

The Indian Constitution lays the groundwork for social justice through various provisions:

1. Preamble – Establishes the commitment to justice (social, economic, and political), liberty, equality, and fraternity.
2. Fundamental Rights (Articles 14-18, 19, 21, etc.) – Guarantee equality before the law, prohibit discrimination, and ensure personal freedoms.
3. Directive Principles of State Policy (DPSP) (Articles 38-46) – Encourage the state to create a welfare state by promoting social and economic equality.
4. Reservations and Affirmative Action (Articles 15(4), 16(4), 330-342) – Provide special provisions for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs) in education, employment, and political representation.

## **Key Areas of Social Justice in India**

### 1. Caste-Based Social Justice

- Abolition of Untouchability (Article 17) – Declares untouchability illegal and punishable.
- Reservations in Education & Jobs – Affirmative action policies for SCs, STs, and OBCs.
- Prevention of Atrocities Act, 1989 – Provides protection against caste-based violence and discrimination.

### 2. Gender Justice

- Laws Against Discrimination & Violence – Legislation such as the Dowry Prohibition Act (1961), Protection of Women from Domestic Violence Act (2005), and the Sexual Harassment of Women at Workplace Act (2013).
- Political Representation – The Women's Reservation Bill (2023) ensures 33% reservation for women in legislatures.
- BetiBachaoBetiPadhao – A government initiative to improve the status of girls in society.

### 3. Economic Justice

- MGNREGA (2005) – Guarantees 100 days of wage employment to rural households.
- Right to Education (RTE) Act (2009) – Ensures free and compulsory education for children aged 6-14 years.
- Food Security Act (2013) – Provides subsidized food grains to millions of poor families.

#### 4. Rights of Minorities & Marginalized Groups

- Special Rights for Religious and Linguistic Minorities (Articles 29 & 30) – Protect their culture, language, and educational institutions.
- Prime Minister's 15-Point Program for Minorities – Focuses on education, employment, and welfare.
- Rights of Persons with Disabilities Act (2016) – Ensures equal rights and reservations for differently-abled persons.
- Decriminalization of Homosexuality (Section 377 Verdict, 2018) – Recognizes LGBTQ+ rights and dignity.

### **Challenges in Achieving Social Justice**

Despite constitutional safeguards and policy measures, several challenges hinder the realization

of true social justice, they are: Caste-based discrimination and violence, especially in rural areas; Gender inequality persists in wages, education, and decision-making roles; Economic disparity with a widening gap between the rich and the poor; Slow implementation of social policies and corruption in governance; Religious intolerance and communal violence, which threaten national harmony; Judicial delays that deny timely justice to marginalized communities, etc.

### **Way Forward for Strengthening Social Justice**

India has made remarkable strides in social justice through constitutional safeguards, legislative measures, and policy initiatives. However, much remains to be done to eliminate deep-rooted inequalities. A collective effort from the government, civil society, and citizens is crucial to realizing the vision of an inclusive and just society where every individual has an equal opportunity to grow and thrive.

To ensure effective social justice, the following steps are essential: Strengthening Education & Skill Development Programs – To empower weaker sections with knowledge and skills; Judicial & Legal Reforms – Fast-tracking cases related to social justice issues; Inclusive

Economic Policies – Promoting equitable wealth distribution and employment generation; Awareness Campaigns – Encouraging societal change regarding caste, gender, and minority rights; and Strict Law Enforcement – Ensuring accountability and action against discrimination and injustice.

### **The Future of the Indian Constitution and Democracy**

The Indian Constitution and democracy have stood the test of time, adapting to social, political, and economic changes. However, as India progresses, both face new challenges and opportunities. The future of Indian democracy and constitutional governance depends on how well the nation upholds its core values of justice, liberty, equality, and fraternity while addressing emerging issues. So the future of our constitution and the democracy will be based on the following points.

*Strengthening Constitutional Values* - The Indian Constitution is a living document that evolves through amendments and judicial interpretations. In the future, it must; Preserve fundamental rights while balancing security and governance; Ensure judicial independence and faster justice delivery; and Promote constitutional

morality to prevent misuse of laws and protect democracy.

*Challenges to Indian Democracy* - Despite being the world's largest democracy, India faces several challenges: Electoral Reforms Needed – Issues like money power, fake news, and criminalization of politics must be addressed; Strengthening Federalism – The balance of power between the center and states must be protected; Social Inequalities – Caste, gender, and religious discrimination still hinder democratic participation; Freedom of Expression – Protecting media and individual freedoms is vital for a healthy democracy; and Judicial & Institutional Reforms – Delays in justice and political influence over institutions must be minimized.

*Opportunities for a Stronger Democracy* - India has the potential to enhance its democratic and constitutional values by: Expanding Digital Democracy – Using technology for better governance, transparency, and voter participation; Youth & Civic Engagement – Encouraging young people to participate in elections and policymaking; Inclusive Growth Policies – Ensuring education, healthcare, and employment opportunities for all; and Strengthening Local Governance – Empowering Panchayati Raj institutions for grassroots democracy.

The future of India's Constitution and democracy depends on the nation's commitment to protecting democratic institutions, ensuring equality, and strengthening governance. While challenges exist, progressive reforms, civic awareness, and constitutional integrity will ensure that Indian democracy remains vibrant and resilient in the years to come.

## Conclusion

The **Indian Constitution, democracy, and social justice** are forming the foundation of the nation's governance and societal progress. As a **living document**, the Constitution provides the framework for **democratic governance**, ensuring that the principles of **justice, liberty, equality, and fraternity** are upheld. Through **universal suffrage, rule of law, and institutional checks and balances**, Indian democracy has evolved while facing numerous challenges, including **political corruption, social inequalities, and economic disparities**.

Despite these challenges, India's democratic system continues to function as a **beacon of pluralism and inclusivity**, striving to balance **development with social justice**. The pursuit of **social justice** remains crucial in bridging gaps of



**caste, gender, religion, and economic status**, ensuring that the benefits of democracy reach every citizen. The future of **India's Constitution and democracy** depends on the collective efforts of the **government, judiciary, civil society, and citizens** to uphold its principles. By strengthening **institutions, empowering marginalized communities, promoting transparency, and embracing inclusive policies**, India can ensure that its **democratic and constitutional ideals continue to thrive**. In this journey, **active civic engagement, legal reforms, and commitment to social justice** will play a pivotal role in shaping a more **equitable, just, and democratic society** for future generations.

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## **Chapter 2**

# **Constitutional Scheme for Administration of Social Justice in India-Recent Trends**

### **I. Introduction**

Administration of social justice is the primary value of an organised civil system and the primordial responsibility of an accountable government. The concept of social justice is a changing one, depending on many factors including the change of time, varying needs of people, and resources of the state. But at all times, it is considered a political philosophy the crux of which is the fair treatment and equitable status to all individuals in a state. This is a principle that guides all political, social,

administrative, and legal entities in all their transactions.

Martha Nussbaum's concept of justice suggests that “a society which follows principles of justice nurtures capabilities of all individuals to engage in activities which are necessary to lead a life essentially human—including, among others, the capabilities to live a life of normal length, to use one's mind in ways “protected by guarantees of all freedoms and rights of participation in political decision-making”. Another category of definitions emphasizes the institutional conditions that encourage individual self-development and self-determination—the former being understood as the opposite of oppression and the latter as the opposite of domination.

Many jurists, philosophers, and statesmen have defined social justice, or justice itself, in terms of broad categories of human rights, which encompass the entire spectrum of civil, political, social, and economic rights. In the 1970s, American philosopher John Rawls played a vital role in defining what social justice means today. He developed the concept of ‘Justice as Fairness’, wherein justice is tied to inequality and how social goods are distributed. In Rawls' view, all social goods should be distributed equally unless an

inequality benefits everyone, but especially those who have the least. This is based on the understanding that everyone is equal.

Currently, orations on social justice are about the distribution of wealth, opportunities, and privileges in society. Social injustice exists when discrimination and inequalities lead to negative outcomes. Hence, today, the concept of social justice often refers to enjoyment of human rights, improving the lives of marginalized and disadvantaged on the basis of race, ethnicity, nationality, gender, sexual orientation, age, religion, and disability. The scheme provided by the Constitution of India assures this kind of social system in which individuals enjoy human rights with equal access, opportunities for participation and development, and attainment of economic growth.

## **II. Justice under Indian Constitution**

The concept of justice discussed above reigns throughout the constitutional scheme of India and it is enshrined in the Preamble of the Indian Constitution, which is the key to open the entire text. The framers of the Indian Constitution were aware of the need to assert in explicit terms that justice is the core concept guiding the country.

Articles 14, 15, 16, and 17 of the Indian Constitution reflect the idea of justice to be attained through equality, enshrined in the Preamble. Article 18 stands for eliminating titles, promoting a merit-based society devoid of inherited status or privilege. These provisions are incorporated under Part III of the Constitution, which assures fundamental rights to every citizen.

Provisions relating to 'Equal Justice and Free Legal Aid' are enshrined under Article 39A of the Indian Constitution, which gives every citizen the right to get free legal help from officers of the court. No one can be denied access to free legal aid. It is the duty of the State to secure that the working of the legal system is based on justice, provides equal opportunity, and also provides free legal aid, to ensure that any opportunity for securing justice is not denied to any citizen due to economic or other disabilities.

Directive Principles of State Policy in Chapter IV of the Indian Constitution (Articles 36 to 51) provide guiding principles for governance based on social justice. These principles include:

- Fostering the welfare of the people (Art 38).
- Ensuring sufficient means of livelihood, fair distribution of resources, equitable access to



means of production, and equal compensation for equal work (Art 39).

- Promoting the well-being of workers and safeguarding children and youth from exploitation (Art 39).
- Upholding principles of equal justice (Art 39A).
- Guaranteeing the rights to work, education, and public assistance in certain circumstances (Art 41).
- Establishing fair and humane working conditions, along with providing maternity relief (Art 43).

These are sound principles of social and economic justice embedded among the directive principles.

## **II.A. Distributive Justice**

Distributive Justice is defined by Article 38 and 39 of the Indian Constitution. It means the fair distribution of resources among those in need of it and concerns the socially just allocation of goods. Principles of distributive justice provide moral guidance for the political processes and structures that affect the distribution of benefits and burdens in society. The fundamental norm is that equal effort should produce equal outcomes and a few

people should not hold a disproportionate amount of goods, which is the crux of the socialist view.

The key elements visualizing distributive justice are equality, equity, power, need, and responsibility.

- Equality visualizes that, regardless of their inputs, all group members should be given an equal share of the rewards/costs.
- Equity is administered in the practical sense, where members' outcomes should be based on their inputs. In other words, equals should be treated equally and unequals, unequally.
- Those in greatest need should be provided with the resources required to meet those needs.
- Group members who have the most are burdened with a responsibility to share their resources with those who have less.

There is no single fixed theory of distributive justice, as any theory might create conflict in different conceptions and situations of social justice perspectives (e.g., Feminists' rights are sometimes in conflict with transgenders' rights).

While distributive justice concerns itself with the welfare of an individual, social justice concerns

itself with the welfare of a social group. Sometimes they both come into conflict. For example, the poor from a privileged class should be preferred according to distributive justice, but the rich from an underprivileged class should be preferred according to social justice. Thus, a balanced approach is required to create harmony. This is evident in the idea that reservation based on social groups should continue to provide social justice, but the creamy layer should be introduced to prevent a section of the underprivileged group from securing all benefits, thereby providing distributive justice.

The Indian Constitution defines three types of justice:

1. Social Justice
2. Economic Justice
3. Political Justice

### **II.A.1. Social Justice**

Social justice as a concept arose during the Industrial Revolution of the 19th century. Different definitions are provided by different institutions; for some, it is fair and comprehensive distribution of goods among people for economic growth, and for others, it is equality of status among individuals.

Social justice means greater good for a larger number of people and that unequals should be treated equally.

The apex court of India, in the *Kesavananda Bharati* case, held that social justice is part of the Basic structure of the Indian Constitution. Social justice means that equal social opportunities are available to every person for their personal development without any discrimination based on race, sex, or caste. No person should be deprived of social conditions necessary for development due to these differences. The concept is based on the practice of social equality and can only be enforced in a society where exploitation of an individual by another is absent. In the case of *S.R Bommai v. Union of India*, the apex court held that social justice and judicial review are two basic features of the Indian Constitution.

### **II.A.2. Economic Justice**

Economic justice is inherently part of social justice. The Indian Constitution visualizes socio-economic justice as incorporated under the Directive Principles of State Policy. Economic justice means providing economic opportunity, economic equality, and removing economic disabilities. It is

always implemented under the umbrella of Social Justice.

Economic justice means there should be economic equality among everyone in society , and no inequality should exist based on economic status. No one should be deprived of any opportunity due to their economic status. It also means the eradication of poverty by adding to national wealth and resources and distributing this wealth equally among everyone who contributes to its production.

### **II.A.3. Political Justice**

Political Justice means a system of polity and State free from political arbitrariness. There should be political fairness in the working of the government. The political status of any person should not give them any advantage, and they should be treated like every other citizen. Every law should be equally applicable to every person irrespective of their political status.

John Rawls formulated a political conception of justice where shared principles of distributive justice are derived from the agreement of rational people in a common political situation or culture, rather than from 'comprehensive' claims about human nature, rationality, or well-being. Political

justice is contrasted with metaphysical or philosophic justice rather than with principles of justice that govern the distribution of goods in other spheres of life. Rawls argues that rational and truly impartial participants in a democratic public culture would respond to the challenges of a pluralistic society.

#### **II.A.4. Relationship between Social, Economic, and Political Justice**

All three types of justice are closely related. One cannot be obtained unless and until the other two are present. Social justice can only be obtained when economic and political justice are present. The Indian Constitution, under Part III, enforces all three types of justice by making provisions relating to equality under Article 14 and 15.

Social inequality leads to vulnerability in social life, which touches the issues of poverty, minority status, gender, age, disabilities, human capital, and social capital. Expositions about social justice highlight that it is critical to eradicate poverty by fairly distributing resources and achieving economic and political justice, which emphasizes the economic content of social justice.

The social structure of women and men differs, and thus their vulnerabilities make it important to understand their needs. Age and disability determine the ability to respond to the opportunities equally offered. People with different sexual orientations, marginalized on account of social, geographical, financial, and other reasons, should also be well addressed to attain political justice and, in turn, social justice.

A special mention is deserved for the 103rd Amendment (2019) of the Constitution, which reserved 10% of seats in government jobs and educational institutions for Economically Weaker Sections (EWS), to ensure economic justice for everyone. The jurisprudence behind this amendment was the implementation of economic justice to obtain social justice.

### **III. Components of Social Justice**

#### **III.A. Access**

Access to resources is a fundamental principle of social justice. Unfortunately, in many areas of society, communities have had different levels of access based on factors such as socioeconomic status, education, employment, and environment. Education, for example, is associated with better

opportunities for employment, higher-paying jobs, and economic advancement. Lack of quality, equitable education results in lack of employment, engagement in low-wage occupations, poverty, and limited access for future generations.

By levelling the playing field, we expand underserved communities' access to resources affecting health, education, and other fundamental community needs. In broad public policy terms, this could mean:

- Offering free public education for everyone, thereby eliminating financial barriers.
- Implementing more equitable funding distribution for essential resources, improving the quality of education for students in disadvantaged communities.

### **III.B. Equity**

It is easy to confuse the terms 'equity' and 'equality', but those things which are equitable are not always equal. The effort and resources required for two different people to achieve a common goal can vary widely. For instance, some students may need more support and educational resources than their peers to complete a college degree. To achieve social justice and ensure equal opportunities for success,



it is important to provide equitable resources that focus on the specific needs of communities and the individuals within them. Advocating for justice could mean:

- Promoting policies that address systemic barriers.
- Implementing policies for inclusive education and adding more educators for students, based on their needs.

### **III.C. Participation**

Social justice requires that individuals have the opportunity and platform to participate in making the policies that affect their well-being. Even well-moulded public administrators can create exclusionary policies when they fail to bring diverse voices to the discussion table to frame strategies. Policies are often created by a select group of people in powerful government positions. Public administrators can prevent this by:

- Carefully considering who will be part of the decision-making process.
- Purposely inviting advocates for groups not adequately represented.
- Encouraging them to apply for long-term and permanent positions.

### III.D. Diversity

Public administrators will be better equipped to craft policies that address everyone's needs when they acknowledge the differences that exist between individuals and groups. To be effective, policy-makers must recognize and accept all factors that create barriers, and then work on ways to overcome them. By understanding diversity and embracing cultural differences, opportunities and access are expanded.

One of the best examples is the Union Government's attempt to increase benefits for Inter-State Migrant Workers to ensure social justice. Initiatives have been taken to strengthen laws and schemes like *Garib Kalyan* and the delivery of free food grains to their homes. Access to education, healthcare, and employment opportunities can be improved by:

- Increasing diversity among administrators.
- Making available resources at multiple levels depending on the needs.
- Implementing policies that bar employment discrimination based on race, gender, gender identity, religion, marital status, sexual orientation, age, physical ability, and other human traits.

### **III.E. Human Rights**

Perhaps the most important principle is that human rights are inherent to all individuals, regardless of socio-economic status. Human rights and social justice are inevitably intertwined, and it is impossible to have one without the other. In India, these rights are manifest in laws that grant freedom of speech, voting rights, criminal justice protections, and other basic rights.

By virtue of the Protection of Human Rights Act, 1993, fundamental rights enshrined in the Constitution of India are identified as human rights. According to Section 2(d) of the Act, “Human Rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”.

The state initiative to make available legal frameworks for the better enjoyment of human rights is demonstrated through various enactments, including:

- Labour reforms undertaken since 2014, which resulted in the formulation of 4 Labour Codes.

- Legal frameworks for protecting the human rights of women, ensuring their social, economic, and political well-being. Examples include the National Commission for Women Act, 1990; the Maternity Benefit Act, 1961, and its 2019 Amendment; and The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

#### **IV. Role of Judiciary as Trend Setter in Administration of Social Justice**

From the time of the inception of the Constitution of India, the judiciary acts as the protector of civil rights; it acts as the custodian of fundamental rights and plays an important role in the enforcement of all three types of justice. The judiciary has played an important role in the administration of justice and in making the concept of justice in the Preamble a reality. Its approach has been progressive, showing through its decisions that justice is an essential ingredient of a developed and law-abiding society.

In cases like *Maneka Gandhi v. UOI*, the court enforced the concept of social justice. The arbitrary impounding of the petitioner's passport led to a unanimous decision widening Article 21's scope

immensely and realizing the goal of making India a welfare state. There are numerous Supreme Court decisions where the judiciary continuously assumes the role of protector and guarantor of social justice at different levels. This has resulted in giving new dimensions to the concept of social justice.

Recent judicial interventions illustrating the trend in social justice administration:

- Eligibility Criteria for Government Jobs: In *Prakash Pathak v. Rajasthan High Court*, the apex court ruled that eligibility criteria for Government jobs cannot be changed midway unless allowed by existing Rules. The stipulations mandate the government to stick to its promises.
- Electoral Bonds Scheme: The Supreme Court unanimously struck down the Electoral Bonds Scheme for being violative of the right to information under Article 19(1)(a) of the Constitution. The five-Judge Constitution Bench held that anonymous electoral bonds are unconstitutional.
- Caste-Based Discrimination in Prisons: The Supreme Court held that provisions of Prison Manuals/Rules enabling caste-based discrimination of manual labour are

unconstitutional, as they violate Constitutional principles.

- Disability and Educational Courses: The Supreme Court held that disqualification from an educational course cannot be solely based on quantified disability. Quantified disability *per se* will not disentitle a candidate with benchmark disability from admission if the Disability Assessment Board opines the candidate can pursue the course. This intervention balanced the interests of differently-abled candidates.
- Safety of Medical Professionals: Following a case of murder and alleged rape of a doctor in Kolkata, the Supreme Court ordered the constitution of a National Task Force to give recommendations on modalities ensuring safety at the workplace for medical professionals.
- Advisory to Adolescent Girls: The Supreme Court, while quashing a rape conviction, set aside a Calcutta High Court verdict that advised adolescent girls to control their sexual urges, condemning the impugned decision.
- Live Location Bail Condition: In *Frank Vitus v. Narcotics Control Bureau*, the Supreme Court struck down a 'Live location Bail

Condition,’ stating that such a condition violates the right to privacy as it enables the police to constantly track movements and virtually peep into the private life of the accused.

- Grounds of Arrest: The Supreme Court entertained a challenge to an arrest under the Unlawful Activities (Prevention) Act, 1967, and upheld the need to inform the accused of the grounds of arrest in writing. This led to setting aside the arrest and remand of a chief editor in a UAPA case.
- Anticipatory Bail: In the case of Shajan Scaria, editor and publisher of *Marunadan Malayali*, the Supreme Court granted anticipatory bail against charges under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

## **V. Conclusion**

Enforcement of justice serves as a catalyst for a better political life for a nation. For better democracy, better implementation of justice is needed. Without the presence and nourishment of all forms of justice, no society can develop as a constitutional society. This is why the framers of the Constitution included this concept not only in the Preamble, and Parts III and IV, but throughout

the constitutional framework. Hence, a strong need exists for coordination among all three organs of the government to establish a system based on the administration of justice with justifiable approaches.

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## **Chapter 3**

# **Equality, Fraternity, and Social Justice: The Soul of the Indian Constitution**

## **Introduction**

When the Indian Constitution was adopted in 1949, the framers faced the formidable task of uniting a deeply diverse population into a coherent democratic polity. India was a land of innumerable castes, religions, languages, tribes, regions, and economic classes, each with its own internal hierarchies and lived histories. At the moment of independence, the memory of Partition added a fresh wound that cut across the social fabric. In this

atmosphere of hope mixed with trauma, India's leaders needed to craft not merely a legal framework but a moral compass capable of guiding the nation through the challenges of building an egalitarian and cohesive society.

It was in this context that the values of equality, fraternity, and social justice emerged as the soul of the Indian Constitution. They form the ethical core of the Preamble: justice, liberty, equality, and fraternity were deliberately placed at the forefront as normative aspirations. While liberty and justice had strong roots in classical liberal philosophy, equality and social justice reflected a recognition that India's historical inequities required transformative interventions. Fraternity, a concept less often foregrounded in constitutional frameworks, was introduced by B. R. Ambedkar [3] with emphatic insistence. For Ambedkar, fraternity was indispensable because democracy is not merely a system of government; it is a mode of associated living, a moral commitment by citizens to treat one another with respect and solidarity.

Today, more than seventy-five years later, these values continue to animate the Republic's democratic experience. They shape judicial decisions, influence legislative choices, inspire social movements, and serve as reference points in

public debate. Yet they are also under strain. Persistent caste-based discrimination, gender violence, communal tensions, economic inequality, and polarisation in political discourse present ongoing challenges to the realisation of constitutional ideals. Incidents such as vigilante lynching, religious identity conflicts, debates surrounding citizenship, and questions about the boundaries of religious freedom illustrate how these values continue to be tested.

This article seeks to undertake a detailed exploration of these values, tracing their philosophical origins, constitutional embodiment, judicial interpretation, and contemporary relevance. It argues that the Indian Constitution is fundamentally a transformative document committed to reshaping entrenched social hierarchies and fostering a democratic ethos rooted in mutual respect. Equality, fraternity, and social justice are not independent ideals but interdependent commitments whose full realisation requires synergy among institutions, citizens, and the state.

### **Philosophical Foundations of the Constitutional Trinity**

The philosophical roots of equality, fraternity, and social justice in the Indian Constitution are

complex, drawing inspiration from Enlightenment ideals, anti-colonial struggles, and indigenous socio-political reform movements. To understand their constitutional significance, one must consider how India's socio-political context shaped their interpretation. [4].

Equality in the Indian constitutional tradition transcends the notion of formal equivalence before the law. In Western constitutionalism, equality typically implies non-discrimination on enumerated grounds. However, the Indian framers recognised that such an approach would be insufficient in a society stratified by caste. For millennia, caste-based hierarchy divided Indian society into rigid layers, producing not only economic disparities but social segregation and humiliation. Ambedkar, as one of the principal architects of the Constitution, believed that unless the Constitution provided mechanisms to correct these structural inequities, legal equality would simply preserve the status quo. Thus, the framers adopted a concept of substantive equality that allowed the state to take affirmative measures to protect disadvantaged groups. Equality, therefore, is not a mere promise of identical treatment but a tool to achieve fairness by acknowledging unequal starting points. Social justice emerges from the recognition that

dismantling unequal structures requires deliberate and often redistributive state action. It is impossible to achieve meaningful equality if vast segments of the population lack access to education, health care, employment, land, and basic dignity.

Social justice demands not only correcting existing inequities but ensuring that no citizen remains excluded from the social and economic mainstream. The Indian Constitution therefore incorporates mechanisms such as reservations, protective discrimination, and welfare obligations within its structure. Social justice is not a moral afterthought; it is a constitutional mandate essential for sustaining democracy in a stratified society. Fraternity, by contrast, has a more intangible philosophical orientation. While equality and social justice can be institutionalised through legal and administrative frameworks, fraternity requires cultural and psychological transformation. Ambedkar warned that without fraternity, democracy would remain fragile because citizens would not see each other as equals in dignity. He understood that India's history of caste-based exclusion and communal divisions could only be healed through a shared commitment to respect and mutual recognition.

Fraternity demands that citizens rise above narrow identities and affirm the intrinsic worth of every person. It is a binding force that holds together a society marked by deep diversity.

These three values cannot be disentangled. Equality requires social justice because without corrective measures, entrenched hierarchies persist. Social justice requires fraternity because redistributive policies can evoke backlash unless citizens feel a sense of shared destiny. Fraternity, in turn, becomes hollow if citizens continue to face discrimination or structural disadvantage. The Indian constitutional imagination therefore situates these values in a relationship of mutual reinforcement.

### **Constitutional Architecture of Equality, Fraternity, and Social Justice**

The Indian Constitution embeds these ideals throughout its structure. The Preamble articulates them explicitly, while the Fundamental Rights and Directive Principles translate them into enforceable norms and aspirational goals.

The Preamble's emphasis on justice—social, economic, and political—signals that social justice is fundamental to the constitutional order. Justice is not limited to individual rights; it includes structural reforms aimed at securing the welfare of

all. The Preamble's guarantee of equality of status and opportunity reflects the commitment to dismantle barriers that prevent individuals from achieving their potential. Finally, the objective of fraternity assuring the dignity of the individual and the unity and integrity of the nation highlights that social cohesion is essential for democratic stability.

Articles 14 to 18 form the constitutional foundation of equality. Article 14 establishes the right to equality before the law and equal protection of the laws. Over time, the Supreme Court has expanded this provision to include protection against arbitrariness in state action, effectively making fairness a constitutional requirement. Articles 15 and 16 prohibit discrimination on grounds such as religion, race, caste, sex, or place of birth, while simultaneously permitting special provisions for socially and educationally backward classes, Scheduled Castes, Scheduled Tribes, women, and children. These provisions acknowledge that formal equality is insufficient and must be supplemented by policies aimed at achieving substantive equality. Article 17 abolishes untouchability, marking a radical departure from centuries of caste-based discrimination. Article 18 abolishes titles, reinforcing the egalitarian ethos of the Republic. [1].

The Directive Principles of State Policy further articulate the commitment to social justice. Article 38 mandates that the state strive to promote the welfare of the people by securing a social order in which justice, social, economic, and political, shall inform all institutions of national life. Article 39 calls for the equitable distribution of material resources and adequate means of livelihood for all citizens. Article 46 obligates the state to promote the educational and economic interests of weaker sections, particularly Scheduled Castes and Scheduled Tribes. Although the Directive Principles are not enforceable in courts, they embody the moral imperatives that guide legislative and administrative actions.

Fundamental duties, particularly Article 51A(e), exhort citizens to promote harmony and the spirit of common brotherhood transcending religious, linguistic, and regional or sectional diversities. This constitutional expectation reinforces the importance of fraternity as a civic virtue.

### **Jurisprudential Evolution**

The Supreme Court of India has played a transformative role in interpreting and expanding the meaning of equality, fraternity, and social justice. Judicial decisions have often reconciled



conflicting values, addressed emerging social challenges, and articulated broader philosophical principles underlying constitutional provisions.

In its early years, the Supreme Court tended towards a formalistic interpretation of equality. However, the doctrinal shift began with landmark decisions that adopted a more purposive, socially sensitive approach. The *Kesavananda Bharati* judgment [8] marked a constitutional watershed by affirming that equality, dignity, and fraternity constitute the basic structure and therefore cannot be amended by Parliament. This principle ensures that the state's commitment to these values remains inviolable.

A foundational decision in the evolution of substantive equality is *State of Kerala v. N. M. Thomas*. Justice Krishna Iyer's opinion fundamentally reshaped Indian equality jurisprudence by recognising that affirmative action is implicit in the guarantee of equality itself. Formal equality, he argued, perpetuates inequality unless historical disadvantages are addressed. This reasoning laid the groundwork for subsequent cases that linked equality directly to social justice.

The decision in *Indra Sawhney v. Union of India* advanced the relationship between equality and social justice by upholding reservations for

Other Backward Classes while imposing safeguards to ensure that benefits reach the truly disadvantaged. The judgment sought to balance meritocracy and social redress, reaffirming that substantive equality sometimes requires differential treatment. It also established the principle of the creamy layer, ensuring that advanced sections within backward classes do not monopolise benefits intended for the needy.

The jurisprudence surrounding Article 21 further enriched constitutional values by expanding the meaning of life and personal liberty to include dignity, autonomy, and freedom from arbitrary power. In *Maneka Gandhi v. Union of India*, the Court broadened the concept of due process and paved the way for a more humane and expansive rights framework. This case initiated an era in which the Court connected liberty with dignity and fraternity, recognising that individuals cannot enjoy liberty unless they feel secure within the larger social platform.

A remarkable development in recent jurisprudence is the Court's recognition of dignity as the foundation of equality and fraternity. In *NALSA v. Union of India*, the Court recognised transgender persons as a third gender and emphasised that constitutional rights cannot be

restricted by societal prejudice. This judgment explicitly acknowledged that fraternity requires society to embrace those who have historically faced exclusion. Similarly, in *Navtej Johar v. Union of India*, the Court decriminalised consensual same-sex relationships, grounding its reasoning in dignity, equality, and the moral imperative of treating individuals as autonomous agents deserving respect. Further details can be had from [8].

The Sabarimala decision, though contested, illustrates how the Court has attempted to reconcile religious freedom with gender equality. The controversy following the judgment demonstrates the difficulty of enforcing constitutional morality in contexts where social norms resist change. Nevertheless, the Court's commitment to gender equality, even in sensitive religious matters, underscores the Constitution's transformative aspirations.

These judicial developments collectively reveal that equality, fraternity, and social justice are not isolated ideals but a coherent moral framework. Through its jurisprudence, the Supreme Court has repeatedly reaffirmed the need to interpret the Constitution in a manner that upholds human

dignity, counters structural inequalities, and fosters a cohesive society.

## **Contemporary Challenges**

Despite the robust constitutional and judicial framework, India continues to confront challenges that test the resilience of equality, fraternity, and social justice. These challenges arise from structural inequalities, social prejudices, economic disparities, and political polarisation.

One of the most disturbing developments in recent years has been the rise of mob lynching and vigilante violence. These incidents, often justified by the rhetoric of cow protection or cultural preservation, disproportionately target minority communities and the socially vulnerable. Such violence erodes the moral foundations of equality and fraternity by creating fear and mistrust among communities. The Supreme Court has condemned mob lynching as an affront to the rule of law and directed states to take preventive and punitive measures. However, uneven implementation continues to undermine the constitutional promise of equal protection.

The Citizenship Amendment Act (CAA) and the proposed National Register of Citizens (NRC) have also generated significant debate about

equality and secularism. Critics argue that introducing religion as a criterion for citizenship violates the principle of equality and undermines India's secular character. The widespread protests that erupted across the country reflected a deep anxiety about inclusion, belonging, and the future of citizenship. Sites such as Shaheen Bagh became symbols of civic engagement, where citizens invoked the Constitution as the moral basis for resistance. Yet the polarised political climate surrounding these debates revealed deep fractures in India's social scenario.

Another contentious issue is the Karnataka hijab controversy, which focused on whether educational institutions could restrict the wearing of the hijab under uniform regulations. For Muslim women, the hijab represents not merely a garment but a form of religious expression, bodily autonomy, and identity. The Supreme Court's split verdict on the matter highlights the challenge of balancing secularism, institutional order, and individual rights in a diverse society. The controversy illustrates the ongoing tension between maintaining uniformity in public institutions and accommodating cultural diversity, both of which are essential components of India's democratic ethos.

The Sabarimala dispute offers further insight into conflicts between religious autonomy and gender equality. Advocates of women's entry argued that restricting access violated constitutional guarantees of equality and dignity. Opponents maintained that the restriction was essential to the temple's religious identity. The intense public reaction following the judgment revealed how deeply social norms can resist change and how constitutional values sometimes confront entrenched cultural traditions. The dispute underscores the need to balance constitutional morality with respect for cultural diversity while ensuring that practices violating fundamental rights cannot be justified on religious grounds.

Caste-based discrimination continues to challenge India's commitment to equality and social justice. Incidents of caste violence, discrimination in educational institutions, and the persistence of manual scavenging highlight the gap between constitutional promises and social reality. Reports of Dalit students facing systemic discrimination and even tragic suicides expose the fragility of constitutional values in institutional settings. These incidents demonstrate that caste remains a powerful force shaping social and economic outcomes, and that legal prohibitions alone are insufficient to dismantle entrenched hierarchies.

Economic inequality has widened significantly in recent decades, raising concerns about the future of equality of opportunity. Concentration of wealth among a small elite limits upward mobility and erodes the foundations of democratic citizenship. Access to quality education, healthcare, and employment remains unevenly distributed, exacerbating the divide between privileged and marginalised communities. Technological advancements, while offering new opportunities, have also created a digital divide that threatens to deepen existing inequalities. Without universal digital literacy and access, marginalised groups risk exclusion from essential services, employment opportunities, and civic participation.

Social and political polarisation presents another major challenge to fraternity. The rise of misinformation, hate speech, and divisive rhetoric on digital platforms contributes to an atmosphere of mutual suspicion. Public discourse increasingly reflects adversarial narratives, undermining the shared sense of belonging necessary for democratic stability. In such an environment, fraternity becomes difficult to sustain.

These challenges demonstrate that the constitutional values of equality, fraternity, and social justice must be actively defended and

renewed. They require not only legal frameworks but social, economic, and cultural interventions that foster inclusion and solidarity.

### **Fraternity as Constitutional Morality**

Among the values articulated in the Preamble, fraternity occupies a uniquely significant yet fragile position. Unlike equality and social justice, which can be operationalised through legal measures and state policies, fraternity relies on civic attitudes, cultural practices, and interpersonal relationships. It is a moral quality that cannot be legislated into existence but can be nurtured by institutions, public discourse, and collective experiences.

Ambedkar, more than any other framer, emphasised that fraternity is central to India's democratic project. He argued that liberty and equality could not be sustained without fraternity because social divisions, particularly caste, had historically fragmented Indian society. According to Ambedkar, fraternity must express itself in a sense of common humanity, transcending caste, religion, and other identity markers. Without this moral foundation, the legal and political structure of democracy becomes vulnerable to majoritarian domination and social exclusion.



The Supreme Court has integrated fraternity into constitutional jurisprudence by linking it to dignity and secularism. In *S. R. Bommai*, the Court held that secularism is part of the basic structure and essential for maintaining national unity. The judgment recognised that fraternity and secularism are mutually reinforcing principles that ensure the peaceful coexistence of diverse communities. Similarly, in decisions recognising the rights of marginalised groups, such as *NALSA* and *Navtej Johar*, the Court emphasised that dignity and fraternity require respecting individuals' identities and allowing them to participate fully in society.

Fraternity also plays a role in defining constitutional morality, a concept invoked by the Court to emphasise that constitutional principles must prevail over social practices rooted in prejudice. Constitutional morality requires citizens and institutions to uphold the values enshrined in the Constitution, even when they conflict with popular sentiment or cultural norms. The *Sabarimala* judgment, despite opposition, sought to affirm this higher commitment to equality and dignity.

Yet fraternity faces significant challenges in contemporary India. Polarised political discourse, communal tensions, and social media-driven

misinformation undermine the capacity of citizens to see one another as part of a shared community. When fear and suspicion replace trust, fraternity erodes, and the democratic fabric weakens. Sustaining fraternity therefore requires a concerted effort from all sectors of society, including education, media, civil society, and political leadership.

### **Social Justice in Practice**

Social justice represents a cornerstone of the Indian constitutional vision. It seeks to dismantle structural inequalities, provide equitable access to resources, and enable marginalised groups to participate fully in social, economic, and political life.

Affirmative action, particularly through reservations, is one of the primary mechanisms for achieving social justice. The reservation system for Scheduled Castes, Scheduled Tribes, and Other Backward Classes aims to correct historical injustices and promote representation in education and public employment. While reservations have enabled many from disadvantaged backgrounds to access opportunities previously denied to them, the system remains contested. Debates continue over the scope, implementation, and impact of reservations, particularly concerning the creamy

layer principle, reservations in promotions, and the introduction of the Economically Weaker Sections quota.

Welfare programmes also play a crucial role in advancing social justice. Schemes such as the Right to Education Act, the Public Distribution System, the National Rural Employment Guarantee Act, and health insurance initiatives aim to provide essential services to those in need. Despite their importance, these programmes face challenges related to implementation, funding, and administrative inefficiency. Ensuring that welfare schemes reach their intended beneficiaries requires strengthening governance mechanisms, increasing transparency, and addressing regional disparities.

Land reforms constitute another vital area of social justice. Access to land remains a major determinant of socio-economic status, particularly in rural areas. While land redistribution efforts were undertaken in the decades following independence, their success has been uneven across states. Tribal communities, in particular, face ongoing displacement due to industrialisation, mining, and infrastructure projects. The Forest Rights Act sought to address these injustices by recognising the rights of forest-dwelling

communities, but its implementation has been inconsistent.

Emerging forms of inequality, such as digital exclusion, require new strategies for social justice. As governance, education, and employment increasingly depend on digital access, those without internet connectivity or technological literacy face heightened exclusion. Addressing digital inequality is essential for ensuring that marginalised communities do not remain trapped in cycles of disadvantage.

Social justice also demands attention to gender equality. Despite legal protections, women continue to face discrimination in education, employment, and public spaces. The persistence of gender-based violence, including domestic violence, sexual harassment, and honour crimes, underscores the need for stronger institutional responses. Promoting women's participation in public life, enhancing legal safeguards, and challenging patriarchal norms remain essential components of the social justice agenda.

Thus, social justice is not a static ideal but an ongoing process that requires sustained commitment, innovation, and robust institutional mechanisms.

## **Equality and the Future of Constitutional Democracy**

Equality lies at the heart of democracy because democratic participation requires that individuals have equal status, equal dignity, and equal opportunity. Yet achieving equality in deeply unequal societies like India demands more than formal declarations. It requires dismantling structures of domination, redistributing opportunities, and ensuring that laws do not inadvertently perpetuate disadvantage.

The evolution of equality jurisprudence in India reflects a recognition that formal equality is insufficient. A law that treats everyone identically may still produce unjust outcomes if it fails to account for historical disadvantages or entrenched hierarchies. Substantive equality, by contrast, focuses on achieving fair outcomes by acknowledging that different groups may require different forms of support. This approach has informed decisions on reservations, gender discrimination, and minority rights.

Economic inequality presents a major obstacle to achieving substantive equality. When wealth and opportunities are concentrated in the hands of a few, democratic participation becomes skewed. Access to education, healthcare, and

resources shapes an individual's capacity to engage meaningfully in civic life. Policies aimed at reducing economic inequality, such as progressive taxation, investment in public infrastructure, and expansion of social safety nets, are essential for sustaining democratic equality.

Ensuring equality in the digital age requires vigilance. Algorithms, artificial intelligence, and digital surveillance can replicate or even exacerbate existing biases. Ensuring that technological systems respect constitutional values is an emerging challenge.

The future of equality in India will depend on how effectively institutions address new and existing challenges. Strengthening anti-discrimination laws, enhancing access to justice, improving representation in public institutions, and promoting inclusive development are essential steps.

### **Sustaining the Constitutional Trinity**

The constitutional values of equality, fraternity, and social justice cannot flourish without active commitment from both the state and society. Sustaining these values requires interventions across multiple domains, including education,

media, civil society, political leadership, and institutional reforms.

Education is one of the most powerful tools for cultivating democratic values. Schools and universities must promote constitutional literacy, critical thinking, and appreciation for diversity. Teaching students about the history of social justice movements, democratic principles, and civic responsibilities can foster a culture of empathy and inclusion.

Media plays a critical role in shaping public discourse. Responsible journalism that challenges prejudice, exposes injustice, and promotes dialogue can strengthen fraternity. Conversely, sensationalism, misinformation, and polarising rhetoric undermine democratic values.

Civil society organisations have historically played an important role in advocating for marginalised communities, monitoring state action, and fostering social solidarity. Their continued vibrancy is essential for protecting constitutional rights and promoting inclusive policies.

Political leadership has the capacity to influence public attitudes profoundly. Leaders who emphasise unity, respect, and constitutional morality can nurture fraternity, while divisive

rhetoric can damage the social fabric. Political actors must recognise their responsibility in shaping a democratic culture grounded in mutual respect.

Institutional reforms are essential for strengthening constitutional values. Ensuring police accountability, safeguarding judicial independence, enhancing transparency in governance, and upholding the integrity of the electoral process are critical for protecting equality and justice.

At a broader societal level, fostering fraternity requires transcending narrow identities while respecting cultural diversity. Community initiatives, interfaith dialogues, and cultural exchanges can help build trust and understanding among diverse groups.

## **Conclusion**

Equality, fraternity, and social justice constitute the moral core of the Indian Constitution. They embody the framers' vision of a democratic society in which every individual enjoys dignity, freedom, and opportunity. Yet these values remain fragile and constantly challenged by structural inequalities, social prejudices, economic disparities, and political polarisation.



Sustaining these values requires a collective commitment from institutions, citizens, and leaders. The judiciary must uphold constitutional morality; the legislature and executive must implement policies that promote inclusion and fairness; educators must cultivate informed and empathetic citizens; the media must promote responsible discourse; and civil society must continue to advocate for the marginalised.

India's democratic project is not merely a system of governance but a shared moral journey. Realising the constitutional vision requires not only legal frameworks but a social ethos grounded in dignity, empathy, and solidarity. Equality must be made substantive, social justice must be made effective, and fraternity must be made real in everyday life.

Only by embracing these values in their full depth can India honour the vision of its founders and build a democratic future rooted in dignity, harmony, and shared humanity.

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## **Chapter 4**

# **The Impact of Social Media Portrayals on the Lives of Transwomen in India**

### **Introduction**

Transgender individuals in India have a long history of facing significant social, legal, and cultural challenges, including discrimination, violence, and limited access to essential services(Prabhakar, n.d.) · Despite the landmark Supreme Court decision recognizing transgender individuals as a third gender, these challenges persist(Currah et al., 2006). The emergence of social media has profoundly transformed how

individuals communicate, express themselves, and build communities worldwide (Miller et al., 2016). However, the impact of social media on marginalized groups, such as transgender individuals, is complex and can have both positive and negative consequences (Charmaraman et al., 2022). This research investigates how social media portrayals specifically affect the lives of transwomen in India.

This research examines how social media portrayals significantly influence the lives of transwomen in India. It investigates how social media, with its potential for both empowerment and marginalization, shapes the experiences, identities, and well-being of transwomen within the Indian social context. This research holds significant value for several key reasons. Firstly, it aims to enhance our understanding of the lived experiences of transwomen in the digital age, highlighting the unique challenges and opportunities presented by social media within the Indian context. Secondly, the study will investigate how social media representations can both positively and negatively impact transwomen, examining how online portrayals contribute to the perpetuation of harmful stereotypes, discrimination, and online harassment, while also exploring the potential for

social media to foster community, support, and self-expression.

Furthermore, the findings of this research can be instrumental in advocating for a more inclusive and respectful media landscape for transwomen. The study will provide valuable insights that can inform the development of interventions to address the challenges faced by transwomen in the digital age. These interventions could include digital literacy programs, community-based initiatives, policy interventions to address online harassment, and media literacy campaigns to challenge harmful stereotypes and promote greater understanding and acceptance.

Finally, this research will contribute to the growing body of knowledge on the intersection of gender, technology, and social media. It will provide valuable insights for researchers, policymakers, and advocates working to improve the lives of transgender individuals in India and beyond.

## **Literature Review**

The rise of social media has revolutionized communication, offering unprecedented opportunities for individuals to connect, express themselves, and access information. However, for

marginalized groups like transgender individuals, the impact of social media is multifaceted. While it can provide platforms for community building, self-expression, and advocacy, it also presents significant challenges such as online harassment, cyberbullying, and exposure to harmful stereotypes (Miller et al., 2016).

Research on transgender experiences with social media, conducted primarily in Western contexts, provides valuable insights. Studies have highlighted the potential of online platforms to foster social support networks, facilitate self-discovery, and amplify marginalized voices (Dansu, 2024). Poteat and Koskinen (2016) found that social media use can contribute to improved mental health outcomes by providing social support among transgender and gender non-conforming individuals (Poteat & Koskinen, 2016). Similarly, Van Cleve and Davis (2018) explored the role of social media in transgender identity formation, emphasizing its importance for self-exploration and expression (Van Cleve & Davis, 2018).

However, research also points to the significant challenges faced by transgender individuals on social media. Studies have documented high rates of online harassment, cyberbullying, and exposure to transphobic content. Kosinski, Stillwell, and

Graepel (2013) demonstrated the potential for online data to be used to predict sensitive personal attributes, raising concerns about privacy and the potential for discrimination (Kosinski et al., 2013). The Human Rights Campaign (2021) reported a significant increase in hate crimes targeting transgender individuals, highlighting the pervasive impact of discrimination and violence both online and offline (Human Rights Campaign, 2021).

Furthermore, media portrayals, both mainstream and social media, often perpetuate harmful stereotypes and reinforce existing biases against transgender individuals (Grant et al., 2009). Studies have shown that transgender individuals are frequently misrepresented in media, often portrayed in stereotypical or sensationalized ways. Grant, Ritchie, and Birch (2009) conducted a critical review of transgender portrayals in mainstream media, highlighting the prevalence of negative stereotypes and their potential impact on public perceptions. Kosut and Fitzsimons (2010) investigated the impact of media portrayals on attitudes towards transgender individuals, finding that negative portrayals can contribute to prejudice and discrimination (Kosut & Fitzsimons, 2010).

However, research specifically examining the impact of social media portrayals on transgender

women in India is limited. While studies like that of Asmarani and Hanjani (2024) in Indonesia provide valuable insights into the influence of public fantasies and societal norms on media representations of trans women, more research is needed to understand the specific Indian context. The interplay of cultural norms, religious beliefs, and evolving legal frameworks in India likely influences media representations of transgender women in unique ways(Asmarani & Hanjani, 2024).

## **Methodology**

This study employed a qualitative narrative design to explore the lived experiences and perspectives of transwomen in India. This approach allowed for an in-depth understanding of their unique narratives and how social media impacts their lives(Wells, 2011).

Snowball sampling was utilized to recruit participants. This method involved identifying a small group of initial participants and then asking them to refer other individuals who fit the study criteria.<sup>1</sup> This approach is particularly effective for reaching marginalized populations, such as transwomen, who may have limited access to traditional recruitment channels(Heckathorn, 2011).



In-depth interviews were conducted with five transwomen residing in India. A semi-structured interview guide was developed to explore their experiences with social media, including their use of platforms, their perceptions of online representations, and the impact of social media on their lives (Eppich et al., 2019).

Thematic analysis was employed to analyze the interview data. This involved identifying, analyzing, and interpreting patterns and themes within the data to understand the participants' experiences better. This approach allowed for a rich and nuanced understanding of the participants' perspectives and the impact of social media on their lives.

## **Findings**

### **a. Self-Identification and Coming-Out:**

The findings revealed that social media played a significant role in the self-identification and coming-out journeys of the participants. Access to information, support groups, and role models within the transgender community on platforms like Facebook, Instagram, and YouTube facilitated self-discovery and provided crucial support during the coming-out process. Participants described using social media to explore different aspects of

their gender identities, connect with other transgender individuals, and learn about the transgender community. Online platforms provided a safe space for self-exploration and experimentation, allowing individuals to express themselves authentically and connect with others who shared similar experiences.

### **b.Negative Portrayals and Discrimination:**

The study found that social media platforms are rife with stereotypical and discriminatory portrayals of transwomen. These include hypersexualization and objectification, where transwomen are often portrayed as hypersexualized objects, reinforcing harmful stereotypes and contributing to their objectification and exploitation. Furthermore, transgender identities are frequently pathologized and medicalized, with an emphasis on medical interventions and a focus on "fixing" or "curing" transgender individuals.

Social media platforms also often amplify narratives of violence and discrimination against transgender individuals, contributing to a climate of fear and hostility. These negative portrayals had a significant impact on the mental health, self-esteem, and social experiences of the participants. They reported experiencing feelings of shame, self-

doubt, and anxiety due to the constant exposure to negative and discriminatory content. These experiences often exacerbated existing feelings of isolation, marginalization, and discrimination.

### **c. Educational and Workplace Challenges:**

The findings highlighted the significant challenges faced by transwomen in educational and professional settings, often exacerbated by negative social media portrayals. Participants reported experiencing discrimination, harassment, and exclusion in academic and workplace environments. The case of Maharajas College, a reputed educational institution in Kerala, exemplifies the challenges faced by transwomen in higher education. Despite a growing number of transwomen enrolling, high dropout rates suggest significant barriers to academic success, including discrimination, lack of support, and hostile environments.

### **d. Stigma and Stereotypes:**

Social media contributed to the perpetuation of harmful stereotypes about transwomen, such as the association of transwomen with sex work and begging. Participants reported experiencing the impact of these stereotypes in their daily lives. For

example, one participant recounted instances of being approached by men for prostitution after class and part-time jobs: *"Currently, I'm pursuing my Masters from an eminent college in Kerala. Several times, after class and my part-time job, randomly men approached me to ask for go with them for prostitution."* Another participant shared the experience of being offered money on trains, reflecting the societal perception of transwomen as beggars: *"There is a community in North India where transgenders solely depend on begging for their daily lives. It is not a culture in Kerala. Even though several times, when I entered the train, people offered me money."*

## **Discussion**

The findings of this study underscore the complex and multifaceted impact of social media on the lives of transwomen in India. While social media platforms offer the potential for self-discovery, community building, and access to information, they also present significant challenges. These challenges include exposure to harmful stereotypes, discrimination, and online harassment, which can negatively impact the mental health and well-being of transwomen.

Social media often perpetuates harmful stereotypes about transwomen. For example, transwomen are frequently portrayed in hypersexualized ways, reducing them to objects of desire and reinforcing harmful objectification. Furthermore, transgender identities are often pathologized and medicalized, with an emphasis on medical interventions and a focus on "fixing" or "curing" transgender individuals. This contributes to a societal perception that transgender identities are inherently flawed or in need of correction.

Moreover, social media platforms can amplify narratives of violence and discrimination against transgender individuals, contributing to a climate of fear and hostility. This can manifest in various forms, such as online harassment, cyberbullying, and the spread of misinformation and hate speech.

Addressing these challenges requires a multi-pronged approach. Empowering transwomen with digital literacy skills is crucial. This includes educating them about online safety, critical media literacy, and strategies for identifying and mitigating online harassment.

Creating safe and supportive online spaces for transwomen to connect, share experiences, and build community is essential. This could involve

fostering the growth of online platforms and support groups specifically designed for transwomen in India.

Policy interventions are necessary to address online harassment and discrimination. This includes developing clear guidelines for social media platforms to prevent and address hate speech, online abuse, and the dissemination of harmful stereotypes.

Raising awareness about the impact of media representations on public perceptions and attitudes towards transgender individuals is crucial. Media literacy campaigns can educate the public about the realities of transgender lives and challenge harmful stereotypes perpetuated in mainstream and social media.

Addressing these challenges requires a multi-pronged approach. Empowering transwomen with digital literacy skills is crucial. This includes educating them about online safety practices, such as identifying and mitigating online harassment, and fostering critical media literacy skills to critically evaluate and engage with online content.

Furthermore, creating safe and supportive online spaces for transwomen is essential. This could

involve fostering the growth of online platforms and support groups specifically designed for transwomen in India. These spaces can provide a haven for transwomen to connect, share experiences, and build community, mitigating feelings of isolation and fostering a sense of belonging.

Policy interventions are also necessary to address online harassment and discrimination. This includes developing clear guidelines for social media platforms to prevent and address hate speech, online abuse, and the dissemination of harmful stereotypes. These guidelines should outline clear consequences for violations and provide mechanisms for reporting and addressing online harassment.

Raising awareness about the impact of media representations on public perceptions and attitudes towards transgender individuals is crucial. Media literacy campaigns can educate the public about the realities of transgender lives, challenge harmful stereotypes perpetuated in mainstream and social media, and promote more inclusive and respectful representations of transgender individuals.

By implementing these strategies, we can strive to create a more inclusive and supportive online

environment for transgender women in India, where they can safely express themselves, build community, and thrive.

## **Conclusion**

This research highlights the complex and multifaceted impact of social media on the lives of transwomen in India. While social media platforms offer the potential for self-discovery, community building, and access to information, they also present significant challenges. These challenges include exposure to harmful stereotypes, discrimination, and online harassment, which can negatively impact the mental health and well-being of transwomen.

Addressing these challenges requires a multifaceted approach. Empowering transwomen with digital literacy skills is crucial. This includes educating them about online safety, critical media literacy, and strategies for identifying and mitigating online harassment. Creating safe and supportive online spaces for transwomen to connect, share experiences, and build community is essential. This could involve fostering the growth of online platforms and support groups specifically designed for transwomen in India.



Furthermore, it is crucial to advocate for more inclusive and respectful media representations of transgender individuals. This includes challenging harmful stereotypes and promoting greater understanding and acceptance in society. By raising awareness about the impact of media representations on public perceptions and attitudes towards transgender individuals, we can work towards a more inclusive and equitable media landscape.

This research emphasizes the need for continued efforts to address the challenges faced by transwomen in the digital age. By implementing these strategies, we can strive to create a more inclusive and supportive online environment for transgender women in India, where they can safely express themselves, build community, and thrive.

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## **Chapter 5**

# **From Vision to Reality: The Role of Constitutional Democracy in Achieving Social Justice**

### **Introduction**

Democracy, the Constitution, and social justice are foundational principles that underpin the governance of modern societies. These ideals are intrinsically linked, with democracy providing the framework for representation and equality, the Constitution serving as the supreme legal authority to guarantee rights, and social justice ensuring inclusivity and fairness for all members of society. As B.R. Ambedkar aptly remarked, “Political

democracy cannot last unless there lies at the base of its social democracy.<sup>1</sup>”

India, with its diverse socio-economic fabric, embodies the challenges and opportunities inherent in striving for these principles. The Indian Constitution, a transformative document, was designed to break the chains of colonial and social hierarchies, fostering a new order grounded in justice, liberty, and equality. The Preamble’s promise of “social, economic, and political justice”<sup>2</sup> underscores the centrality of social justice in the constitutional vision.

However, achieving these ideals in practice requires a dynamic interplay of constitutional provisions, judicial activism, and policy initiatives. While the Constitution provides the legal and institutional framework, its implementation often grapples with systemic inequities, social hierarchies, and the evolving challenges posed by globalization.

This paper explores the relationship between democracy, constitutionalism, and social justice, with particular emphasis on key themes such as gender justice, affirmative action, and the impact of globalization. It critically examines constitutional provisions, judicial interpretations, and legislative measures, drawing on case laws, international frameworks, and comparative perspectives. Through this lens, the paper evaluates the progress

made in fostering equality and inclusivity, while addressing the persistent challenges of marginalization and exclusion.

### **Constitutional Framework and Social Justice**

The Constitution of India stands as a transformative charter aiming to create a just society. As observed by Granville Austin, “The Indian Constitution is first and foremost a social document.”<sup>3</sup> This transformative vision is reflected in its Preamble, which enshrines the goals of justice—social, economic, and political—along with equality and liberty.

### **Constitutional Framework and Social Justice**

The Indian Constitution serves as a transformative document to achieve social justice by embedding it within its framework. The Preamble, regarded as the soul of the Constitution, declares justice—social, economic, and political—as its primary goal alongside equality, liberty, and fraternity. This vision is operationalized through Fundamental Rights (Part III), which protect individual freedoms and ensure equality, and Directive Principles of State Policy (Part IV), which provide the state with a roadmap to achieve socio-economic justice. Together, these provisions aim to

create a society free from discrimination and inequalities<sup>4</sup>

The Fundamental Rights form the bedrock of social justice in India. Article 14, which guarantees equality before the law and equal protection of laws, was expanded in *E.P. Royappa v. State of Tamil Nadu*<sup>5</sup> (1974), where the Supreme Court emphasized fairness and non-arbitrariness as integral to equality. Similarly, Articles 15 and 16 prohibit discrimination and ensure equality of opportunity in public employment. In *Indra Sawhney v. Union of India*<sup>6</sup> (1992), the Court upheld affirmative action as a tool to achieve substantive equality by approving 27% reservations for Other Backward Classes (OBCs). Article 17, which abolishes untouchability, was reinforced in *State of Karnataka v. Appa Balu Ingale*<sup>7</sup> (1993), emphasizing the need for strict enforcement mechanisms to eradicate caste-based discrimination.<sup>8</sup>

The Directive Principles of State Policy complement these rights by providing socio-economic directions to the state. For instance, Article 38 obligates the state to minimize inequalities, while Article 39 promotes equal pay for equal work and ensures adequate livelihood. In *Unni Krishnan v. State of Andhra Pradesh*<sup>9</sup> (1993), the Supreme Court recognized the right to

education as a tool for achieving these objectives. Moreover, Article 46 mandates the state to promote the educational and economic interests of Scheduled Castes (SCs), Scheduled Tribes (STs), and other weaker sections, underscoring the Constitution's focus on social justice.<sup>10</sup>

Judicial activism has played a critical role in transforming these ideals into reality. The introduction of Public Interest Litigation (PIL) has democratized access to justice, as seen in *M.C. Mehta v. Union of India*<sup>11</sup> (1987), where environmental and social justice were linked. Landmark judgments such as *Navtej Singh Johar v. Union of India*<sup>12</sup> (2018), which decriminalized Section 377 IPC, and *Vishaka v. State of Rajasthan*<sup>13</sup> (1997), which provided guidelines against workplace sexual harassment, demonstrate the judiciary's commitment to evolving social needs. Despite these strides, challenges like economic inequality, caste-based discrimination, and uneven implementation of welfare policies persist, necessitating collective action to fully realize the constitutional vision of justice.<sup>14</sup>

## **Fundamental Rights and Directive Principles: Pillars of Social Justice**

The Indian Constitution's framework for social justice is primarily anchored in the

Fundamental Rights (Part III) and the Directive Principles of State Policy (Part IV). Together, they provide a balance between individual rights and socio-economic goals, creating a framework for constitutional democracy. While Fundamental Rights are enforceable by courts, the Directive Principles serve as moral and political guidelines for governance, aiming to reduce inequalities and uplift marginalized groups.

The synergy between the Fundamental Rights and Directive Principles of State Policy (DPSPs) exemplifies the commitment to social justice. Article 14 guarantees equality before the law, while Articles 15 and 16 specifically prohibit discrimination based on religion, race, caste, sex, or place of birth.<sup>15</sup> Article 21, interpreted expansively in *Maneka Gandhi v. Union of India*,<sup>16</sup> has become a repository of socio-economic rights, including the right to dignity and livelihood.

The Directive Principles under Articles 38 and 46 direct the State to secure a social order aimed at reducing inequalities and promoting the welfare of weaker sections.<sup>17</sup> The interplay between DPSPs and fundamental rights was cemented in *Minerva Mills v. Union of India*<sup>18</sup>, where the Court held that a harmonious interpretation of the two was integral to upholding the Constitution's basic structure. Fundamental Rights and Social Justice



Fundamental Rights ensure individual freedoms and guard against state arbitrariness. Article 14 guarantees equality before the law and equal protection of laws, forming the cornerstone of social justice<sup>19</sup>, the Supreme Court expanded the scope of Article 14 by linking equality with fairness and reasonableness. Articles 15 and 16 prohibit discrimination and ensure equality of opportunity, particularly in public employment. In 1992, the Court upheld 27% reservations for OBCs, reinforcing affirmative action as a tool to achieve substantive equality.<sup>20</sup> Furthermore, Article 17, which abolishes untouchability, was interpreted broadly in 1993, where the Court emphasized strict enforcement to combat caste discrimination.<sup>21</sup>

Article 21, guaranteeing the right to life and personal liberty, has been instrumental in advancing social justice. The Court expanded the scope of Article 21 to include dignity, making it a foundation for rights such as education and livelihood.<sup>22</sup> Additionally, Article 23 prohibits human trafficking and forced labour, and Article 24 bans child labour in hazardous industries, emphasizing the Constitution's commitment to protecting the most vulnerable.

#### Directive Principles and Socio-Economic Justice

The Directive Principles of State Policy complement Fundamental Rights by obligating the

state to promote socio-economic welfare. Article 38 directs the state to minimize inequalities in income and status. In *State of Kerala v. N.M. Thomas* 23(1976), the Court upheld affirmative action measures under Article 38, highlighting their role in achieving social justice. Article 39 emphasizes equal pay for equal work, protection of children, and equitable distribution of resources. In *Unni Krishnan v. State of Andhra Pradesh*<sup>24</sup> (1993), the Supreme Court linked the right to education to Article 39(e) and (f), recognizing its role in empowering the disadvantaged.

Other key provisions include Article 41, which directs the state to ensure the right to work, education, and public assistance, and Article 46, which mandates the promotion of educational and economic interests of Scheduled Castes (SCs), Scheduled Tribes (STs), and other weaker sections. In *M.C. Mehta v. State of Tamil Nadu*<sup>25</sup> (1996), the Court emphasized the protection of child workers, interpreting Directive Principles in conjunction with Fundamental Rights.

Together, Fundamental Rights and Directive Principles create a comprehensive framework for achieving social justice, with the judiciary playing a pivotal role in interpreting and harmonizing these provisions. While Fundamental Rights ensure immediate legal remedies, the Directive Principles

provide a vision for a welfare state. The synergy between these constitutional elements transforms the vision of social justice into a reality.

### Judicial Activism in Advancing Social Justice

Indian courts have played a pivotal role in realizing the Constitution's transformative potential. In *Bandhua Mukti Morcha v. Union of India*,<sup>26</sup> the Supreme Court directed the government to rehabilitate bonded labourers, terming it a violation of Article 23. Similarly, *People's Union for Civil Liberties v. Union of India (PUCL)*<sup>27</sup> recognized the right to food as integral to Article 21, compelling the State to implement welfare schemes.

### Key Observations

Justice Krishna Iyer noted that "the judiciary, while interpreting the Constitution, must never lose sight of its obligation to protect the weaker sections of society."<sup>28</sup> These judicial pronouncements highlight the judiciary's proactive stance in bridging gaps left by legislative and executive inaction.

### Gender Justice in Constitutional Democracy

Gender justice, integral to the vision of social justice, requires constitutional frameworks to actively safeguard the rights of women and marginalized genders. In a constitutional democracy, the principle of equality is enshrined in the Fundamental Rights section of the constitution,

and gender justice is a critical application of this principle. For instance, Article 14 of the Indian Constitution guarantees equality before the law, while Article 15 prohibits discrimination on grounds of sex. These provisions set the foundation for addressing gender-based inequality. Judicial interpretations, such as in *Vishaka v. State of Rajasthan*<sup>29</sup>, have expanded gender justice beyond mere formal equality, stressing the necessity of ensuring substantive equality through specific protections, such as the creation of workplace sexual harassment guidelines in line with international conventions like the Convention on the Elimination of All Forms of Discrimination Against Women<sup>30</sup> (CEDAW).

Moreover, gender justice involves addressing socio-economic disparities, ensuring that women have access to equal opportunities in education, employment, and healthcare. In this regard, Article 39(a) of the Indian Constitution directs the state to ensure that children and women receive equal treatment in all spheres of public life. This directive was exemplified in the case of *Shah Bano Begum v. Union of India*<sup>31</sup>, where the Supreme Court upheld the right of a Muslim woman to maintenance, highlighting the state's duty to protect women's economic rights. Legislative provisions like the Protection of Women from Domestic Violence

Act<sup>32</sup>, 2005 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act<sup>33</sup>, 2013 further complement constitutional guarantees, focusing on protecting women from violence and discrimination in domestic and workplace settings.

Judicial activism has played a crucial role in advancing gender justice in constitutional democracies. In *Naz Foundation v. Government of NCT of Delhi*<sup>34</sup>, the Delhi High Court decriminalized consensual same-sex relations between adults, recognizing the need for gender inclusivity within the constitutional framework. Similarly, in *Indian Young Lawyers Association v. State of Kerala*<sup>35</sup>, the Supreme Court struck down the ban on women entering the Sabarimala temple, reaffirming that the constitutional principle of equality applies irrespective of gender or religious practices. These cases highlight the evolving nature of gender justice, where judicial interpretation adapts to ensure inclusive, progressive outcomes.

However, challenges remain, including patriarchal norms and structural barriers that hinder the full realization of gender justice. Constitutional democracy must continue to evolve to address these barriers through both legal and societal reforms. Gender justice, thus, requires ongoing efforts in legal interpretation, legislation,

and social change, ensuring that both men and women have equal access to justice, opportunities, and dignity in all aspects of public and private life.

### Constitutional Provisions and Legislative Framework

The Constitution explicitly addresses gender justice through Articles 14, 15(3), and 39(d). Article 15(3) empowers the State to make special provisions for women and children, while Article 39(d) mandates equal pay for equal work. Landmark legislations such as the Equal Remuneration Act, 1976,<sup>36</sup> and the Sexual Harassment of Women at Workplace Act, 2013,<sup>37</sup> complement constitutional guarantees.

### Judicial Precedents

*Vishaka v. State of Rajasthan* (1997): The Supreme Court laid down the Vishaka Guidelines to prevent workplace harassment, interpreting gender equality under Articles 14, 15, and 21.<sup>38</sup>

*Shayara Bano v. Union of India* (2017): Declaring triple talaq unconstitutional, the Court upheld gender justice within personal laws.<sup>39</sup>

Justice Chandrachud, in *Navtej Singh Johar v. Union of India*, stated, “The Constitution transforms society by providing rights to those historically excluded from the social fabric.”<sup>40</sup> Global Comparisons: Countries such as Sweden and Iceland have adopted gender parity measures in

governance and pay equity, demonstrating effective approaches that India can emulate.<sup>41</sup>

### Affirmative Action: Bridging Inequalities in Constitutional Democracy

Affirmative action serves as a vital tool in constitutional democracies to bridge historical and systemic inequalities by ensuring that marginalized groups have equal access to opportunities in education, employment, and public life. The Indian Constitution, through provisions such as Article 15(4), Article 16(4), and Article 46, permits the state to make special provisions for the advancement of socially and educationally backward classes, scheduled castes (SCs), and scheduled tribes (STs). These provisions aim to create a level playing field by enabling these groups to overcome barriers that have historically restricted their access to resources and opportunities. The landmark case of *Indra Sawhney v. Union of India*<sup>42</sup> upheld the constitutionality of reservations in government jobs for backward classes, reinforcing the notion that affirmative action is a necessary remedy to address entrenched socio-economic disparities.

Affirmative action, however, is not limited to caste-based reservations. The principles of affirmative action extend to gender and disability as well, ensuring that constitutional democracies actively work to rectify systemic disadvantages. The

Constitution (One Hundred Third Amendment) Act<sup>43</sup>, 2019, introduced a 10% reservation for economically weaker sections (EWS) in educational institutions and government jobs, marking a progressive step toward expanding affirmative action in India. In the case of *M Nagaraj v. Union of India*<sup>44</sup>, the Supreme Court emphasized that affirmative action must not be seen as a means of merely compensating for past wrongs but also as a proactive tool for creating an egalitarian society. The ruling underscored that while the state has the authority to implement affirmative action, it must also ensure that these measures do not violate the principles of equality and proportionality embedded in the Constitution.

Despite its success in promoting equality, affirmative action has been contentious and faced challenges regarding its scope and the extent of reservations. In *State of Uttar Pradesh v. Pradip Tiwari*<sup>45</sup>, the Supreme Court observed that reservations should not undermine merit, urging a balance between equity and excellence. Critics argue that over-reliance on affirmative action can perpetuate caste identities and hinder societal integration. Nevertheless, the constitutional framework in India continues to evolve in response to these concerns, with the courts often playing an instrumental role in refining the scope of



affirmative action. For instance, in *Ashoka Kumar Thakur v. Union of India*<sup>46</sup>, the Supreme Court ruled that the 27% reservation for Other Backward Classes (OBCs) in higher education institutions should be implemented in a manner that does not compromise academic standards, ensuring that affirmative action also contributes to the overall development of society.

In short, affirmative action is a crucial instrument for addressing social inequalities within a constitutional democracy. It provides a mechanism to uplift historically marginalized groups, fostering equality in a society marked by entrenched social and economic divides. While challenges to its implementation remain, especially regarding balancing merit and social equity, affirmative action continues to play a pivotal role in making the vision of social justice a reality. By ensuring that all citizens, regardless of their caste, gender, or socio-economic background, have equal access to opportunities, constitutional democracies can take concrete steps toward achieving an inclusive and just society.

#### Constitutional Provisions and Rationale

Articles 15(4) and 16(4) empower the State to promote educational and occupational opportunities for socially and educationally backward classes, SCs, and STs.

Article 15(4) of the Indian Constitution allows the State to make special provisions for the advancement of socially and educationally backward classes, Scheduled Castes (SCs), and Scheduled Tribes (STs). This provision serves as a recognition of the social and economic inequalities that these communities face and provides the legal basis for affirmative action. By empowering the state to enact laws or policies that benefit these groups, Article 15(4) ensures that they receive the support needed to access education, employment, and social mobility. The rationale behind this provision lies in its aim to remedy the structural discrimination and marginalization that these communities have endured historically. R. P. Anand in *The Constitution of India: A Comprehensive Commentary*<sup>47</sup> (2017) highlights that this article is a cornerstone of social justice, facilitating the upliftment of historically disadvantaged communities.

Similarly, Article 16(4) of the Indian Constitution empowers the State to make special provisions for the reservation of appointments or posts in favour of backward classes of citizens, which may include SCs and STs, to ensure adequate representation in public services. The provision allows for the reservation of jobs in government services for these communities, thus addressing the

deep-seated social inequities in employment. The rationale behind Article 16(4) is to promote inclusive governance and equitable representation in public institutions, as well as to create opportunities for upward mobility. The jurisprudence surrounding this article is reflected in the case of *Indra Sawhney v. Union of India*<sup>48</sup>, where the Supreme Court upheld the constitutionality of caste-based reservations, reinforcing that such measures were essential to achieving substantive equality in the workforce.

Both Articles 15(4) and 16(4) underscore the principle of affirmative action, which aims to level the playing field for those who have been historically excluded from opportunities due to caste, class, or social status. The constitutional rationale rests on the idea that true equality can only be achieved when measures are taken to compensate for past discrimination and to address current socio-economic disadvantages. According to D.D. Basu in *Introduction to the Constitution of India*<sup>49</sup> (2020), these provisions are vital for creating a more just and inclusive society. They reflect the constitutional vision of an egalitarian democracy where no citizen is denied their rightful opportunities due to social background.

Key Judicial Decisions

Indra Sawhney v. Union of India (1992): The Supreme Court upheld the Mandal Commission's recommendations, capping reservations at 50%.<sup>50</sup> Jarnail Singh v. Lachhmi Narain Gupta (2018): Reservations in promotions were subjected to proof of backwardness.<sup>51</sup>

Justice Reddy, in Indra Sawhney, observed, "Affirmative action is not an exception to the principle of equality but a means to achieve it."<sup>52</sup>

### **Global Comparisons: Constitutional Democracy and Social Justice**

The pursuit of social justice within constitutional democracies is a universal aspiration, though the approaches vary based on socio-political contexts. Countries like the United States, South Africa, and Germany offer instructive comparisons in their constitutional frameworks, judicial activism, and commitment to social welfare. These frameworks highlight how constitutional democracies reconcile individual freedoms with collective socio-economic equity.

#### **United States**

The United States Constitution, under the 14th Amendment, ensures equal protection and due process, providing a legal basis for social justice. Landmark judgments such as *Brown v. Board of*

Education<sup>53</sup> ended racial segregation in public schools, emphasizing substantive equality. Additionally, the Civil Rights Act<sup>54</sup> of 1964 reinforced anti-discrimination principles in education, employment, and public accommodations. However, challenges such as systemic racism and economic inequality persist, underscoring the limitations of judicial and legislative interventions.<sup>55</sup>

In the USA, affirmative action was upheld in *Regents of the University of California v. Bakke* (1978) as a remedy for racial discrimination.<sup>56</sup>

South Africa

South Africa's Constitution, enacted in 1996, is renowned for its transformative character, addressing centuries of racial and economic injustice. The Bill of Rights explicitly incorporates socio-economic rights, such as the rights to housing, healthcare, and education<sup>57</sup>. In *Government of the Republic of South Africa v. Grootboom*<sup>58</sup>, the Constitutional Court emphasized the state's obligation to provide access to adequate housing, interpreting socio-economic rights as justiciable. This progressive approach demonstrates how constitutional democracies can directly address structural inequalities.<sup>59</sup>

Germany

Germany's Basic Law (Grundgesetz), particularly Article 1, emphasizes human dignity as inviolable, forming the foundation for social justice. The social state principle enshrined in Article 20 mandates the state to ensure equitable socio-economic conditions<sup>60</sup>. In Lüth Case<sup>61</sup>, the German Federal Constitutional Court expanded the concept of equality to include indirect obligations on private parties, illustrating the horizontal application of constitutional rights. This framework exemplifies how constitutional principles can be integrated into broader social policies.<sup>62</sup>

#### Relevance to India

India's constitutional democracy shares similarities with these systems, particularly in balancing civil liberties and socio-economic rights. Like South Africa, India recognizes socio-economic rights through the Directive Principles of State Policy, though these are non-justiciable. Like Germany's emphasis on human dignity, India's Article 21 has been interpreted expansively to include the right to life with dignity.<sup>63</sup> Additionally, India's affirmative action policies, akin to the U.S. Civil Rights framework, underscore its commitment to achieving substantive equality.<sup>64</sup>

These global comparisons highlight the diverse approaches of constitutional democracies in achieving social justice, while also emphasizing the

shared challenges of implementation and systemic inequalities.

### **Globalization and Social Justice**

Globalization has presented challenges for marginalized communities, particularly in labour markets. The Bhopal Gas Tragedy (1984) highlighted corporate negligence in the wake of globalization.<sup>65</sup>

International frameworks like the ILO's Decent Work Agenda advocate fair wages and safe working conditions.<sup>66</sup> Collaborative measures, such as the UN's Sustainable Development Goals (SDGs), emphasize reducing inequalities globally.<sup>67</sup>

Globalization, characterized by increased interconnectedness in trade, culture, and governance, has transformed the socio-economic landscape, impacting social justice in profound ways. On one hand, globalization fosters economic growth, technological innovation, and cultural exchange, potentially reducing poverty and inequalities. On the other hand, it often exacerbates disparities, undermines local governance, and marginalizes vulnerable populations, necessitating a robust constitutional framework to address these inequities.<sup>68</sup>

**Positive Impacts of Globalization on Social Justice** Globalization has enhanced access to

resources and opportunities, aiding nations in addressing social inequalities. For instance, international human rights frameworks, such as the Universal Declaration of Human Rights<sup>69</sup> (UDHR), 1948, have influenced constitutional democracies to embed social justice principles. In *Vishaka v. State of Rajasthan*<sup>70</sup>, the Indian Supreme Court relied on international conventions like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to address workplace harassment, highlighting how globalization can advance social justice through international legal instruments. Similarly, globalization facilitates economic integration, enabling states to implement welfare schemes funded by trade and foreign investments, as evidenced by India's National Food Security Act<sup>71</sup>, 2013, aimed at ensuring food security for all.

#### Challenges of Globalization to Social Justice

However, globalization also poses significant challenges to social justice. The dominance of transnational corporations and the neoliberal economic model often marginalize weaker sections, as seen in the displacement of indigenous communities due to large-scale industrial projects. In *Samatha v. State of Andhra Pradesh*<sup>72</sup>, the Indian Supreme Court highlighted the rights of tribal communities to land and resources, asserting



constitutional protections under Article 244 and the Fifth Schedule of the Indian Constitution<sup>73</sup>. Globalization also contributes to labour exploitation, particularly in developing nations. The Bhopal Gas Tragedy Case<sup>74</sup>, which exposed the lax enforcement of environmental and labour standards by multinational corporations, underscores the need for stronger regulatory frameworks in the era of globalization.

### Constitutional and Judicial Responses

Constitutional democracies have sought to balance globalization's opportunities and risks through progressive judicial interpretations and policy interventions. In India, the Directive Principles of State Policy, such as Article 39(b) and (c)<sup>75</sup>, emphasize equitable resource distribution and the prevention of economic concentration. In *Novartis AG v. Union of India*<sup>76</sup>, the Supreme Court upheld India's patent laws prioritizing public health over corporate profits, showcasing how constitutional democracy can ensure social justice amidst globalizations. Similarly, South Africa's Constitution<sup>77</sup> mandates socio-economic rights, allowing courts to review the state's actions concerning housing, healthcare, and education, as seen in *Government of the Republic of South Africa v. Grootboom*<sup>78</sup>.

While globalization poses challenges to social justice, constitutional democracies equipped with judicial oversight and socio-economic policies can navigate these complexities. By incorporating global norms and prioritizing domestic welfare, they can achieve a balance between economic integration and social equity.

### **Recommendations for Strengthening Social Justice**

To transform the vision of social justice into a reality, constitutional democracies must continually adapt their legal and institutional frameworks to address emerging challenges. First, it is essential to strengthen socio-economic rights and make them justiciable. In India, while Directive Principles of State Policy provide guidance, these principles should be interpreted expansively by courts to guarantee substantive equality and welfare outcomes, as seen in cases like *Grootboom*<sup>79</sup>, where courts enforced socio-economic rights. Second, global collaboration on human rights should be reinforced to create binding international standards that address issues such as poverty, labour rights, and environmental justice. For example, the International Covenant on Economic, Social and Cultural Rights<sup>80</sup> (ICESCR)

could serve as a foundation for nations to legislate and enforce comprehensive welfare policies.

Further, inclusive governance is crucial in achieving social justice. Governments must actively involve marginalized groups in the policymaking process, ensuring their voices are heard. Constitutional provisions such as Article 15 and Article 17 of the Indian Constitution, which prohibit discrimination and untouchability, should be robustly enforced through affirmative action policies. The implementation of positive discrimination measures, like those in *Indra Sawhney v. Union of India*<sup>81</sup> remains critical for providing equitable opportunities to historically disadvantaged communities. Additionally, judicial activism can play a pivotal role in addressing gaps in legislative frameworks. The Indian Supreme Court's proactive approach in cases such as *Vishaka v. State of Rajasthan*<sup>82</sup> serves as a model, where the Court interpreted international conventions to ensure the protection of women's rights in the workplace.

## **Conclusion**

In conclusion, the vision of social justice can only be realized through a collective commitment to constitutional democracy that is both forward-looking and responsive to the needs of its citizens. Globalization, while creating economic

opportunities, also presents challenges that must be addressed through strong, enforceable constitutional provisions, judicial oversight, and inclusive policies. Constitutional democracies worldwide, including India, South Africa, and the United States, have demonstrated the potential of legal frameworks to safeguard social justice. However, challenges remain in ensuring that these constitutional visions are implemented effectively and inclusively. To fully realize social justice, it is essential that both constitutional frameworks and their practical application evolve to address the complexities of contemporary socio-economic landscapes, as evidenced by judicial pronouncements and legislative reforms across various jurisdictions.

*The integration of socio-economic rights with civil and political rights, the strengthening of international cooperation on human rights, and the pursuit of inclusive governance are critical for achieving social justice in a constitutional democracy. By ensuring that legal protections are not only aspirational but also actionable, constitutional democracies can transition from the vision of social justice to its practical realization.*

## **Chapter 6**

# **Democracy in India and the Criminalization of Politics**

Democracy in India represents a multifaceted and dynamic system that enables citizens to engage in the political arena through transparent and equitable elections. Nevertheless, one of the significant obstacles confronting India is the infiltration of criminal elements into politics. This phenomenon can be traced to various underlying causes. A critical factor is the relationship between criminal figures and political entities. Political parties occasionally nominate candidates with criminal histories, believing that such individuals can provide financial backing, physical influence, and a dedicated voter base. In some instances, individuals with criminal ties

actively pursue political positions to secure protection, legitimacy, and access to authority. Additionally, the protracted judicial processes in India exacerbate the issue. Many politicians facing criminal accusations manage to postpone their trials for extended periods, sometimes stretching into years or even decades. This situation enables them to maintain their political roles and continue their activities, fostering a culture of impunity where those with criminal pasts face minimal repercussions for their actions. The involvement of politicians with criminal affiliations poses serious risks to the democratic framework. It diminishes the credibility of the political system, undermines public confidence, and obstructs the effective operation of democratic institutions. Furthermore, it can lead to compromised governance, as such politicians may prioritize their interests over the public good. The Supreme Court of India has been instrumental in addressing this issue by issuing rulings aimed at limiting the participation of criminals in politics. In 2002, the court mandated that candidates running for office must reveal their criminal histories, assets, and liabilities. Advancing this initiative, in 2018, the court prohibited individuals with pending criminal charges from contesting elections. To effectively combat this challenge, comprehensive political and electoral

reforms are essential. Stricter legislation is needed to accelerate the judicial process for politicians accused of criminal conduct. Political parties must also take proactive measures by implementing internal screening processes to deter candidates with criminal backgrounds. Moreover, civil society organizations, the media, and the general populace play a vital role in this context. They can foster awareness, advocate for accountability, and apply pressure on political parties to nominate candidates with clean records. Voters can exercise their electoral power judiciously by selecting candidates who have demonstrated integrity and by endorsing initiatives aimed at purging politics of criminal influence. It is crucial to acknowledge that the criminalization of politics is not an issue exclusive to India; it poses challenges for numerous democracies worldwide. However, with persistent efforts and a steadfast commitment to the tenets of democracy, it is feasible to confront this issue and fortify the democratic framework of the nation.<sup>1</sup> The Representation of the People Act, 1951, permits individuals with pending criminal charges to run for elections in India. Under the current regulations of this Act, a person becomes ineligible for election to Parliament or a State Legislature only if they have been convicted of specific offences and sentenced to imprisonment for a defined period.

This aspect of the law has sparked considerable criticism and discussion, as it enables individuals with serious criminal allegations to engage in the electoral process. Detractors contend that this provision jeopardises the integrity of the political landscape, allowing those with criminal histories to attain positions of authority, thereby undermining democratic principles. There have been widespread calls for reforms in the electoral system to tackle the issue of political criminalisation. The Supreme Court of India has also highlighted the necessity for more stringent regulations to prevent those with criminal records from entering politics. In a ruling from 2018, the court mandated that political parties disclose the criminal backgrounds of their candidates and justify their selection. Efforts are underway to instigate changes in this domain. Numerous organizations and civil society advocates are pushing for more robust legislation to bar individuals with criminal charges from contesting elections. Additionally, the Law Commission of India has suggested modifications to the Representation of the People Act aimed at disqualifying candidates facing serious criminal allegations from participating in elections.<sup>2</sup> It is important to recognize that, in spite of existing regulations, there have been occasions where the



judiciary has adopted a proactive role. The courts have been instrumental in disqualifying elected officials who have been convicted of crimes and in establishing guidelines aimed at tackling the criminalization of politics. Combating the criminalization of politics necessitates a multifaceted strategy that includes legal reforms, a commitment from political leaders, and heightened public awareness. Implementing more stringent laws, ensuring prompt resolution of cases, and instituting reforms within political parties can significantly diminish the presence of individuals with criminal histories in the political sphere. Furthermore, fostering voter awareness regarding the criminal backgrounds of candidates and encouraging ethical voting behaviors can facilitate meaningful reform. Ultimately, it is the shared duty of legislators, political organizations, civil society, and the electorate to collaborate in fortifying democracy by addressing the challenges posed by the criminalization of politics and promoting transparent and responsible governance.<sup>3</sup>

### **Concept of criminalization of politics**

The phenomenon of criminalization in politics arises when individuals with criminal histories or alleged connections to illegal activities become active participants in the political arena

and obtain positions of authority. This issue raises significant concerns regarding the functionality of democratic systems. Specifically, the criminalization of politics highlights the growing presence and influence of individuals with criminal backgrounds within political institutions. This trend is particularly alarming in various democracies, such as India, as it prompts critical inquiries into governance quality, adherence to the rule of law, and the overall vitality of the democratic framework.

**1. Candidates with Criminal Histories:** The criminalization of politics manifests when individuals with prior criminal convictions, including those accused or found guilty of serious crimes, engage in electoral processes as candidates. These individuals may seek election at multiple levels, from local councils to national parliaments, vying for political positions across the spectrum.<sup>4</sup>

**2. Motivations Behind Criminalization:** Some political parties opt to nominate candidates with criminal backgrounds, believing that such individuals may have a greater likelihood of electoral success. Factors contributing to this belief include name recognition, access to financial resources, and local influence. Moreover, candidates with criminal associations might

leverage political power to shield their illicit activities or to secure resources and influence for personal benefit.

**3. Implications for Governance:** The involvement of individuals with criminal backgrounds in politics can negatively impact governance. It could result in compromised decision-making processes, a diminished rule of law, and a decline in public trust toward institutions. Criminalized politics may lead to a focus on personal agendas rather than the public good, resulting in policies that cater to the narrow interests of the politicians involved.<sup>5</sup>

**4. Legal and Ethical Considerations:** Legal frameworks are often established to prevent individuals with specific criminal convictions from seeking public office. However, these laws may not be rigorously enforced or may encounter various challenges. The ethical aspect raises concerns about the appropriateness of individuals with criminal histories representing public interests and participating in legislative processes.

**5. Public Awareness and Perception:** The degree to which politics is criminalized can be shaped by public awareness and perceptions. When voters are well-informed about the criminal

backgrounds of candidates, they may be less inclined to support them. Nevertheless, in certain situations, voters might prioritize other factors, such as caste, religion, or local connections, over the candidates' criminal histories.

**6. Strategies to Combat the Issue:** Addressing the criminalization of politics typically involves implementing electoral reforms, legal measures, and public awareness initiatives. These efforts aim to enhance the integrity of the electoral process and encourage ethical behaviour among political candidates.

**7. Criminal Influence:** When politicians with ties to criminal organizations occupy positions of authority, they may leverage their power to safeguard and advance illegal activities, thereby enabling organized crime to flourish. This situation can result in widespread corruption, weakened governance, and diminished respect for the rule of law.<sup>6</sup>

**8. Erosion of Trust:** The involvement of politicians with criminal histories can significantly undermine public confidence in the political system. This diminishes trust in democratic institutions and fosters disillusionment among

citizens, which can lead to reduced participation and engagement in democratic processes.

**9. Impunity and Lack of Accountability:**

Inefficiencies in the judicial system and existing legal loopholes may enable politicians with criminal pasts to postpone their trials or evade convictions. This fosters a culture of impunity, wherein individuals can partake in illicit activities without facing the necessary repercussions.<sup>7</sup>

**10. Distorted Representation:** The election or appointment of candidates with criminal backgrounds can result in a misrepresentation of the populace's interests. Such individuals may prioritize their own agendas, affiliations with criminal networks, or patronage systems over the broader welfare of the community.

**Legal Provisions in Representation of the People Act, 1951**

In India, there are specific legal measures and regulations designed to tackle the issue of criminalization in politics. These provisions aim to bar individuals with criminal records from holding public office and participating in the political arena. This legislation governs the conduct of elections in India and outlines the eligibility criteria for

candidates. Section 8 of the Act disqualifies individuals from being elected to Parliament or State Legislatures if they have been convicted of particular offenses and sentenced to imprisonment for a defined period. The Representation of the People Act, 1951 is a crucial law that establishes the framework for elections to the Parliament and State Legislatures, detailing both qualifications and disqualifications for membership. The Act has been amended multiple times to address evolving electoral challenges and legal considerations.<sup>8</sup>

**1. Qualifications for Membership:** The Act delineates the qualifications necessary for an individual to be eligible for membership in the Lok Sabha (House of the People) and State Legislative Assemblies, including citizenship, age, and other criteria.

**2. Disqualifications for Membership:** The Act specifies various grounds for disqualification from being elected as a member of either House of Parliament or a Legislative Assembly. These disqualifications can arise from holding an office of profit, mental unsoundness, or certain criminal convictions.

### **3. Election Offenses and Corrupt Practices:**

The Act identifies various election-related offenses, corrupt practices, and unlawful activities associated with the electoral process, prescribing penalties to maintain the integrity of elections.<sup>9</sup>

**4. Reservation of Seats:** The Act ensures the reservation of seats for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the Lok Sabha and State Legislative Assemblies to promote adequate representation for these marginalized groups.

**5. Conduct of Elections:** The Act outlines the procedures for conducting elections, including the preparation and updating of electoral rolls, candidate nominations, scrutiny of nomination papers, polling, and vote counting.

**6. Election Petitions:** The Act establishes a framework for filing election petitions in cases of disputes concerning election conduct. Such petitions may be submitted to the relevant High Court, which has the authority to adjudicate the validity of an election.

**7. Registration of Political Parties:** The Act contains provisions regarding the registration and recognition of political parties, requiring them to meet specific criteria.

### **8. Corrupt Practices and Electoral Offenses:**

The Act elaborates on corrupt practices and electoral offences, such as bribery, undue influence, and impersonation, and stipulates penalties to ensure the fairness and transparency of elections.

**9. Disqualification on Conviction:** The Act includes provisions for the disqualification of individuals found guilty of specific offenses, including corrupt practices and electoral violations, by a court of law.

**10. Amendments:** Over the years, the Representation of the People Act, 1951 has been amended to adapt to changing electoral dynamics, legal interpretations, and emerging challenges within the electoral framework.

## **Election Commission of India (ECI) Guidelines**

The Election Commission of India, an independent constitutional body responsible for overseeing elections, has implemented guidelines to combat the criminalization of politics. These guidelines include measures such as enhanced scrutiny of candidate disclosures, strict enforcement of



campaign spending limits, and monitoring of electoral misconduct.

**1. Disclosure of Criminal Records:** The ECI mandates that political parties and candidates disclose their criminal records. Parties are required to make this information public to inform voters about candidates' backgrounds.

**2. Model Code of Conduct (MCC):** Prior to each election, the ECI issues the Model Code of Conduct, which provides a set of guidelines that political parties, candidates, and the government must follow during the election period, including provisions to avoid engaging in or promoting criminal activities.

**3. Disqualification of Candidates:** The ECI oversees the disqualification process for candidates with criminal records in accordance with the provisions of the Representation of the People Act, 1951, which bars individuals convicted of certain offences from contesting elections.

**4. Oversight of Campaign Finances:** The Election Commission of India (ECI) oversees and regulates the financial expenditures of campaigns to ensure compliance with established legal limits. This oversight is crucial in deterring the use of

illegal funds, particularly those linked to criminal activities, within the electoral framework.<sup>10</sup>

**5. Regulation of Intimidation Tactics:** The ECI implements strategies to mitigate the influence of intimidation and violence during elections. Its goal is to curb any coercive actions that may arise from criminal groups seeking to sway the electoral process.

**6. Assurance of Democratic Integrity:** The ECI underscores the necessity of conducting elections that are both free and fair. This involves proactive measures to thwart any instances of criminal intimidation, coercion, or violence that could compromise the electorate's right to vote.

**7. Collaboration with Law Enforcement:** The ECI works in conjunction with law enforcement agencies to facilitate the effective execution of security protocols during elections. This partnership is vital in preventing criminal disruptions to the electoral process.<sup>11</sup>

**8. Voter Education Initiatives:** The ECI undertakes voter education and awareness initiatives to enlighten the public about the significance of making informed electoral choices and recognizing the criminal histories of

candidates. The objective is to empower voters to base their decisions on pertinent information.<sup>12</sup>

**9. Deployment of Special Observers and Rapid Response Teams:** The ECI assigns special observers and rapid response teams to oversee election-related activities, particularly monitoring for any criminal interference. These units are instrumental in ensuring adherence to electoral laws and regulations.

### **Criminalisation of politics**

The criminalization of politics refers to the trend in which individuals with criminal histories or those engaged in unlawful activities gain entry into and exert influence within the political arena. This issue is a worldwide concern as it jeopardizes the foundations of democracy, good governance, and the rule of law. The implications of this phenomenon are particularly harmful to democratic societies and their governance structures. Below are several key factors contributing to and consequences arising from the criminalization of politics:

**1. Weak Party Discipline:** Political parties lacking robust internal controls and ethical guidelines may permit individuals with criminal

pasts to join or run as candidates. This often stems from a focus on immediate benefits, opportunism, or inadequate vetting processes.

**2. Financial and Physical Influence :** Criminal entities frequently possess considerable financial resources and physical power, which they can leverage to sway politicians and garner political backing. Politicians in need of funding or protection may find themselves collaborating with such individuals, thereby increasing their influence in political affairs.<sup>13</sup>

**3. Connections to Organized Crime:** In certain instances, politicians may themselves be engaged in organized crime or have ties to criminal networks. These connections can provide them with additional resources, support, and protection, reinforcing the intertwining of crime and politics.

**4. Corruption and Favoritism:** The intertwining of crime and politics breeds a culture of corruption, where politicians may resort to bribery, embezzlement, and other illicit practices for personal benefit. This undermines effective governance, leads to resource misallocation, and perpetuates social inequality.

**5. Diminished Public Trust:** The presence of politicians with criminal backgrounds in positions of authority erodes public confidence in democratic institutions. This disillusionment can lead citizens to withdraw from the political process, thereby weakening democracy's foundational structures.

**6. Compromised Governance:** The involvement of politicians with criminal ties can degrade the quality and effectiveness of governance. Policies may be swayed by personal interests or criminal affiliations rather than the public good, resulting in mismanagement and poor outcomes.

**7. Erosion of the Rule of Law:** The criminalization of politics undermines the rule of law, as politicians with criminal backgrounds may interfere with law enforcement, influence judicial proceedings, and compromise the impartiality of the legal system. This diminishes public confidence in justice and fosters a culture of impunity.

**8. Skewed Representation:** When individuals with criminal histories enter politics, they may prioritize the interests of criminal networks or personal agendas over the needs of the populace. This leads to misrepresentation, where the concerns of marginalized and law-abiding citizens are overlooked.<sup>14</sup>

**9. Deterioration of Social Cohesion:** The criminalization of politics can weaken the social fabric by fostering a culture of lawlessness, violence, and intimidation, which adversely impacts community unity and development.<sup>15</sup>

**10. Financial Influence in Elections:** In India, the high costs associated with elections mean candidates often need significant financial backing. Individuals with criminal backgrounds may have greater access to illicit funds, making them appealing to political parties seeking financial support.

**11. Vote Bank Politics:** Some politicians with criminal ties may manipulate social divisions and align with specific communities or interest groups to secure a voting bloc. This can result in parties prioritizing electoral success over the candidates' criminal histories.

**12. Ineffective Judicial Systems:** The slow pace of the legal system and backlog of cases can delay justice. Politicians facing criminal charges may exploit these delays to remain in office or contest elections for extended periods before facing legal repercussions.

**13. Public Apathy and Ignorance:** A segment of the electorate may be unaware of the criminal backgrounds of certain politicians or may vote based on other factors such as caste, religion, or local ties. This ignorance and apathy can perpetuate the cycle of criminalization.

**14. Insufficient Party Discipline:** Political parties often lack stringent internal mechanisms to deter or remove members with criminal records. This absence of discipline can lead to the acceptance and promotion of candidates with questionable backgrounds.

**15. Socioeconomic Influences:** Factors such as poverty, lack of education, and unemployment can contribute to crime's prevalence. Individuals facing these challenges may view politics as a pathway to power and influence, even if they have a criminal history.

## **Conclusion**

The Indian Constitution aspires to create a federal, democratic, socialist, and secular society. It outlines a framework for achieving a peaceful transformation of the socio-political landscape through democratic means. The preamble envisions the constitution and a democracy founded on the

principles of justice, liberty, equity, fraternity, and individual dignity.<sup>16</sup> It aims to eliminate social injustices based on religion, gender, caste, and creed, and it prohibits the abhorrent practice of untouchability. Moreover, the Constitution delineates a method of social engineering through the rule of law to attain its goals. Within a democratic setup, the fundamental law serves as a tool to mediate conflicting societal interests. One of democracy's strengths is its ability to foster peaceful social renewal. Millions of individuals rely on this system to improve their lives and establish conduct rules that allow them to live with dignity and honour. Therefore, the Indian Constitution serves as an instrument for a peaceful political and socio-economic revolution, emphasizing that India must progress through constitutional and democratic means into a new era of social, political, and economic engagement.

The criminalization of politics in India poses a significant threat to its democratic system. Despite being the world's largest democracy, the country faces challenges due to the rise of criminals in politics, undermining the integrity of the political process. Factors such as the electoral system allowing candidates with criminal backgrounds, the socio-economic disparities, and a sluggish judicial system contribute to this issue. Political parties



often nominate such candidates for their financial influence and voter base, which compromises transparency, accountability, and ethical governance.

The criminal involvement in politics weakens public trust, erodes democratic institutions, and leads to policy distortions. Efforts have been made to address this, including court rulings and reforms to limit criminal participation, but more reforms are necessary. Strengthening internal mechanisms for candidate selection, expediting legal proceedings, and raising public awareness are crucial steps. Moreover, civil society and the media must hold politicians accountable to create a more transparent and ethical political environment. Comprehensive reforms and active public engagement are essential to counteract the criminalization of politics and restore the integrity of India's democracy.

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## **Chapter 7**

# **When the Waters Rise, We All Float Together: A Social Model Analysis of Disability Representation in the Malayalam Film 2018**

### **Introduction**

The 2023 Malayalam film *2018*, set during the Kerala floods, presents a nuanced representation of disability, aligning with Lennard Davis's social model. This model shifts focus from individual impairment to societal barriers as the defining

factors of disability. The film, using the flood as a metaphor for shared vulnerability, blurs the lines between abled and disabled individuals, showcasing their resilience and the importance of community. By challenging traditional notions, *2018* exemplifies the evolving portrayal of disability in cinema, emphasising its social construct and highlighting the agency of disabled individuals.

### **Lennard Davis' Disability Theory**

Lennard Davis challenges the notion of disability as an individual deficit, positing it as a social construct shaped by societal norms. He critiques the concept of 'normalcy' and advocates for environmental change and diverse representation to foster inclusivity. The film *2018* supports Davis' theory, showcasing the vulnerability of everyone during a crisis and highlighting the agency and resilience of individuals with disabilities. The film also emphasises the strength of the human spirit and the inherent empathy that emerge during adversity, transcending societal divisions.

### **Disability as a Social Construct in the Film *2018*: A Deeper Analysis**

The Malayalam film *2018* not only depicts the catastrophic Kerala floods but also subtly

challenges the traditional notion of disability as an individual deficit. Through its narrative and characters, the film aligns with the social model of disability, emphasising that disability is not solely an inherent characteristic of individuals but is largely shaped by societal barriers and attitudes. In *2018*, the social construction of disability is subtly interwoven into the narrative, challenging the conventional medical model that views disability as an individual deficit. This nuanced portrayal aligns with the social model of disability, as evidenced by the following key aspects.

### **Shift in Focus: The Flood as a Universal Disabling Factor**

In *2018*, the catastrophic flood functions as a great equaliser, rendering everyone, regardless of their prior physical or mental capabilities, vulnerable and dependent. This shared experience of disability challenges the traditional medical model, which views disability as an individual deficit residing solely within the person. Instead, the film aligns with the social model of disability, as articulated by Tom Shakespeare, who argues, 'Disability is not something individuals have... It is something that happens to people in a disabling society' (Shakespeare, 2014, p. 12). In the context of the film, the flood becomes the disabling factor,

highlighting how environmental and situational circumstances can significantly impact a person's functioning and participation in society. This shift in focus from individual impairment to a disabling environment is a key aspect of the social construction of disability depicted in the film.

### **Shared Vulnerability: Blurring the Lines Between 'Able' and 'Disabled'**

*2018* effectively blurs the lines between 'abled' and 'disabled' by showcasing the shared vulnerability of all individuals in the face of the devastating flood. Characters who were previously perceived as able-bodied are shown struggling to survive and requiring assistance, much like those with pre-existing disabilities. This portrayal aligns with the social model of disability, which posits that disability is not a fixed state but rather a fluid and contextual experience. The film's narrative echoes the words of Colin Barnes, who asserts that 'the media often portray disabled people as objects of pity or charity, rather than as active agents in their own lives' (Barnes, 1992, p. 45). By depicting characters across the spectrum of ability as equally vulnerable and dependent during the flood, *2018* challenges these stereotypical portrayals and promotes a more nuanced understanding of disability as a shared human experience.



### **Collective Resilience: Agency and Contribution of Disabled Individuals**

The film showcases the resilience and agency of individuals with disabilities, defying the stereotype of them as passive recipients of help. For instance, Narayanan, a character who uses a wheelchair, plays a crucial role in the rescue efforts by utilising his mechanical skills to repair a boat essential for saving lives. This portrayal aligns with the social model of disability, which emphasises the importance of recognising the unique abilities and contributions of individuals with disabilities. The film challenges the notion that disability equates to inability, as advocated by Michael Oliver, who states that 'disabled people are not disabled by their impairments but by the barriers that prevent them from participating in society' (Oliver, 1990, p. 54). By showcasing the active participation and contributions of disabled characters in overcoming the challenges posed by the flood, *2018* advocates for a more inclusive and empowering understanding of disability.

### **Interdependence and Community: Redefining Disability as a Relational Experience**

*2018* underscores the significance of interdependence and community support in overcoming adversity, thereby redefining disability as a relational experience rather than an individual deficit. The characters, regardless of their abilities, rely on each other's strengths and skills to navigate the crisis, emphasising the importance of collective action and solidarity. This portrayal resonates with Mark Priestley's assertion that 'disability is not simply a matter of individual impairment but is also about the relationship between the individual and their environment' (Priestley, 2003, p. 87). In the context of the film, the flood fosters a sense of community and shared purpose, highlighting how disability can be mitigated through social support and collaboration. The film's emphasis on interdependence challenges the individualistic notion of disability and promotes a more inclusive understanding of disability as a shared human experience that can be overcome through collective action.

### **Diverse Representations of Disability in *2018***

*2018* showcases a range of characters with diverse disabilities, going beyond the stereotypical portrayals often found in mainstream cinema. This diversity is evident in the inclusion of characters

with visible physical disabilities, such as Anoop, the fisherman with a limp, and Narayanan, who uses a wheelchair. The film also includes characters with less visible disabilities, such as the young boy with a learning disability. This intentional inclusion of characters across the disability spectrum dismantles the notion of a singular disabled experience, highlighting the unique challenges and strengths that individuals with different disabilities possess. By presenting a multifaceted view of disability, the film challenges the audience to recognise the complexity and diversity within the disabled community, promoting a more nuanced understanding of disability.

### **Challenging Stereotypes Associated with Disability**

*2018* actively challenges the stereotypes often associated with disability. Anoop, despite his limp, emerges as a resilient leader who inspires others, defying the stereotype of disabled individuals as dependent and incapable of leadership roles. Similarly, the young boy's quick thinking and resourcefulness in the face of danger challenge the stereotype of intellectual disability as a barrier to independent thinking and problem-solving. Narayanan, who uses a wheelchair, is not portrayed as a passive recipient of help but as a skilled

mechanic whose expertise proves crucial to the rescue efforts. By subverting these stereotypes, the film promotes a more positive and empowering image of individuals with disabilities, emphasising their capabilities and contributions to society.

### **Emphasising Abilities and Agency of Disabled Characters**

Rather than focusing on their impairments, *2018* highlights the abilities and agency of its disabled characters. Anoop's fishing skills prove indispensable for navigating the flooded terrain and rescuing stranded individuals. The young boy's knowledge of the local environment guides his family to safety, demonstrating the value of his unique perspective. Narayanan's mechanical skills play a crucial role in enabling the rescue mission, emphasising that disability does not equate to inability. By showcasing the diverse skills and contributions of disabled characters, the film aligns with the social model of disability, which emphasises removing barriers and creating opportunities for individuals with disabilities to participate fully in society.

### **Disability as a Shared Experience in the Face of Adversity**

In *2018*, the catastrophic flood acts as a universal disabling factor, affecting everyone regardless of their pre-existing abilities. This shared experience of vulnerability and resilience challenges the notion of a fixed binary between 'abled' and 'disabled'. The film portrays a collective struggle for survival, where individuals with diverse abilities come together to support and rescue each other. This shared experience fosters a sense of solidarity and interdependence, highlighting the importance of community and cooperation in overcoming adversity. By portraying disability as a shared human experience, the film challenges the audience to reconsider their assumptions about disability and recognise the interconnectedness of human experience in the face of adversity.

By showcasing diverse representations, emphasising abilities and agency, and portraying disability as a shared human experience, the film aligns with the social model of disability and contributes to a more positive and accurate portrayal of disabled individuals in cinema.

## **Conclusion**

The Malayalam movie *2018* stands as a testament to the power of cinema to challenge stereotypes and promote a more inclusive understanding of

disability. By situating disability within the context of a natural disaster, the film effectively dismantles the medical model's focus on individual impairment and instead foregrounds the social and environmental factors that shape the experience of disability. The film's characters, both with and without disabilities, defy conventional tropes, showcasing agency, resilience, and the transformative power of collective action. Through its nuanced and multifaceted representation of disability, *2018* invites viewers to reconsider their assumptions about disability and its impact on individuals and society. This research paper not only offers a critical analysis of *2018* but also contributes to the broader discourse on disability representation in media. By demonstrating how a film can subtly yet effectively challenge conventional notions of disability, this paper opens avenues for further research into the potential of cinema to foster social change and promote a more inclusive and equitable society. The film's portrayal of disability serves as a poignant reminder that disability is not a fixed identity but a fluid and contextual experience shaped by social interactions and environmental factors. Ultimately, *2018* serves as a beacon of hope, illuminating the path towards a more inclusive and equitable future where disability

is embraced as a form of diversity rather than deviance.

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## **Chapter 8**

# **Globalization and Social Justice in the Indian Context: An Analysis of Contemporary Issues**

### **Introduction**

Globalization, defined as the increasing interconnectedness of economies, societies, and cultures, has profoundly impacted India over the past few decades. Since the implementation of economic liberalization policies in 1991, India has witnessed significant economic growth, technological advancements, and deeper integration into the global market. However, this

rapid transformation has also brought to the forefront critical issues related to social justice, including income inequality, the plight of marginalized communities, employment challenges, environmental concerns, and gender disparities. While acknowledging these challenges, it is equally important to recognize the positive aspects that globalization has introduced. At this juncture, a closer examination of these issues is imperative. This paper delves into some of these contemporary concerns, analysing the multifaceted effects of globalization on social justice in India.

### **Economic Growth and Income Inequality**

The liberalization of India's economy has undeniably spurred economic growth, elevating the country to one of the world's fastest-growing economies. The Gross Domestic Product (GDP) has seen substantial increases, and a burgeoning middle class has emerged, enjoying improved standards of living. However, this economic prosperity has not been equitably distributed across the population.

Income inequality in India has been on the rise, with the wealth gap between the rich and the poor widening significantly. According to Oxfam, the confederation of independent non-governmental organizations (NGOs) that work together to fight

poverty and injustice around the world, reported in 2018 that the top 10% of the Indian population held 77% of the total national wealth. Additionally, 73% of the wealth generated in 2017 went to the richest 1%, while the poorest half of the population saw only a 1% increase in their wealth. The COVID-19 pandemic further exacerbated these inequalities. Lockdowns and economic slowdowns led to job losses and income reductions, disproportionately affecting the lower-income strata. While the wealthy could cushion the economic shock, the poor faced heightened vulnerabilities, with limited access to healthcare, education, and social security. As per their 2023 Report titled "Survival of the Richest: The India Story" revealed that the richest 1% of Indians now own more than 40% of the country's total wealth, whereas the bottom 50% hold just 3%. These reports underscore the growing economic inequality in India, with a substantial portion of the nation's wealth concentrated among a small percentage of the population.

The COVID-19 pandemic further exacerbated these inequalities. Lockdowns and economic slowdowns led to job losses and income reductions, disproportionately affecting the lower-income strata. While the wealthy could cushion the economic shock, the poor faced heightened

vulnerabilities, with limited access to healthcare, education, and social security.

### **Impact on Marginalized Communities**

Globalization's benefits have often bypassed marginalized communities, including Scheduled Castes (SCs), Scheduled Tribes (STs), and other economically disadvantaged groups. These communities have faced systemic challenges that hinder their socio-economic progress.

Industrial projects and infrastructural developments, hallmarks of globalization, have frequently led to the displacement of these communities. The acquisition of land for industrial use has resulted in the loss of traditional livelihoods, forcing many into urban areas where they encounter further socio-economic hardships. Additionally, the erosion of state-supported welfare measures in favour of market-driven approaches has left these groups with inadequate support systems.

Furthermore, the introduction of automated social protection systems, while aimed at improving efficiency, has sometimes threatened human rights. In Telangana state, for instance, the

implementation of algorithmic systems since 2016 has raised concerns about the exclusion of eligible individuals from welfare benefits, highlighting the need for human oversight in such technologies.

## **Employment and Labor Dynamics**

The globalization era has transformed India's employment landscape, presenting both opportunities and challenges. While sectors like information technology and services have experienced growth, this has not translated into sufficient employment opportunities for the vast labour force.

Globalization has opened up numerous employment opportunities, especially in sectors such as information technology (IT), business process outsourcing (BPO), pharmaceuticals, and manufacturing. For example, the IT boom in cities like Bengaluru and Hyderabad has created millions of jobs, attracting talent not only from India but also from abroad. Companies like Infosys, TCS, and Wipro have become global players, offering employment to a large workforce and contributing to India's economic growth.

The rise of Special Economic Zones (SEZs) and export-oriented industries has further boosted employment in manufacturing and exports.

Companies like Tata Motors and Maruti Suzuki have expanded their operations, employing thousands of skilled and semi-skilled workers.

Moreover, globalization has facilitated skill development and improved labour productivity. The exposure to international markets has encouraged Indian workers to upgrade their skills, aligning with global standards. For instance, vocational training programs sponsored by companies such as Larsen & Toubro have empowered workers to become more competitive.

Despite these benefits, globalization has also resulted in challenges such as job insecurity, wage disparities, and exploitation. The informal sector, which employs over 80% of India's workforce, has faced increased vulnerability. Contractual and temporary jobs have become more common, often without job security or social protection. For example, garment workers in Tirupur, Tamil Nadu, face long hours and low wages despite contributing to the global supply chain. Additionally, globalization has led to a shift from agriculture to industrial and service sectors, causing rural-to-urban migration. This has created pressure on urban infrastructure and increased unemployment in rural areas. Farmers in states like Maharashtra and Punjab have struggled to compete with cheaper

imports, leading to economic distress and farmer suicides. The growth of the gig economy, driven by platforms like Uber, Ola, and Swiggy, has provided flexible employment but also raised concerns about labour rights. Many gig workers lack formal contracts, health benefits, and retirement plans, leaving them vulnerable to economic fluctuations.

### **Environmental Concerns**

While globalization has accelerated economic growth, industrialization, and technological advancements, it has also led to significant environmental challenges such as pollution, deforestation, and climate change.

Globalization has promoted the exchange of technologies and ideas to address environmental issues. For instance, renewable energy technologies like solar and wind power have spread globally, enabling countries like India to expand their clean energy initiatives. The International Solar Alliance, launched in 2015 by India and France, aims to increase solar energy usage worldwide, reducing dependence on fossil fuels.

Moreover, globalization has facilitated international cooperation on environmental issues. Agreements like the Paris Agreement (2015) demonstrate global efforts to combat climate change through emission

reduction targets and sustainable practices. However, globalization has also intensified environmental degradation. The rise in manufacturing and industrial activities to cater to global markets has led to increased carbon emissions and resource depletion. For example, the Amazon Rainforest in Brazil, often called the "lungs of the Earth," has faced massive deforestation to meet global demand for beef and soybeans.

In India, industrial growth in cities like Delhi, Mumbai, and Chennai has resulted in severe air and water pollution. Delhi, for instance, has consistently ranked among the most polluted cities globally due to vehicle emissions, construction dust, and industrial waste. The textile industry, heavily influenced by globalization, has also contributed to water pollution. Tirupur, Tamil Nadu, known as the "Knitwear Capital of India," has faced severe water contamination from dyeing and bleaching units that discharge untreated effluents into rivers.

Globalization has fuelled consumerism, leading to increased electronic waste (e-waste) and plastic pollution. India is one of the largest importers of e-waste, much of which ends up in informal recycling units, posing health and environmental hazards. Similarly, plastic pollution in oceans has risen, affecting marine ecosystems worldwide.



While globalization has enabled economic growth and technological progress, it has also amplified environmental concerns. Sustainable practices, stricter regulations, and international cooperation are essential to mitigate these effects. Countries must balance economic development with environmental preservation to ensure a sustainable future for the planet.

### **Gender Disparities**

Globalization has had a complex impact on gender dynamics in India. While it has opened up new opportunities for women, particularly in urban areas and emerging industries, significant challenges persist. Women's participation in the workforce remains low, with cultural norms, safety concerns, and discriminatory practices acting as barriers. The commodification of women's bodies in media and advertising, influenced by global trends, has also been a point of contention among feminists, with debates on its impact on women's autonomy and societal perceptions.

Furthermore, workplace discrimination and safety concerns have deterred women's active participation in the economy. Incidents of harassment and violence, both in public spaces and workplaces, have underscored the need for robust

policies to ensure women's safety and equal opportunities.

## **Educational Disparities**

Globalization has significantly influenced India's education system, creating both opportunities and challenges. While it has improved access to global knowledge and modern technologies, it has also deepened educational disparities between urban and rural areas, and between different socio-economic groups.

Globalization has facilitated the introduction of advanced teaching methods, e-learning platforms, and international collaborations. Institutions like the Indian Institutes of Technology (IITs) and Indian Institutes of Management (IIMs) have gained global recognition, attracting foreign investments and partnerships. For instance, collaborations with universities like MIT and Stanford have enhanced research capabilities and curriculum standards.

The rise of online learning platforms such as BYJU's has democratized access to quality education, enabling students in remote areas to benefit from digital resources. Additionally,

globalization has encouraged skill-based learning, which aligns with global job markets, preparing students for careers in IT, finance, and engineering.

Despite these advancements, globalization has also widened the educational divide in India. Urban areas, with better infrastructure and internet connectivity, have reaped most of the benefits, while rural and tribal regions continue to struggle with inadequate facilities, teacher shortages, and poor digital access. For example, states like Bihar and Jharkhand face low literacy rates and poor school retention, limiting their participation in the global economy.

The privatization of education, driven by globalization, has led to the growth of expensive international schools and private institutions, making quality education unaffordable for marginalized communities. For instance, elite schools in cities like Delhi and Bengaluru charge exorbitant fees, further marginalizing economically weaker sections. Moreover, language barriers persist, as globalization promotes English-medium education. Students from vernacular backgrounds often face difficulties competing with their English-speaking peers, leading to inequality in job opportunities.

## **Conclusion**

Globalization has undeniably brought economic growth, technological progress, and global integration to India, transforming its economic and social fabric. However, the benefits have not been equitably distributed, leading to rising income inequality, the marginalization of vulnerable communities, and disparities in education and gender representation. The economic liberalization policies of 1991 spurred rapid development, but they also exacerbated social and economic divides. Marginalized groups continue to face systemic barriers, while environmental concerns stemming from industrialization and consumerism pose serious threats to sustainability. Employment trends highlight a duality job creation in sectors like IT and manufacturing contrasts with precarious informal labour conditions and exploitation in the gig economy. Similarly, globalization's influence on education has created opportunities through technological advancements and global partnerships but widened gaps between rural and urban access to quality education.

Addressing these issues requires a multi-pronged approach. Policymakers must prioritize inclusive growth strategies, ensuring equitable resource distribution and stronger social safety nets for marginalized communities. Investment in sustainable development and environmental

protections should be balanced with economic expansion. Strengthening labor laws and promoting skill development programs can improve job security and employability. Efforts to empower women through education, safety measures, and workplace reforms are equally vital. Finally, bridging educational disparities by enhancing infrastructure and digital access in rural areas will promote equal opportunities.

As India continues to navigate the complexities of globalization, it must embrace policies that balance economic aspirations with social justice imperatives. Sustainable development, inclusive growth, and equitable reforms are crucial for ensuring that globalization serves as a tool for collective progress rather than deepening existing inequalities. By addressing these contemporary challenges, India can achieve a future that is both globally competitive and socially just.

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## **Chapter 9**

# **Ageing in the Digital Age: Intergenerational Dynamics and Social Justice in Malayalam Cinema**

Malayalam cinema, renowned for its progressive leanings and nuanced storytelling, has recently embarked on a critical exploration of ageing, a theme previously relegated to the periphery of mainstream filmmaking. This shift in focus is significant, as it coincides with a period of profound social and technological transformation. The digital age, with its rapid advancements and

ever-evolving technologies, presents both unprecedented opportunities and unique challenges for older adults. Malayalam cinema, through its insightful portrayals of ageing characters and their experiences, offers a valuable lens through which to examine the social, cultural, and technological forces shaping the lives of older adults in contemporary society. This paper will delve into this cinematic evolution, analyzing key films such as *Jananam 1947: Pranayam Thudarunnu* and *Home* to understand how they challenge dominant discourses on ageing, explore the complexities of intergenerational relationships, and ultimately contribute to the struggle for social justice for older adults.

The analysis of ageing in Malayalam cinema necessitates a critical framework that transcends simplistic narratives and embraces a nuanced understanding of the human experience. The "gerontological gaze," as proposed by scholars like Mulley (2012), provides a valuable tool for this endeavour. This framework encourages a critical examination of how older characters are represented in film, inviting viewers to scrutinize the underlying assumptions, biases, and power dynamics that shape their portrayal. By applying this gaze, we can begin to deconstruct the pervasive influence of ageism – a form of discrimination that



stigmatizes older individuals and limits their opportunities for meaningful participation in society.

Ageism, as Ayalon and Tesch-Römer (2018) argue, is deeply embedded within social structures and cultural narratives. It manifests in various forms, from subtle microaggressions to overt discrimination in employment, healthcare, and social interactions. Cinematic representations of ageing play a crucial role in either reinforcing or challenging these ageist stereotypes. Traditional portrayals often depict older adults as frail, dependent, and devoid of agency, reducing them to caricatures or passive recipients of care. Such representations not only perpetuate harmful stereotypes but also contribute to the social marginalization of older adults.

Malayalam cinema, however, is moving beyond these reductive portrayals. Films like *Jananam 1947: Pranayam Thudarunnu* offer more nuanced and complex representations of older characters, showcasing their resilience, agency, and capacity for love and intimacy. The film's protagonists, Gowri and Sivan, challenge conventional notions of love, marriage, and ageing by choosing to pursue a fulfilling relationship later in life. Their decision, while met with opposition

from their children, underscores the importance of personal autonomy and the right to choose one's own path, regardless of age.

The exploration of intergenerational relationships constitutes another crucial dimension of ageing in Malayalam cinema. These relationships, as depicted in films like *Home*, offer valuable insights into the evolving dynamics between different age groups in contemporary society. The film poignantly portrays the challenges faced by older adults in adapting to the rapid technological advancements of the digital age. The character of Oliver Twist, a former video cassette shop owner, struggles to navigate the complexities of the digital world, highlighting the anxieties and frustrations experienced by many older adults as they attempt to keep pace with the changing technological landscape.

However, *Home* does not merely depict the challenges; it also explores the potential for intergenerational understanding and solidarity. The film underscores the importance of empathy, patience, and intergenerational communication in bridging the digital divide. By fostering open dialogue and providing support to older adults as they navigate the complexities of the digital world,

younger generations can play a crucial role in ensuring their social inclusion and well-being.

The film also draws attention to the potential for intergenerational learning. Older adults possess a wealth of knowledge, experience, and wisdom that can be invaluable to younger generations. By fostering intergenerational dialogue, we can create opportunities for knowledge sharing and mutual learning, enriching the lives of both young and old. This can involve initiatives such as intergenerational workshops, mentorship programs, and community projects that bring together people of different ages.

The digital age has profoundly impacted the lives of older adults, presenting both opportunities and challenges. While technology offers access to information, communication, and entertainment, it can also exacerbate social isolation and create feelings of exclusion and inadequacy.

The film *Home* effectively captures the anxieties and frustrations experienced by older adults as they grapple with the complexities of the digital world. The rapid pace of technological change can be overwhelming for older adults, many of whom lack the necessary skills and support to effectively navigate the digital landscape. This can

lead to feelings of isolation, exclusion, and a sense of being left behind.

Furthermore, the increasing reliance on digital technologies can exacerbate existing inequalities. Access to technology and digital literacy are not evenly distributed across all segments of the population. Older adults from lower socioeconomic backgrounds may face significant barriers to accessing and utilizing technology, further marginalizing them within society.

In conclusion, this analysis of contemporary Malayalam cinema demonstrates its pivotal role in subverting ageist narratives and fostering a more nuanced understanding of the ageing experience. By eschewing reductive portrayals of older adults as passive recipients of care and instead showcasing their resilience, agency, and capacity for love and intimacy, these films challenge deeply ingrained societal biases that marginalize and devalue older individuals. Furthermore, the cinematic exploration of intergenerational relationships underscores the critical need for empathy, understanding, and reciprocal learning across age groups, particularly within the context of rapid technological advancements. The films analyzed here serve as potent cultural artifacts, reflecting and refracting

the anxieties, aspirations, and evolving social dynamics of a rapidly changing society. They offer a valuable framework for critical gerontological inquiry, encouraging viewers to interrogate the underlying power dynamics and social structures that shape the ageing experience. Ultimately, by fostering a deeper appreciation for the diverse experiences and contributions of older adults, Malayalam cinema contributes significantly to the ongoing struggle for social justice and intergenerational equity.

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## **Chapter 10**

# **Tribal Education in Kerala: Problem, Policies and Perspective**

### **Introduction**

The tribals of Kerala are very backward in the educational, socio-economic fields. At the same time, they prefer to live close to the forest area without being connected to the mainstream society. This has led them to continue the unique lifestyle, culture, language and customs of their tribal identity in the tribal villages to which they belong. Most of the tribal areas in Kerala are located close

to the forests and lack transportation and communication facilities. This creates practical obstacles in introducing modern or basic amenities to the tribal areas.

To empower tribal areas, it is of utmost importance to provide them with modern education. Based on the available data, the literacy rate of tribals in Kerala is 74.44 percent. However, this is much lower than the state average of 93.91 percent. The literacy rate among the tribals is higher in Kottayam district than in Pathanamthitta and Thiruvananthapuram districts. According to the 2011 census, tribals constitute 1.5 percent of the total population of Kerala. The largest number of tribals is in Wayanad district, followed by Idukki, Palakkad, Kasaragod and Kannur districts. The major tribal groups in Kerala are Paniyar, Irular, Kattunayakar, Urali and Adiyar. These include Kadar, Kattu Naikkar, Kurumbar, and Chola Naikkar, who are among the Particularly Vulnerable Scheduled Tribes. According to the government, there are 17 such tribal groups in Kerala.

Modern education is essential for the socio-economic and political transformation of any society. Only a good education system can bridge the social gap between the tribals and the



mainstream society. Therefore, only a specially designed new education system can replace it in this regard. The state government is currently planning several schemes for the advancement of education among the tribals. However, the continuous decline in literacy rate in SSLC, Plus Two and unger graduation, success rate at the school or college level is evidence that these schemes are limited to announcements only. The state government is running 4 Balavadis in Wayanad district of Kerala, 3 Bala Vigyan Kendras in Malappuram district, 20 model residential schools, 23 single teachers' schools, 13 nursery schools, and 7 peripatetic schools exclusively for tribal students across the state. However, the declining success rate shows the failure in the implementation of the project.

Currently, according to the information available from the government, 2,73,033 tribal people have access to formal education. Of these, 46.81% are at the primary level and 33.95% are below SSLC. Only 6.02% have a Plus Two certificate, 1.64% are graduates and only 0.3% are post graduates. However, many of the tribals belonging to the PVTG section do not even reach the SSLC level. However, the fact that 76.03% of the children in the tribal community do not go to Anganwadi is a failure in the initial implementation

of the scheme. The dropout rate among tribal students is a major concern. The dropout rate is highest in Wayanad (44.64%), Kasaragod (13.82%), and Kannur (8.99%) districts.

Since tribal areas are adjacent to forest areas, tribals are generally not interested in going to distant places to get education. Therefore, establishing educational institutions near tribal areas would be good for attracting more tribal students to schools. Having a higher secondary school next to the high school may encourage students to continue their studies after SSLC. Currently, there is a general complaint that most educational institutions in the hilly areas are in-charge administrations without a head of the institution. Most schools in tribal areas have temporary teachers and temporary employees. Teachers who transferred every year cause students to lose their mental and emotional attachment to their teachers. The lack of permanent English teachers in high schools can also lead to a decrease in the proficiency of tribal students in English. This naturally creates practical difficulties for these students when they go to higher secondary or other degree courses where English is the medium of instruction, and this may lead to dropouts.

The linguistic gap is the main challenge for teaching tribal students. Tribals have their first language as their tribal language. They think, make decisions and speak in their own tribal language. Most tribal languages are not similar to other tribal languages and may be completely different from other tribal languages. Non-tribal teachers use Malayalam, English or Tamil as the language of instruction. This slows down the students' ability to understand what the teachers are teaching. When it comes to teacher recruitment or appointment, it is better if they have experience working in the tribal area or belong to the tribal community. However, this may cause technical problems with the governmental recruitment agencies. It is necessary to ensure that students have continuous access to nutritious food, free uniforms, textbooks, and study finance. Providing separate hostel facilities for boys and girls in schools in tribal areas that are not model residential schools will help attract more students to the educational institution. Tribal-student friendly educational institutions and teachers should be mandatory in colleges and schools. Otherwise, tribal students may not show interest in coming to school or the drop out rate may increase. By ensuring free transport facility, students from PVGTs or tribal groups in remote forests can be taken to school. The Gotra Sarathi

scheme in collaboration with the Forest Department is a good example of this.

Dropout monitoring committees, remedial teaching, counselling, career guidance, etc. should be strictly implemented in schools and the concerned authorities should file reports. In Attappadi, a prominent tribal area in Kerala, schools also have only Commerce and Science as subjects. The fact that there is no humanities, which is generally a light subject and a humanistic subject, is extremely unorganized. Children should be provided with the opportunity to choose second languages like Tamil, Kannada along with Malayalam. National service scheme, Student Police Cadet, National Cadet Corps and other clubs should be implemented efficiently. Since different cultures, languages and customs are unique, it is imperative that the language, culture, customs, beliefs, dances, etc. of the tribals are respected and promoted in schools. Special legal aid, treatment, and basic facilities should also be made available to the tribals. Continuous awareness should be created among the students and their parents. Sessions on the need for education, job opportunities, the ill effects of drug abuse, the need to prevent child marriages, etc. are also desirable.

The framers of the Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness on account of the primitive agricultural practices, lack of infrastructure facilities and geographical isolation. The Constitution of India in Article 366 (25) prescribe that the Scheduled Tribes means such tribes or tribal communities as are deemed under Article 342 of the Constitution to be Scheduled Tribes.

342(1) Scheduled Tribes --- the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by a public notification, specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to that State or Union Territory as the case may be.

Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification

While the Constitution is silent about the criteria for specification of a community as a

Scheduled Tribe. The words and the phrase ‘tribes or tribal communities or part of or groups within tribes or tribal communities’ in Article 342 have to be understood in terms of their historical background of backwardness. Primitiveness, geographical isolation, shyness and social, educational & economic backwardness due to these reasons are the traits that distinguish Scheduled Tribe communities of our country from other communities. It takes into account the definitions of tribal Communities adopted in the 1931 Census. These facts are the basis for the provision in Article 342(1) which mandates to specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to that State or Union Territory as the case may be. Thus the list of Scheduled Tribes is State/UT specific and a community declared as a Scheduled Tribe in a State need not be so in another State. The Presidential notifications under Clause 1 of Article 342 of the Constitution are issued as the Constitution Orders. Two Constitution Orders were initially issued in relation to two distinct categories of States as existed at the time of adoption of the Constitution of India. Marginalized tribal students need to be brought into the mainstream. The government needs to ensure that tribal students also have access to free and universal education, as

guaranteed to all students in India under the Right to Education Act, 2009.

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## **Chapter 11**

# **Reforming the Judiciary: Enhancing Independence and Accountability**

### **Introduction**

An independent judiciary is necessary for a society and a constitutional democracy. It ensures the rule of law and a constitutional democracy. (Philip.S.Anderson,1998) . The constitutions or the foundational laws on judiciary are, however, only the starting point in the process of securing judicial independence. Ultimately the independence of the judiciary depends on the totality of a favourable environment created and backed by all State organs

including the judiciary and the public opinion. India has given itself a liberal constitution in the Euro-American traditions which aims at establishing a free and democratic society. It also aims at the prosperity and stability of the society. Its makers believed that such a society could be created through the guarantee of fundamental rights and an independent judiciary to guard and enforce those rights. A fearless and independent judiciary is the very bedrock of our constitutional edifice. Democracy cannot exist without justice and justice cannot be dispensed without an independent judiciary. The judiciary must possess and be seen to have fierce independence manifested through a rare courage of conviction.

### **Judicial Independence**

The independence of the judiciary is not a new term. The doctrine of separation of powers is considered as the initial point to this concept. Basically judicial independence means the independence of the judiciary from the other two organs of the Government i.e, legislature and executive. The judicial independence does not mean that the creation of an autonomous institution is free from the control of the executive and the legislature. Its underling purpose is that Judges must be able to decide a dispute before them in

accordance with the law without any bias or partiality. The makers of the Constitution recognised the importance of judicial independence and it is considered as one the important salient features of Indian Constitution.

### **Judicial Accountability**

The meaning of accountability in the literal sense means answerable to someone. The accountability of judiciary is different from that of the accountability of the legislature and executive (Kashyap, 2021). Mona Shukla has listed down three promotions done by Judicial Accountability:

- 1) It promotes the rule of law by deterring conduct that might compromise judicial independence, integrity and impartiality.
- 2) It promotes public confidence in judges and judiciary.
- 3) It promotes institutional responsibility by rendering the judiciary responsive to the needs of the public as it serves as a separate branch of the government (Shukla, 2010).

Even in the US, there is a debate over selection of judges. Elected judges are more accountable than independent judges in the sense that they can turn them out if they do not like their decisions. The main aim of separation of powers is the maximum extent

of accountability. According to Article 235 of Indian Constitution the High Court has control over subordinate Courts which is one of the efficient measure to enforce accountability. Judicial criticism by the executive, legislature or public at large are a recognition that the independence of the judicial officers is not absolute but is subject to recent restrictions.

### **Judicial Independence and Accountability in the light of Indian Constitution**

The Indian Constitution is considered as the fundamental law of the land from which all other laws derive their authority. All powers of the State and its different organs have their source in it and must be exercised subject to the conditions and limitation laid down in it (M.P.Singh, 2000). Article 50 mentioned under the Directive Principles of State Policy provides for the provision for separation of judiciary from executive. It states that “The State shall take steps to separate the judiciary from the executive in the public services of the State.” The object behind the Directive Principle is to secure the independence of the judiciary from the executive. Art. 211 of the constitution states that “No discussion shall take place in the legislature of a state with respect to the conduct of any Judge of

the Hon'ble Supreme Court or of a High Court in the discharge of his duties." In the same way provision made in Art. 121 states that "No discussion shall take place in parliament with respect to the conduct of any Judge of the Hon'ble Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the president praying for the removal of the Judge." Thus, the constitution of India separates the Hon'ble Supreme Court and the High Court's from political criticism, and thus accords their independence from political pressures and influence.

.Article 129 provides the Hon'ble Supreme Court the power to punish for contempt of itself. Similarly, Article 215 provides every High Court the power to punish for contempt of itself. . Article 125 speaks about the salaries of the judges. The salaries and allowances of the judges are one of the factors which show that judges are independent as their salaries and allowances are fixed. The salaries of judges of the Hon'ble Supreme Court and High Court are paid from the Consolidated Fund of India and states respectively. Article 125(1) states that "There shall be paid to the Judges of the Supreme Court such salaries as may be determined by parliament by law and, until provision in that behalf is so made, such salaries as are specified in

the Second Schedule.” And Article 125(2) states “Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule: Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.” Article 124(2) states that the retirement age of a Supreme Court Judge is 65 years whereas Article 217(1) mentions that the retirement age of a High Court Judge is 62 years .In addition, Article 124(4) runs as “A Judge of the Supreme Court shall not be removed from his office except by an order of the president passed after an address by each house of parliament supported by a majority of the total membership of that house and by a majority of not less than two-thirds of the members of the house present and voting has been presented to the president in the same session for such removal on the ground of proved misbehaviour or incapacity.” Article 138 (1) states that the powers of the Hon’ble Supreme Court cannot be taken away by the parliament. Parliament can only add to the powers and jurisdiction of the Supreme Court but cannot curtail

them, making the judiciary independent from legislature.

The relationship between the judiciary and the other wings has to be correct and proper, not cordial. A Canadian Judge, Marshall, writing about judicial independence a few decades ago, observed that even unavoidable interactions between the top echelons of the judiciary and the executive can be harmful to judicial independence. The independence of the judiciary is an important concomitant of the power of judicial review under a democratic constitution. The origin of judicial review without a specific provision under the American Constitution was laid by Marshall, C.J. in 1803 in *Marbury v. Madison* (*Marbury v. Madison*, 1803); though much earlier in 1608 Lord Coke opined it in *Dr. Bonham's case* (*Thomas Bonham v. College of Physicians*, 1610). The Indian Constitution provides for judicial review under Articles 13, 32, 136, 141, 142, 226 and 227 of the Indian constitution. It further recognizes it as a basic feature forming an indestructible part of the constitution of India pursuant to the decision in *Keshavananda Bharti case* (*Keshavananda Bharati v. State of Kerala*, 1973). Part IV of the Indian constitution provides for the directive principle of State policy in which Article 50 mandates separation of judiciary from the executive in order

to maintain its independence which is essential for its function as the watchdog under the constitution. However, like every other organ of the state and every public institution in a democracy the judiciary as an institution where every judge is a public functionary and is accountable to the political sovereign—the People. The only difference lies in the form or nature of the mechanism which is required to enforce their accountability

There is a recent trend of judges of the Supreme Court/High Court speaking in a very adulatory terms and lavishing fulsome praise on the head of the political executive at the Centre or in the State. Such behaviour and remarks can only be described as being in bad taste and unwarranted . This is not to cast any aspersions on the elected leaders of the nation and the States who are entitled to due respect. But institutional propriety would dictate that sitting judges do not indulge in such talk or behaviour. Such statements by the Judges would shake public confidence in their independence and impartiality, tend to lower the dignity of judiciary and constitute a threat to the rule of law (Pai, 2023).

Judges are human beings, not some disembodied spirits. Like the rest of human kind, they cannot completely shed their ideas and



ideologies, background and past experience. It is inevitable that their so-called philosophy and scale of values play an important part in decision-making, as Pantajali Sastri ,CJ, said. Cardozo deals with all this graphically in his *The Nature of the Judicial Process* where he states that “The great tides and currents which engulf the rest of men do not turn aside in their course and pass the Judges by” (Cardozo, 1921). Judges can be influenced by what is said in the media. But a Judge is not to shut himself in an ivory tower . He should not be like Sir Mathew Sausse, the first Chief Justice of the Bombay High Court who was known as the Sausse the silent and who did not read newspapers.

The issue of judicial independence has been raised in number of cases from *Sakalchand* to National judicial appointment commission Bill. Recently there is a controversy on National judicial appointment commission Bill which tried to change the settled collegiums system in case of appointment of judges. The Hon’ble Supreme Court of India's collegium system for appointment of judges to the nation's constitutional courts, has its origin in three of its own judgments which are collectively known as the ‘Three Judges Cases’. Those three cases are:

1. S. P. Gupta v. Union of India – 1981 (S.P. Gupta v. Union of India, 1982) (also known as the Judges' Transfer case)
2. Supreme Court Advocates-on Record Association vs Union of India – 1993 (Supreme Court Advocates-on Record Association v. Union of India, 1993)
3. In re Special Reference 1988 (Re Special Reference, 1998)

Over the course of these three cases, the court evolved the principle of judicial independence to mean that no other branch of the state - including the legislature and the executive - would have any say in the appointment of judges. The court created the collegium system, which has been in use since the judgment in the Second Judges Case was issued in 1993. If we peruse the whole Indian constitution, we won't find any mention of the collegium either in the original constitution of India or in successive amendments. Though the creation of the collegium system was viewed as controversial by legal scholars and jurists outside India, citizens, and notably, parliament and the executive, have done little to replace it. The Third Judges Case of 1998 is not a case but an opinion delivered by the Hon'ble Supreme Court of India responding to a question of law regarding the collegium system, raised by then

president of India K. R. Narayanan, in July 1998 under his constitutional powers. Moreover, in January 2013, the court dismissed on the ground of locus standi, a public interest litigation filed by NGO Suraz India Trust which sought to challenge the collegium system of appointment. In July 2013, Chief Justice of India P. Sathasivam spoke against any attempts to change the collegium system. On the 5th of September, 2013, the Rajya Sabha passed The Constitution(120th Amendment) bill, 2013, which amends articles 124(2) and 217(1) of the Constitution of India, 1950 and establishes the Judicial Appointment Commission, on whose recommendation the president would appoint judges to the higher judiciary. The criticism about the new setup is that the government through the amendment seeks to achieve is the composition of the judicial appointment commission, the responsibility of which the amendment bill lays on the hands of the parliament to regulate by way of Acts, rules, regulations etc. passed through the regular legislative process.

### **Collegium System and the Rejected NJAC**

During the early days of British colonial administration, the majority of judges was selected by the British Crown. There was little public representation and little involvement from

the part of Indian legal community. Remarkable changes were made in the area of judicial independence and accountability by the enactment of Indian Constitution. The President of India appoints Judges to the Supreme Court and High Court after consulting with the Chief Justice of India and other seniormost Judges. The collegium system has been evolved through judicial interpretations which now plays a key role in the nomination process for judges. Subsequent decisions strengthened and widened the representation of judges in the collegium system. Collegium process of appointing Judges has always been a matter of discussion and debate. Due to the introduction of this system in judiciary, a small number of seniormost judges in the Supreme Court holds an uppermost hand in the selection process. The articles related to the Collegium system are

1) Article 124

2 )Article 217

3) Article 124 A and 217 A added by the 99<sup>th</sup> Constitutional amendment

The 99<sup>th</sup> Constitutional Amendment was passed by the Indian Parliament in 2014 with the object to change the system of appointing Judges to the Supreme Court and High Court. This

amendment established the National Judicial Appointments Commission (NJAC). The Collegium System was greatly criticized due to its lacking openness, accountability and inclusion. The NJAC was established by the Parliament with the intention of amending Article 124 and 127 of Indian Constitution. While examining Constitution one can understand that the Constitution only favoured the President's consultation Judges. NJAC proposed a judicial appointment process which is more open and responsive . Unfortunately NJAC was overturned due to judicial overreach. The Court declared NJAC as unconstitutional in 2015 on the ground that it posed a threat to the independence of the judiciary. (Vohra, 2024).

### **Judicial Appointments in Different Countries**

No other country in the world leaves judicial appointment solely to the judiciary, there are several methods and balances to protect the Independence of the Judiciary.

In France, a constitutional body of Conseil Supérieur de la Magistrature makes recommendations to the President on the basis of which the appointments are made. However the body consists of the President, Minister of Justice, and 16 members out of which only four are

prominent public figures. Out of the remaining twelve, half deal with recommendations of sitting judges and half deal with recommendations for public prosecutors. The first half is composed of 5 sitting judges and one public prosecutor. Thus the primacy of judiciary in the appointment procedure can be clearly seen. Similarly, in the United Kingdom, for appointments to the Supreme Court, the Lord Chancellor has to convene a commission which consults judges and heads of jurisdiction. On the basis of the recommendation of the commission, the Lord Chancellor notifies this selection to the Prime Minister.

In Australia, judicial commissions invites the “expression of interest” from the members of the Bar through public advertisements to enable the appointment of judges in a transparent manner. In the United States as well, the President’s nominees go through confirmation hearings in the Senate and are subjected to public scrutiny in relation to their professional lives and political views. These processes encourage transparency in the procedure for appointment. The Indian NJAC Act can also take inspiration from these processes abroad. (Chhabra, 2016).

## **Suggestions**

- 1) Establish a transparent and merit-based selection process to ensure that the most qualified candidates are appointed.
- 2) Involvement of multiple stakeholders including the judiciary, executive and legislature in the appointment process to ensure that no single institution dominates the process.
- 3) Independent judicial conduct committees to investigate complaints against judges and ensure accountability.
- 4) Conduct regular judicial performance evaluations to assess the performance of judges and identify area for improvement.

## **Conclusion**

The Collegium system has been criticized for being opaque. Reformation should be made in the procedure of appointing judges which may be accomplished by taking into account the NJAC's advantages by resolving its drawbacks. A reformed system is absolutely necessary to address the concerns raised against the collegium process. The independence of the judiciary should be safeguarded because the Judiciary is considered to be the last resort of the people. In order to retain the confidence of the people in the Judiciary, it is

the responsibility of the Judiciary to be independent and impartial as assured by the Indian Constitution. As a public institution Judges are accountable to the public.

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## **Chapter 12**

# **Marital Rape and Gender Injustice in Kerala: Unveiling Systemic Oppression Through the Experiences of Victims**

### **Introduction**

Marital rape is not punishable by law in 32 countries around the world. Unfortunately, India is one of them. China, Bangladesh, Laos, Haiti, Myanmar, Mali, Senegal, Tajikistan, Afghanistan, Malaysia, Egypt, Lebanon, Kuwait, Yemen,

Singapore, Libya, Oman, and others are among these countries. Surprisingly, among India's neighbours, Bhutan is the only one with legislation that criminalises marital rape. Marital rape, or the act of a husband forcing sexual intercourse with his wife without her consent, is not considered a crime under Section 375 of the Indian Penal Code. This chapter discusses IPC 375, 498A, Art. 14, 21, the Domestic Violence Act, and historical perspectives on marital rape in India.

National Commission of Women (NCW) had received 30,957 complaints of crime committed against women in 2022(The Print). This represents a slight increase from the 30,864 complaints received in 2021(The Print). These figures represent only the reported cases, and the actual number of incidents of violence and harassment against women is likely much higher, as many cases go unreported. According to the National Commission for Women (NCW) in India, the highest numbers of complaints of crimes committed against women in 2022 were related to domestic violence, followed by harassment and cruelty by husbands and their relatives, and then rape (“NCW::C&I Cell::Statistical Overview of Complaints”) . It is important to note that while the numbers of reported cases are high in certain states, this does not necessarily mean that these states have a higher

incidence of crimes against women. It may reflect greater awareness of reporting mechanisms, better access to support services, or other factors.

Article 14 of Indian constitution clearly states "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This article emphasizes the principle of equality, ensuring that the law treats every individual, regardless of his or her background or characteristics, equally. It prohibits discrimination by the State and aims to ensure that all individuals have equal standing before the law. The concept of "equality before the law" means that all individuals are subject to the same laws and that no one is above the law. The idea of "equal protection of the laws" goes further, ensuring that the State does not discriminate against any person or group in the application of the laws. The State is expected to provide equal protection to all individuals, and any differentiation must have a reasonable and justifiable basis. Marital rape is actually a human rights violation.

Article 21: Protection of Life and Personal Liberty states "No person shall be deprived of his life or personal liberty except according to the procedure established by law." This article emphasizes the paramount importance of an individual's life and

personal liberty and places restrictions on the state's power to deprive a person of these rights. The phrase "procedure established by law" signifies that any deprivation of life or personal liberty must be done through a just, fair, and reasonable legal process. Over the years, Article 21 has been interpreted expansively by the judiciary, recognizing not only the literal right to life and personal liberty but also various facets of a dignified life. The Supreme Court of India has held that the right to life includes the right to live with dignity, right to education, right to privacy, and several other rights that contribute to a meaningful and fulfilled life.

### **Review of Literature and Research Gap**

The research paper titled '*A Study on Marital Rape in the Indian Legal Scenario*' by G.V. Akshaya and M. Kannappan highlights that Indian laws fail to adequately protect women, perpetuating the view of women as their husband's property and allowing for exploitation without effective remedies. Despite the possibility of pursuing criminal assault charges for a husband's violent and non-consensual acts, the absence of explicit liability for marital rape violates constitutional rights. The non-criminalization of marital rape remains a significant concern in the Indian legal system, necessitating judicial initiatives

to safeguard women. The review emphasizes the need for proper care and protection of married women, preventing sexual assault and violence. It critiques the narrow perspective of this section in addressing sexual assault and highlights the absence of legal provisions specifically protecting married women. This research addresses the urgent need for legal reforms and comprehensive measures to safeguard married women and address the issue of marital rape in India (Akshaya, and Kannappan 1089-1100).

The thesis titled '*Criminalizing Marital Rape under the Shackles of Socio Legal Dilemma*' by Sonali Roy Choudhury highlights the critical issue of marital rape in India, which remains a subject of constant debate and controversy. The National Family Health Survey and United Nations Population Fund surveys focused the plight of marital rape in India. However, there is currently no specific legislation in place to penalize marital rape. Although bills addressing this issue have been tabled in Parliament, they have not yet been passed. The judiciary has taken a step forward by raising the age of consent for wives from 15 to 18 years through the landmark case of *Independent Thought v. Union of India* (2017) 10 SCC 800. Nevertheless, the challenges faced by married women above the age of 18 remain unaddressed. The situation presents

an irony for Indian women, as despite being the largest democracy in the world, complete justice is still elusive for them. The social dynamics in India perceive marriage as a sacred duty, but unfortunately, conservative mentalities persist regarding women's roles and obligations within families (Choudhury Sonali).

Thesis titled '*Domestic violence women and the law and Indian perspective*' by Rai Neelam, underscores the urgency of understanding and addressing domestic violence against women. It highlights the significance of constitutional principles, gender equality, and women's empowerment as key strategies in combating this issue. The focus on international conventions and declarations emphasizes the global nature of gender-based violence and the importance of collaborative efforts. Furthermore, the acknowledgment of dowry-related problems as complex issues requiring multi-dimensional analysis and multi-level strategies indicates the need for comprehensive research to tackle these socio-cultural and economic factors effectively. The persistence of dowry-related issues and associated harmful practices in society is also acknowledged, requiring a comprehensive analysis of socio-cultural and economic factors to address the problem effectively (Neelam).



## **Research Methodology**

The qualitative research aims to uncover the meaning, understanding, and causes of male sexual violence within marriage. The research is based on humanistic, naturalistic, and interpretative ideas. This exploratory study aims to investigate various aspects of male sexual brutality within heterosexual marriages and tries to understand, explore, identify, or describe subjective human experiences using non-statistical methods and develops themes from the study participants' narratives. The researcher utilized the possibility of exploratory research through open-ended questions (verbal and written) and observations to search for patterns of meaning in the collected and used inductive thinking (from specific observations to more general rules) to interpret meaning. The primary data collected through semi-structured open-ended interview method to gather data from seventeen marital raped victims from Kerala. The research involves a sample of seventeen marital rape victims aged between 18 and 49 from Kerala.

The methodology primarily includes the examination of relevant theories such as Theories of Patriarchy, Mutual Consent Theory, Social

Learning Theory, and Intimate Partner Violence Theory. Thematic analysis was the method used for data analysis in this research. The researcher closely examined the collected data, converted it into anecdotal narrative format, made codes appropriate for the narratives, and made themes and sub-themes based on the codes. They then evaluated and interpreted the data. The constructionist approach for this study more focuses on how participants construct their experiences on sexual violence and how these constructions are influenced by social, cultural, and historical contexts.

### **Data Analysis and Interpretation**

This study reveals a significant proportion of respondents expressing dissatisfaction with the slow and uncertain process of the legal system. The majority of participants perceive the legal process to take 2-3 years, and a significant number experienced a continuation of legal proceedings beyond the initial one year. The majority of the respondents (17.1%) reported that the legal process takes 2-3 years, which is the longest duration mentioned in the options. This suggests a significant portion of individuals perceive the legal system to be slow. The second most chosen category is "Continuing Legal Process after 1 Year" with

12.8%. This indicates that a considerable number of participants experienced a continuation of legal proceedings beyond the initial one year. The categories with the lowest percentages are "Above 7 Years" (2.8%) and "4-6 Years" (7.1%). These figures suggest that fewer respondents experienced exceptionally long durations or relatively shorter durations within the given options. The percentages for "Less than One Year" (11.3%) and "1 year" (7.1%).

The statistical analysis highlights the presence of a significant number of participants who have taken legal action by filing cases in either the court or the police station. However, it is noteworthy that a portion of the participants (25.71%) did not pursue legal support. Among the participants, 74.28% chose to file a case in the court. This indicates a significant number of individuals seeking legal recourse for the marital rape they experienced. Filing a case in court suggests a willingness to pursue justice through the legal system. Approximately 32.85% of the participants decided to report their cases to the police station. Filing a case at the police station is often the initial step in seeking legal intervention and can lead to further investigation and legal proceedings. In addition, the study reveals that 25.71% of the participants did not file any case. This suggests that a considerable

number of individuals did not pursue legal action for their marital rape experiences. The reasons behind their reluctance to approach legal support may vary and could include fear, stigma, lack of awareness, societal pressure, or personal circumstances.

"When I got married, I had no idea that my husband was still legally married to someone else and hadn't divorced. What kind of system allows this? Can anyone just get married multiple times? After we separated, I filed a case, and it took nearly four years to resolve." (Participant 01).

"I filed for divorce in 2019, but for one reason or another, it keeps getting delayed. Four years have passed, and I still haven't received the divorce. I believe that breaking the legal bond of marriage is crucial for my self-recovery." (Participant 02).

30% of Indian women report experiencing domestic violence, according to the most recent NFHS-5 statistics (Ministry of Health and Family Welfare Govt. of India 639) 640). That is only the reported figure, though. Karnataka has the highest rate of domestic violence (48%), followed by Bihar (43%) and Manipur (42%) according to the most recent data (Ministry of Health and Family Welfare Govt. of India 646). In Tamil Nadu, Telangana has 41%.

While Lakshadweep had the lowest rate of domestic violence at 1.3%, Nagaland had a rate of 6.3%, Goa had an 8.3% rate, and Himachal Pradesh had an 8.3% rate (646).

The great majority, ninety-four percent, of the participants sought legal support to resolve this problem. Through the omission of marital rape in IPC 375, Section 2, they were not able to file the case for rape; they filed for domestic violence and divorce. The long delay in the legal process is a challenge for them to find a solution. Significant proportion of respondents expressing dissatisfaction with the slow and uncertain process of the legal system. The majority of participants perceive the legal process to take 2-3 years, and a significant number experienced a continuation of legal proceedings beyond the initial one year.

The women's movement in India has a long history that dates back to the early 20th century. In the 1920s and 1930s, women's organizations such as the All India Women's Conference and the National Federation of Indian Women were formed to address issues such as women's education, health, and political representation. During the Indian nationalist movement, many women played an active role in the struggle for independence, and their participation in political activism led to a

growing awareness of women's issues. Women activists such as Sarojini Naidu, Kamaladevi Chattopadhyay, and Annie Besant worked tirelessly to promote women's rights and improve their status in Indian society. They advocated for issues such as women's suffrage, education, and the right to work. After India gained independence in 1947, women's organizations continued to work for women's rights and empowerment, and in the 1970s, the women's movement gained momentum as a separate and distinct movement. Women's groups and organizations began to emerge across the country, working on issues such as violence against women, reproductive rights, and gender equality. Today, the women's movement in India remains a vibrant and active force for change, working to address the many challenges that women face, including discrimination, violence, and inequality.

The Indian National Congress (INC) recognized the importance of mass mobilization in achieving its goals and sought to involve women as well as other marginalized groups in the freedom struggle. Women's participation in politics during the pre-independence period was facilitated by several factors, including the social and cultural reforms of the time, the spread of education, and the growing consciousness of women's rights. The Partition of Bengal and the Swadeshi Movement of 1905 were

significant turning points in the Indian freedom struggle. Women played an active role in these movements, which aimed to boycott British goods and promote Indian-made products. Women were organized and participated in protests, rallies, and acts of civil disobedience and their contributions were essential to the success of these movements. The participation of women in these movements also helped to raise awareness about women's issues and the need for gender equality. The efforts of the INC and other nationalist organizations paved the way for greater participation of women in politics in post-independence India. The Indian constitution guarantees equal rights to men and women, and women have held important positions in government and politics, including the office of the President and the Prime Minister. However, women's participation in politics continues to face challenges, including patriarchal attitudes and cultural barriers that limit women's access to education and resources.

The New Women's movement of the 1970s emerged as a response to the perceived inadequacy of the earlier women's movement of the early 20th century. It was characterized by a self-conscious commitment to feminist politics, including issues related to women's reproductive rights, sexual liberation, equal pay and opportunity in the

workplace, and an end to gender-based violence and discrimination. One of the key features of the New Women's movement was its focus on consciousness-raising. This involved small groups of women coming together to share their personal experiences and discuss the ways in which patriarchy and sexism affected their lives. By sharing these stories and developing a collective understanding of their experiences, women were able to develop a political analysis of the ways in which gender oppression operated in society. The movement also placed a strong emphasis on the importance of women's self-determination and the need to challenge traditional gender roles and stereotypes. This included advocating for greater representation of women in positions of power, as well as the development of alternative models of work, childcare, and family life that were not based on gendered assumptions.

"I faced many difficulties at the police station. I don't think we have a gender-neutral system in our state yet. I had to go to the police station and court with my child. I settled this case out of fear that if I complained more, my husband would physically abuse me further, and I wouldn't receive protection or justice." (Participant 06).



“No ceremonies, no dowry, marriage is not a business, From now on, we will not accept a purchased life partner”. (One of the slogans raised by the Indian women’s movement against the discriminatory practice of dowry in the 1970s and 80s.). During 1970s and 1980s, the issue of dowry deaths and bride burnings became a significant concern in India, and was associated with violence inflicted on brides for the non-transfer of money, assets, and wealth from their natal to their conjugal families. In many cases, these incidents were the result of a demand for a higher dowry by the groom and his family, and the failure to meet these demands could result in violence against the bride. “Many women continue to experience excessive brutality or are forced to die miserably in their marital homes because of the tenacity of the inhuman dowry violence”(Nigam 15). The problem of dowry deaths and bride burnings highlighted the many forms of violence that women were facing, not just in India but also in other parts of the world. Women's activists and protestors played a crucial role in politicizing the issue, drawing attention to the ways in which patriarchal norms and values perpetuated violence against women. The movement to end violence against women gained momentum in the 1980s and 1990s, and included campaigns to strengthen laws and regulations

related to domestic violence, sexual assault, and harassment. It also focused on changing cultural attitudes towards women and promoting gender equality in all spheres of life.

In the 1980s, the women's movement in India shifted its focus towards legislative reform, particularly in response to cases of rape, violence, and dowry-related crimes. A number of high-profile cases, including the Shah Bano case and the controversy over the Uniform Civil Code, prompted the movement. In response to these issues, the Indian government enacted several laws that were aimed at addressing violence against women. In 1983, sections 498A and 304B were added to the Indian Penal Code. Section 498A made cruelty towards wives a non-bailable criminal offense, punishable with up to five years in prison. Section 304B made dowry deaths an offense, with a minimum sentence of seven years extendable to life imprisonment if the perpetrator was found guilty. Although the term "domestic violence" did not exist in legal parlance until 2005, the enactment of these laws was an important step in the direction of addressing violence against women in India. The women's movement played a crucial role in advocating for these legal reforms. The movement continues to work towards strengthening laws and regulations related to domestic violence, sexual

assault, and harassment. The Indian Parliament enacted the Protection of Women from Domestic Violence Act, 2005 in order to provide legal protection and assistance to women who are victims of domestic violence. The Act defines domestic violence as any act of physical, sexual, verbal, emotional or economic abuse committed by a person against a woman with whom he is in a domestic relationship.

The Indian Penal Code (IPC) defines an exemption to the general requirement addressing rape in Section 375, Subsection 2. It specifies that sexual intercourse between a man and his wife is not deemed rape if the wife is not under the age of fifteen (“India Code: Section Details”). It is important to note, however, that in October 2017, the Supreme Court of India changed this exception by raising the age of consent for marital sexual intercourse from 15 to 18 years (“Marital Rape in India”). This legal change aims to give kids more protection inside the institution of marriage.

"The legal process here is slow. Unfortunately, marital rape is not considered a criminal offense. The most I can do is file for divorce, a separate case for compensation, and another for domestic violence. The maximum compensation I can receive is ten thousand rupees. How can I take care of my

three kids with that? Their education, hospital expenses, food, clothes... How can I go to work? Who will provide emotional support? We need more advanced laws to protect women." (Participant 04).

The Act provides a comprehensive framework for the prevention of domestic violence against women in India, and it seeks to provide relief to women who have experienced such violence. The Act recognizes the need for a multi-faceted approach to addressing domestic violence, including legal, social, and psychological interventions, and seeks to empower women by providing them with legal rights and remedies.

Section 498A of the Indian Penal Code (IPC) is a legislative provision designed to address the issue of cruelty faced by married women at the hands of their husbands and in-laws (India Code: Section Details). Enacted to counteract the rising instances of harassment often linked to dowry demands, this section serves as a legal safeguard for married women in India. It criminalizes acts of cruelty or harassment perpetrated with the intent of coercing a woman or her relatives to meet unlawful demands for property or valuable security, including dowry.

The crux of Section 498A lies in its commitment to

shielding married women from various forms of harassment and cruelty. The section encompasses willful conduct by a husband or his relatives that may lead the woman to contemplate suicide or cause significant harm to her life, limb, or health. Notably, the section places a specific focus on cruelty arising from disputes over dowry, recognizing the historical prevalence of such issues in marital relationships.

## **Conclusion**

This academic discourse on male sexual brutality within marital relationships touched on various social aspects, including law, psychology, media, gender, and sociology. In conclusion, marital rape remains a serious human rights violation that continues to persist due to the absence of legal recognition and criminalization in India. The failure to address this issue not only perpetuates gender injustice but also leaves countless victims without protection, justice, or societal support. Urgent legal reforms are necessary to ensure that all individuals, regardless of their marital status, are safeguarded against sexual violence. Beyond legal measures, societal awareness and cultural change are essential to dismantle the patriarchal norms that enable such abuse. A holistic approach combining legislative action, education, and victim support systems can

create a safer and more just society for all.

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## **Chapter 13**

# **Household Health Expenditure During Covid19 Period in Kerala an Economic Analysis**

**Introduction-** Catastrophic health expenditure during COVID-19 hospitalization has altered the economic picture of households especially in low resource settings with high rates of COVID-19 infection. This study aimed to estimate the Out of Pocket (OOP) expenditure and proportion of households that incurred catastrophic health expenditure due to COVID-19 hospitalisation in Kerala.

**Materials and Methods-** A Primary data collected study was conducted among a representative sample of 100 COVID-19 hospitalised patients in Thrissur district over four months, using a pretested interview schedule. The direct medical and nonmedical costs incurred by the study participants during hospitalization and the total monthly household expenditure were obtained from the respective COVID-19 affected households. Catastrophic health expenditure was defined as direct medical expenditure exceeding 40% of effective household income.

**Results** – The study revealed that 49.7% of households had catastrophic health expenditure, with 32.9% having incurred Distress financing. Multivariate analysis revealed being below poverty line, hospitalization in private healthcare facility and presence of co-morbid conditions as significant determinants of catastrophic health expenditure.

**Conclusion-** High levels of Catastrophic health expenditure and distress financing revealed by the study unveils major unaddressed challenges in the road to Universal health coverage.

## **Introduction**

The role of health in human capital formation is immense to enhance the productivity of population

of a nation. Spending on health is a significant variable in determining the health capital. Reasons behind on health are differ from person to person. The motive behind spending on health may be preventive health care, promotive health care and tertiary health care. Both microeconomic and macroeconomic aspect of spending on health is crucial for economic analysis of expenditure on health. In microeconomic perspective health is considered as an input to generate income which in turn to buy goods and services. Government involvement in health spending and its effect on individual decision constitutes the macroeconomic perspective of spending on health.

Health is multidimensional. As per the Constitution of World Health Organisation (WHO) “Health is a state of complete Physical, mental and social wellbeing, and not merely the absence of disease or infirmity” (WHO, 1948), WHO definition captures physical, mental and social dimensions. An Individual’s demand for medical services is irregular and unpredictable. There are many factors contributed to good health such as nutritious food, pure drinking water, pollution free environment, opportunity for work and mental peace. Health status will never be the same for medical services is irregular and unpredictable. There are many factors contributed to good health such as nutritious food,

pure drinking water, pollution free environment, opportunity for work and mental peace. Health status will never be the same for all. Different people need different treatments. Different treatments entail different costs. Their illness and their cures will not impose the same economic burden. Every system of risk pooling must face up to the challenge of heterogeneity. Heterogeneity makes health care a thing apart. The risk and uncertainty are crucial elements in medical care (Akerlof, 1970).

Corona Virus Disease Known as Covid-19 (previously Known as “2019 novel corona Virus”). The name of Virus is announced by World Health Organization (WHO) in 11<sup>th</sup> February 2020. The coronavirus outbreak was originated from Wuhan, Hubei province, china in late December 2019. The virus spread all over the World from Wuhan within days through people with Covid-19 positive through their small droplets from nose or mouth. It spread like a wild fire from people to people and from one country to another rapidly. The virus spread to Thailand, Japan, U.S, South Korea, India, Spain, Italy, France, Germany, Iran, Netherland, Switzerland, United Kingdom, Singapore etc. The virus hit so many people very hardest around the World Several Countries made an announcement of lockdown to avoid the spreading of the virus. So

many cases were reported daily in the world almost 184 countries and above 1.5 lakh deaths. Due to the immense impact of the virus in worldwide. The World Health Organization (WHO) declared Covid-19 as pandemic in 11 March 2020. Kerala Health Department take certain proactive measures by ensuring special medical attention to those people who are in quarantine and those who are unwilling to take medical attention having symptoms. The Government Issue strict instructions to hospital staffs, health workers, other government and non-government officers including public by revealing up-to-date information about the current situation of the state in the case of vaccine-less virus. It helps to prevent the spreading of virus. In order to monitor and avail necessary services to ordinary people from local body level, government ensure the help of health workers (ASHAWORKERS).

Stay home and stay safe- a sounding mantra during these days in the nook and corner of the world, especially in India in the wake of Covid-19 spread, everybody is obligated to stay at home in the midst of uncertainties. As a coin has two sides, one group of people are enjoying the situation. Corona Virus has given time them to play with their children, recalling the golden days of childhood, challenging the cooking capacity of the men, testing new dishes and they are enjoying their family life

with their savings in the past. But on the other side, a group of people undertone that they have no job, no money and no food. The daily works across different avenues are badly hit by the spread of Covid-19 and followed by the lock down. On March 28<sup>th</sup> The Hindu reported that livelihood of around five lakh domestic helpers are in jeopardy and future is uncertain for women work force in Kochi. No one is allowing outsiders to enter their homes for fear of contracting the virus. If it is five lakhs in Kerala, we can guess the situation of India and all over the world. Farmers are worried after the announcement of the national lockdown and demand for milk and milk products are diminished. Online supplier Milk basket had stopped delivery services and reported that the shutdown is resulting dumping of 15,000 liters of milk and throwing over 10,000 kg of fruits and vegetables.

### **Covid-19: Crisis of Households**

Stay home and stay safe- a sounding mantra during these days in the nook and corner of the word, especially in India. In the wake of Covid-19 spread, everybody is obligated to stay at home in the midst of uncertainties. As a coin has two sides, one group of people are enjoying the situation. Corona virus has given time for them to play with their children, recalling golden days of childhood,

challenging the cooking capacity of the men, testing new dishes and they are enjoying their family life with their savings in the past. But on the other side, a group of people undertone that they have no job, no money and no food. The daily works across different avenues are badly hit by the spread of covid-19 and followed by the lockdown. On March 28<sup>th</sup> the Hindu reported that livelihood of around five lakh domestic helpers are in jeopardy and future is uncertain for women work force in Kochi. No one is allowing outsiders to enter their homes for fear of contracting the virus. If it is five lakhs in Kerala. We can guess the situation of India and all over the world. Farmers are worried after the announcement of the national lockdown and demand for milk products are diminished. Online supplier Milk Basket had stopped delivery services and reported that the shutdown is resulting dumping of 15,000 liters of milk and throwing over 10,000 kg of fruits and vegetables.

In this extraordinary and unprecedented situation, Covid-19 has effectively brought normal life to a halt of families and it will affect the economic wellbeing of a large number of people. Lottery workers, private security guards and BSNL contract employees are also facing loss of wages. Micro, medium and small enterprises (MSMEs) in the state of Kerala have sought a helping hand from

the employees state insurance Corporation in the wake of the nearly a month long lockdown across India to fight the Covid-19 pandemic. The deep financial trouble of MSMEs will lead to a financial crisis in lakhs of families in India. Migrant workers are the other subject of thought for the Governments. With twenty four hours they lost their jobs and income. Since there is no guarantee for their wages and shelter, they also want to move to their home town. Business today estimated that about 300 million informal workers could be vulnerable and seeking help. According to the most recent labour statistics, 25 percent of rural households and 12 percent of urban households rely on casual labour as their main source of income and they have no fixed flow of income for running their daily life. Fall in employment causes large losses for workers. The covid-19 outbreak has caused a mass travel ban and strict tourist restrictions as governments across the globe are trying to combat the spread of novel corona virus. Because of this, many airlines were forced to cancel their flights, resulting in mounting losses. People are working in tourism and hospitality fields. Corona virus may leave 70 percent of them jobless. The strain on income resulting from the decline in economic activity will devastate workers close to below the poverty line and the shocks of pandemic



can easily push them into poverty. The following diagram figures out the percentage share of all workers in India.

Labour Force Participation Rate (LFPR) in usual status (ps+ss) for persons of age 15 years and above.

All- India.

| Survey period | Rural |        | Urban  |      |        | Rural + Urban |      |        |        |
|---------------|-------|--------|--------|------|--------|---------------|------|--------|--------|
|               | Male  | Female | Person | Male | Female | person        | Male | Female | person |
| 2022-23       | 80.2  | 41.5   | 60.8   | 74.5 | 25.4   | 50.4          | 78.5 | 37.0   | 57.9   |
| 2021-22       | 78.2  | 36.6   | 57.5   | 74.7 | 23.8   | 49.7          | 77.2 | 32.8   | 55.2   |
| 2020-21       | 78.1  | 36.5   | 57.4   | 74.6 | 23.2   | 49.1          | 77.0 | 32.5   | 54.9   |
| 2019-20       | 77.9  | 33.0   | 55.5   | 74.6 | 23.3   | 49.3          | 76.8 | 30.0   | 53.5   |
| 20            | 76    | 26.    | 51.    | 73   | 20.    | 47.           | 75   | 24.    | 50.    |

|         |      |      |      |      |      |      |      |      |      |
|---------|------|------|------|------|------|------|------|------|------|
| 18-19   | .4   | 4    | 5    | .7   | 4    | 5    | .5   | 5    | 2    |
| 2017-18 | 76.4 | 24.6 | 50.7 | 74.5 | 20.4 | 47.6 | 75.8 | 23.3 | 49.8 |

Source: - Periodic Labour Force Survey 2017-2023)

In rural areas, LFPR Increased from 50.7% in 2017- 18 to 60 .8% in 2022-23 while for urban areas it increased from 47.6% to 50.4%. LFPR for male in India increased from 75.8% in 2017-2018 to 78.5% in 2022-23 and corresponding increase in LFPR for female was from 23.3% to 37.0%.

The agonies in the each and every field of the country are the signboard to the economic crisis of the families. The effects will be far – reaching, pushing millions of people into unemployment, underemployment and working poverty. As revenue streams of firm get impacted, employment, particularly of daily wagers and temporary workers, will be in the firing line. The economic and psychological consequences for families have been severe. As family is the basic unit of the society.

### **State Clocks 6.6% growth in 2022-23**

Kerala's economy recorded “steady growth” in 2022-2023 with the Gross State Domestic Product (GSDP) Clocking 6.6% growth at constant prices;

compared with 2021-2022 when Kerala recorded the highest growth in a decade in a post-COVID-19 recovery spurt, the growth rate appears to have settled in 2022-23. The GSDP had clocked 12.97% growth in 2021-2022. But the two years cannot be realistically compared. This is because the higher growth rate in 2021-22 was from a pandemic-induced low base of -8.43% the previous year, senior planning Board officials said.

| REVENUE RECEIPTS 2022-2023                             |
|--------------------------------------------------------|
| Rise 13.79% ,1,32,724,65 cr.                           |
| State' Own Tax Revenue 54.22%<br>71,968.16 cr.         |
| State's Own Non-Tax Revenue 11.39%<br>15,117.96 cr.    |
| Share of Central Taxes, grants 34.39%<br>45,638.54 cr. |

In 2022-2023, Kerala's economy posted positive growth for the second consecutive year after the pandemic. The economic review noted that this has

been achieved in the face of “financial constraints and adversities”.

### **Per capita income**

Per capita income in Kerala has risen by 6.06% to 1, 74,214 compared to 1, 64,261 in 2021-22, according to the Economic Review tabled in the House by Finance Minister. K.N. Balagopal. Sector – wise, the primary sector at current prices grew by 4.96% compared to 6.96% compared to 6.91% the previous year, the secondary sector by 14.19% compared to 20.79%, and the tertiary sector 11.53% against 24.08% the previous year. The Economic Review observed that in 2021-2022, in Kerala registered a relatively higher growth rate in GSDP on account of the post-pandemic recovery trend which was propped up by stimulus packages. Fiscal deficit reduced to 2.44% and revenue deficit to 0.88% of the GSDP.

The Economic Review observed that a series of Union government policies have resulted in a drastic decline in Central transfers to Kerala. “Today, the state economy faces unprecedented financial difficulties because of unfairness and inequality in Centre – State financial relations and failure by the Government of India to implement policies of genuine federalism”, it said. Revenue expenditure decreased to 1, 41, 950.94 crore in

2022-2023, compared to 1, 46,176.51 crore the previous year. The ratio of revenue expenditure to GSDP dipped to 13.57% from 15.64%.

### **Public debt**

The outstanding public debt of the State has been pegged at 2,38,000.96 crore, and the growth rate of public debt is down to 8.19% the public debt-GSDP ratio also decreased from 23.54% 2021-22 to 22.75% in 2022-23.

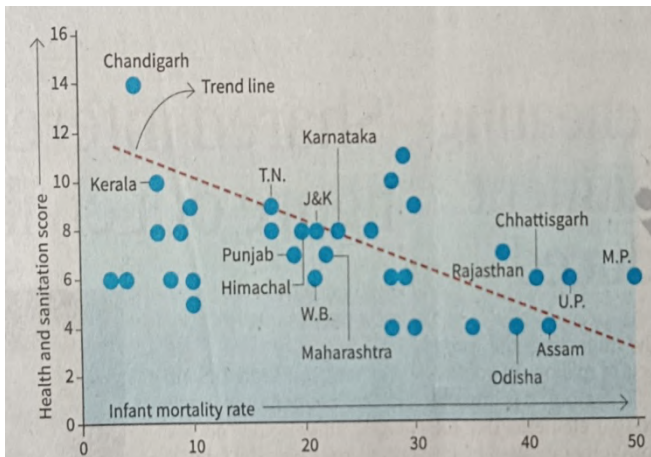
### **Higher autonomy of panchayats leads to better health outcomes**

The reserve bank of India study, based on which the report was written, had called for greater autonomy for panchayats and empowerment of local leaders. This data point aims to show that greater autonomy of panchayats results in better governance and leads to superior outcomes.

Panchayats collaborate with health departments to maintain clinics and dispensaries in rural areas. By encouraging institutional deliveries and ensuring prenatal and postnatal checkups, they help reduce maternal and infant mortality rates (IMR). They also provide clean water and sanitation facilities. All these help improve health outcomes. The RBI study uses two datasets to show that

panchayats which scored high on the health, nutrition, and sanitation parameters also had lower rural IMRs

Chart 1:- The shows the state/ UT-wise avg. of panchayat-level health, nutrition and sanitation scores(vertical axis) and infant mortality rate(horizontal axis)

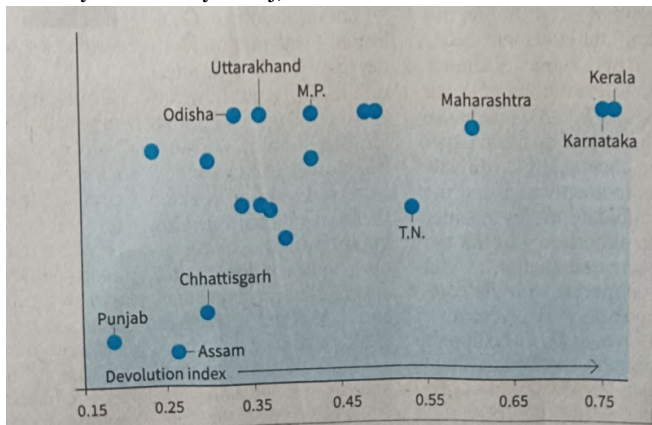


Source:-Secondary Data

Chart 1 shows the state- wise average of panchayat- level health, nutrition, and sanitation scores calculated by the Ministry of panchayati Raj (MoPR) on the vertical axis. The scores of all the panchayats in a state were averaged to present the

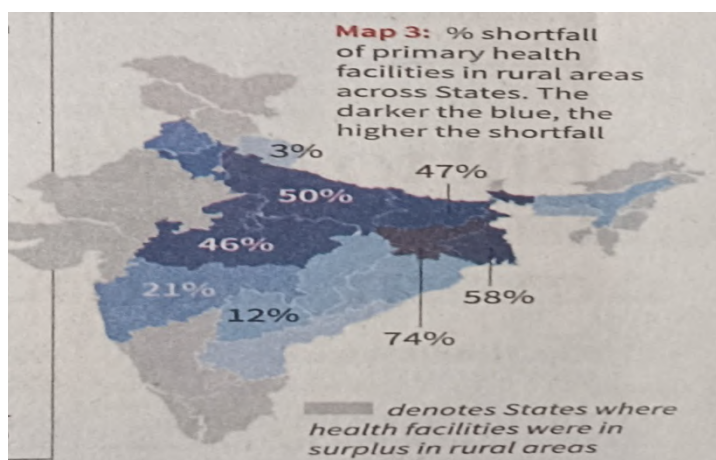
state's overall score on these parameters. On the horizontal axis, the IMR of the state is presented. Both data were for 2018-19. In general, as shown by the trend line, the higher the score on health, nutrition, sanitation parameters, the lower the IMR. Major states including Kerala, Tamil Nadu, Himachal Pradesh, Punjab, Jammu and Kashmir, Karnataka, Maharashtra, and West Bengal all feature on the top left. That is, they have a high score and a low IMR. Madhya Pradesh, Uttar Pradesh, Assam, Rajasthan, Odisha, and Chhattisgarh can be seen on the bottom right- they have a high score and a high IMR. Given that panchayats play a vital role in health management and as chart 1 shows that some states outperform others,

Chart2:- The chart shows the devolution index calculated by the Ministry of Panchayat Raj, across States



Source: - Secondary data

Chart 2 checks whether these better-performing states also have greater autonomy at the panchayat level. For this, the RBI study uses the devolution index prepared by MoPR using independent agencies. The devolution index rates a state based on three parameters. Plots the state's devolution index on the horizontal axis. The states on the right- Kerala, Karnataka, Maharashtra, and Tamil Nadu- have higher devolution scores. The states on the left –Assam, Odisha, Chhattisgarh, Madhya Pradesh and Uttarakhand have lower devolution scores. Chart 1 and 2 when read together shows that panchayat autonomy plays a vital role in better health outcomes in rural areas.



Source: - Secondary Data



Which shows the percentage shortfall of primary health facilities in rural areas also concurs with this conclusion as states which perform better on the index have a surplus, with a few exceptions. Uttar Pradesh, Bihar, Jharkhand, Madhya Pradesh and west Bengal have very high levels of shortage. On the other hand, Kerala, Tamil Nadu, Karnataka and Himachal have none.

### **Objectives of the Study**

The trend and tendencies of government and household expenditure on health at the national and state level is the core of the present study. The deviation of expenditure on health both by the government and the household and the corresponding burden are considered. The financing of health spending is a major concern for the government and the households. The study focuses the factors that related to the household health expenditure during covid-19 period in Kerala an economic analysis. The study analyses the economics of spending on health. The specific objectives of the study are;

1. To analyse the public expenditure on health in India and Kerala during Covid-19 period.
2. To compare the disparity of household expenditure on health in India and Kerala.

3. To identify the major determinants of household health expenditure in Kerala during Covid-19 period.
4. To examine the major disparity of household health expenditure in Thrissur district of Kerala.

### **Review of Literature**

Various aspects of health and expenditure on health are considered for literature review. It helps to examine the various concepts of health expenditure and pattern of expenditure on health between countries and within the country. It throws light on significance of expenditure on health both by the government and households.

Dey et al. (2013) remarked that social health issues, natural calamities and disasters, nutritional aspects have accumulative effect on the wide disparities in the existing health infrastructure. Lack of proper infrastructure facilities has limited the ability of the facilities to drive the health care standards in the majority of the people in the country. The high morbidity and mortality levels in the country indicates the unsatisfactory health indices which in turn indicates the limited success of the public health

system in meeting the preventive and curative requirements of the general population in India.

Rajesh Kumar and Nalraj (2014) examined the causal relationship between health care expenditure and economic growth in Kerala, Orissa, Tamil Nadu and Madhya Pradesh during 1991-2010. The study considered that good health is a decisive factor in the reduction of poverty and promotion of sustainable development. The study finds that there exists a unidirectional causality from health expenditure to economic growth. The increase in demand for better health care leads the private health providers to supply such goods and services. This shift from public to private health care utilisation reduced economic growth contribution on public health care expenditure.

Joe (2015) examined the incidence and correlates of health care financing in India by using cross sectional data from the Morbidity and Healthcare Survey 2004 conducted by NSSO. With the help of multivariate logistic regression the study found that there exist significant socio-economic gradient in the distribution of distressed health care financing for marginalised sections of the society. The financial burden of non-communicable diseases

is high among backward social groups. The treatment cost of elderly and female members can be financed mainly by the contribution from friends and relatives.

Kulkarni (2016) examined the relationship between health expenditure and health outcomes in BRICS nations from 1995-2010. This study is based on panel data regression with fixed effects model using data from the World Health Organisation and World Bank databases. The study found a positive association between health outcome and the per-capita GDP, adult literacy rate and out-of-pocket expenditure. The study found that higher the public health expenditure lower the health outcomes in terms of IMR. The study also found that a negative relationship between age dependency relation and health production. Here health can be categorized as a quasi-public good. The study points out that the increase in public health expenditure is not sufficient to achieve the desired improvements in health economics.

Barenberg et.al. (2017) studied the impact of public health expenditure on infant mortality rate employing a pane dataset of Indian states between 1983-84 and 2011-12. The study finds

out that there is a negative relationship between public health expenditure and infant mortality rate in India. The study shows that one percent increase in public health expenditure by state level net domestic products is associated with a reduction in the infant deaths per 1000 live births. Other relevant covariates like political competition, urbanisation and female literacy reduce the infant mortality rate.

Rahman (2018) examined the nexus between health care expenditure and health outcomes in SAARC and ASEAN region by using World Bank datasets of 15 countries between 1995 and 2014. The study used fixed and random effects model to find out the effects of health care on health outcomes in relation to life expectancy at birth, crude death rate and infant mortality rate. The study found that private health care expenditure had a significant effect in reducing the crude death rate but public health expenditure exhibited the opposite result. Total health expenditure had a significant effect in reducing in infant mortality rate and extent of effect of private health expenditure was greater than that of public health expenditure. The study emphasized transparency, accountability and efficient utilization of public sector health funds.

Harapan Harapan et al (2019) in early December 2019, an outbreak of coronavirus disease 2019, an outbreak of coronavirus disease 2019(COVID-19), caused by a novel severe acute respiratory syndrome coronavirus2 (SARS-Co-2), occurred in Wuhan city, Hubei Province, China. On January 30, 2020 the World Health Organization declared the outbreak as a Public Health Emergency of International Concern. As of February 14, 2020, 49,053 laboratory-confirmed and 1,382 deaths have been reported globally. Perceived risk of acquiring disease has led many governments to institute a variety of control measures. We conducted a literature review of public available information to summarize knowledge about the pathogen and the current epidemic. In this literature review, the causative agent, pathogenesis and immune responses, epidemiology, diagnosis, treatment and management of the disease, control and preventions strategies are all reviewed.

Elumalai Rajalakshmi, Akhil Sasidharan...K Parthipan (2023) the coronavirus disease 2019(COVID19) Pandemic increased the utilization of healthcare services. Such utilization could lead to higher out-of-pocket expenditure (OOPE) and catastrophic health expenditure (CHE). We estimated OOPE and

the proportion of households that experienced CHE by conducting a cross- Sectional survey of 1200 randomly selected confirmed COVID-19 cases.

## **Methodology**

The study is both analytical and theoretical in nature. The present study collected data both from primary and secondary sources. The secondary data were collected from Economic Reviews of the state Planning Board, Census Reports, Reports of the Directorate of Economics and Statistics, RBI Database, Economic Surveys, Human Development Reports, Sample Registration System Reports, National Family Health Survey Reports and Reports of the Directorate of Health Service Trivandrum. Electronic Database such as INFLIBNET and Google Scholar were also used. Relevant websites also forms source of secondary information.

In the primary data, both quantitative aspects are considered for identifying the determinants of household health expenditure. Hence household is considered as the basic unit of ananalysis for analyzing the determinants of annual household expenditure. The primary data analysis is based on cross section data

collected through a household survey conducted among 100 households from rural and urban areas with the support of a structured questionnaire. The present study has been conducted in Chalakudy Municipality, Irinjalakuda Municipality. These selected areas are chosen for the study considering the health parameter's such as birth rate, maternal mortality rate, institutional delivery, immunization. The criteria for selecting this setting were geographical proximity, feasibility of conducting the study, availability of the samples and familiarity of the investigator with the settings.

### **Observation and Result**

Health expenditure during COVID-19 hospitalization has altered the economic picture of households specially in low resources settings with high rates of COVID-19 infection. This study aimed proportion of households that incurred household health expenditures due to COVID-19.



**Table: - 5.1. Demographic Characteristics and demographic distribution of COVID-19 Patients in Kerala, 2020-2021.**

| Characteristics    | Category    | n         | (%)    |
|--------------------|-------------|-----------|--------|
| Total cases        |             | 5,247,177 |        |
| Gender             |             |           |        |
|                    | Female      | 2,422,378 | (46.1) |
|                    | Male        | 2,708,870 | (51.7) |
|                    | Transgender | 115,929   | (2.2)  |
| Age group in years |             |           |        |
|                    | 0-5         | 157,628   | (3.0)  |
|                    | 6-20        | 772,793   | (14.7) |
|                    | 21-40       | 1,824,510 | (34.8) |
|                    | 41-60       | 1,557,4   | (29.   |

|           |                    |         |        |
|-----------|--------------------|---------|--------|
|           |                    | 64      | 7)     |
|           | >60                | 818,853 | (15.6) |
| Districts |                    |         |        |
|           | Ernakulam          | 645,467 | (12.3) |
|           | Malappuram         | 578,930 | (11)   |
|           | Kozhikode          | 559,458 | (10.7) |
|           | Thrissur           | 550,280 | (10.5) |
|           | Thiruvananthapuram | 508,240 | (9.7)  |
|           | Kollam             | 412,782 | (7.9)  |
|           | Palakkad           | 384,038 | (7.3)  |
|           | Kottayam           | 345,063 | (6.6)  |
|           | Alappuzha          | 326,260 | (6.2)  |
|           | Kannur             | 292,502 | (5.6)  |

|  |                |         |       |
|--|----------------|---------|-------|
|  | Pathanamthitta | 206,322 | (3.9) |
|  | Idukki         | 158,616 | (3)   |
|  | Kasaragod      | 143,703 | (2.7) |
|  | Wayanad        | 135,516 | (2.6) |

There were slightly more males than females. The most common age group affected was between 20-40 years, with 3% of children aged up to 5 years and 16% of adults over 60 years also affected. There were five districts (Ernakulam, Malappuram, Kozhikode, Thrissur, and Thiruvananthapuram) that each reported over 500,000 COVID19 cases, comprising between them over half (54%) of the total number of cases in the state.

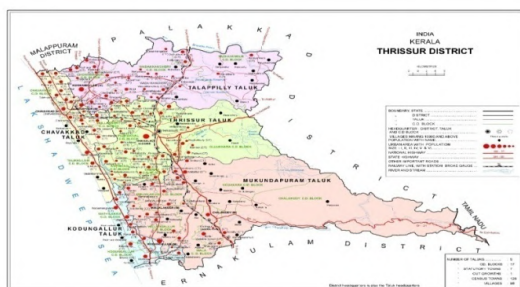
**Table: - 5.2.Demographic Profile of Thrissur District**

| Description       | 2011    |         |         | 2001    |
|-------------------|---------|---------|---------|---------|
|                   | Rural   | Urban   | Total   |         |
| Actual population | 1020537 | 2089790 | 3110327 | 2974232 |

|                                             |            |             |         |                 |
|---------------------------------------------|------------|-------------|---------|-----------------|
| Male                                        | 4858<br>75 | 988<br>790  | 1474665 | 142<br>205<br>2 |
| Female                                      | 5346<br>62 | 1101<br>000 | 1635662 | 155<br>218<br>0 |
| Sex Ratio(per100)                           | 1100       | 1113        | 1109    | 109<br>2        |
| Child Sex Ratio(6-6<br>Age)                 | 955        | 944         | 948     | 958             |
| Child Percentage<br>(%)                     | 9.43       | 9.23        | 9.30    | 11.1<br>8       |
| Male Child<br>Percentage (%)                | 10.13      | 10.0<br>3   | 10.07   | 11.9<br>4       |
| Female Child<br>Percentage (%)              | 8.79       | 8.51        | 8.60    | 10.<br>48       |
| Average Literacy<br>(%)                     | 93.99      | 95.9<br>7   | 95.32   | 92.<br>27       |
| Male Literacy (%)                           | 96.09      | 97.4<br>1   | 96.98   | 95.<br>11       |
| Female Literacy (%)                         | 92.11      | 94.7<br>0   | 93.85   | 89.<br>71       |
| Population Growth<br>(%)                    |            |             | 4.58    | 8.6<br>6        |
| Proportation to<br>Kerala Population<br>(%) |            |             | 9.32    | 9.3<br>4        |
| Area Sq.Km                                  |            |             | 3032    | 303             |

|             |  |  |      |     |
|-------------|--|--|------|-----|
|             |  |  |      | 2   |
| Density/Km2 |  |  | 1026 | 981 |

**Source: - Census of India 2011**



Thrissur district, the Cultural capital of Kerala, is the Center of health care in the central Kerala since it covers the health care needs of the people in Thrissur, Palakkad, Malappuram, and northern part of Ernakulam district, Thrissur district is the fastest becoming educational capital of Kerala due to the existence of various medical, engineering, Ayurvedic, veterinary and art and science Colleges. Kerala University of Medical and Allied Sciences is

located at Thrissur. There are four medical Colleges in Thrissur district. The three allopathic medical colleges in Thrissur district are Government Medical College, Thrissur, Jubilee Mission Medical College and Research Institute, and Amala Institute of Medical Sciences. Thrissur district is also well known for its Ayurvedic treatment. There are two Ayurveda Colleges, Vaidhyaratnam Ayurveda College, Ollur and Poomully Neelakandan Namboothiripad Memorial Ayurveda medical College, Cheruthurthy. Thrissur district has 7 Taluks (Thalappilly, Chavakkad, Kodungalur, Thrissur, Mukundapuram, Chalakudy and kunnamkulam) and 255 villages. There are 88 Grama panchayaths, 16 Block Panchayath in the three tier system of rural local bodies. There are 7 urban local bodies consist of 6 Municipalities and 1 Corporation.

**Table: - 5.3. Distribution of Households by Type of Treatment.**

| Types of Treatment  | Rural     | Urban     |
|---------------------|-----------|-----------|
| Specialty           | 15        | 10        |
| General             | 25        | 20        |
| Specialty + General | 10        | 15        |
| <b>Total</b>        | <b>50</b> | <b>50</b> |

**Source: - Survey Data.**

Health care treatment may be general Treatment or Specialty Treatment. It is noticed that 25 of rural areas and 20 urban households utilize general treatment and 15 of rural and 10 of urban households utilize specialty treatment. Further there are 10 of rural and 15 of urban households utilize both specialty and general treatment.

**Table 5.4:- Religion**

|       |              | Frequency | Percent | Valid Percent | Cumulative Percent |
|-------|--------------|-----------|---------|---------------|--------------------|
| Valid | Hinduism     | 45        | 45.0    | 45.0          | 45.0               |
|       | Islam        | 24        | 24.0    | 24.0          | 69.0               |
|       | Christianity | 31        | 31.0    | 31.0          | 100.0              |
|       | Total        | 100       | 100.0   | 100.0         |                    |

Source: - survey Data

Table 5.4. Religion wise distribution of rural and urban households in Thrissur district constitutes 45 percent of Hinduism followed by 24 percent Islam and 31 percent of Christianity.

**Table 5.5 :- Household Income status**

|       |       | Frequency | Percent | Valid Percent | Cumulative Percent |
|-------|-------|-----------|---------|---------------|--------------------|
| Valid | BPL   | 53        | 53.0    | 53.0          | 53.0               |
|       | APL   | 47        | 47.0    | 47.0          | 100.0              |
|       | Total | 100       | 100.0   | 100.0         |                    |

Source: - Survey Data

Household expenditure is mainly dependent upon the household income. Hence the occupational background of the head of the household is considered under study to examine the determinants of household health expenditure. Generally income is one of the major determinants of consumption expenditure of households. It is evident that household health expenditure is low for poor income households both in rural and urban area. Household health expenditure is substantially high for high income households both in rural and urban area. Household income status frequency household health expenditure is BPL 53 percent and APL 47 percent based on income of the households.



**Table 5.6:- Catastrophic and non-catastrophic households**

|       |                  | Frequency | Percent | Valid Percent | Cumulative Percent |
|-------|------------------|-----------|---------|---------------|--------------------|
| Valid | Catastrophic     | 59        | 59.0    | 59.0          | 59.0               |
|       | Non-Catastrophic | 41        | 41.0    | 41.0          | 100.0              |
|       | Total            | 100       | 100.0   | 100.0         |                    |

Source: - survey Data.

The Covid-19 pandemic had catastrophic impact on various governments globally, be it developed or less developed. One of the major challenges faced by the governments was with regard to the lack of facilities. i.e., both the manpower and infrastructure needed to combat the pandemic and to manage the escalating number of cases, especially those at high risk like old and those with serious illness. Even the developed economies have struggled to cope with this huge demand. Same is the case with a country like India. Kerala is a bit different due to the unique model of development with better education and healthcare indices connected in the beginning with the remittance

income. Among the 100 households surveyed, it is seen from Table 5.6 that 59 percent Catastrophic and 41 percent non- Catastrophic expenditure. Catastrophic expenditure is a serious issue existing in the context of healthcare system in Kerala.

**Table 5.7 :- Positive performance of health care services system During Covid-19**

|       |              | Frequency | Percent | Valid Percent | Cumulative Percent |
|-------|--------------|-----------|---------|---------------|--------------------|
| Valid | Home visit   | 30        | 30.0    | 30.0          | 30.0               |
|       | PHC Medicine | 42        | 42.0    | 42.0          | 72.0               |
|       | Food Provide | 28        | 28.0    | 28.0          | 100.0              |
|       | Total        | 100       | 100.0   | 100.0         |                    |

Source: - survey Data.

Table 5.7 shows the Frequency of positive performance of health care services system during Covid-19. About 42 percent PHC medicine that they have health care services system. It shows that 30 percent Home visit and 28 percent Food provide positive performance of health care services system during covid-19.

**Table 5.8:- Cross tabulation of Type of locality \* Health insurance scheme**

Count

| Type of locality | Health insurance scheme |                     |                               |                   |        | Total |
|------------------|-------------------------|---------------------|-------------------------------|-------------------|--------|-------|
|                  | Government funded       | Arranged households | Employer (not govt) supported | Health protection | Others |       |
| Rural            | 4                       | 19                  | 15                            | 13                | 0      | 51    |
| Urban            | 3                       | 17                  | 20                            | 7                 | 2      | 49    |
| Total            | 7                       | 36                  | 35                            | 20                | 2      | 100   |

Source: - Survey Data

Table 5.8 shows the cross tabulation of health insurance scheme. Rural area 51 percent health insurance scheme and 49 percent urban area health insurance scheme. Most of the non-institutional expenditure is not covered under voluntary prepayment. This would enhance the health expenditure of households. The expenditure for government funded scheme of health insurance is

low both in rural and urban area compared to the other type of insurance scheme.

**Table 5.9:- Problems of Households in Relation to Expenditure**

|       |                                                    | Frequency | Percent | Valid Percent | Cumulative Percent |
|-------|----------------------------------------------------|-----------|---------|---------------|--------------------|
| Valid | inadequate saving                                  | 9         | 9.0     | 9.0           | 9.0                |
|       | insignificant cooperation of the head of household | 10        | 10.0    | 10.0          | 19.0               |
|       | inadequate of health consciousness                 | 15        | 15.0    | 15.0          | 34.0               |
|       | inadequate insurance participation                 | 18        | 18.0    | 18.0          | 52.0               |
|       | insufficient information health care facilities    | 15        | 15.0    | 15.0          | 67.0               |
|       | inadequate support from the government             | 16        | 16.0    | 16.0          | 83.0               |
|       |                                                    |           |         |               |                    |

|                                              |     |           |           |       |
|----------------------------------------------|-----|-----------|-----------|-------|
| infrastructure<br>in government<br>hospitals | 9   | 9.0       | 9.0       | 92.0  |
| inadequate-<br>financing                     | 5   | 5.0       | 5.0       | 97.0  |
| sub-optimum<br>debt position                 | 3   | 3.0       | 3.0       | 100.0 |
| Total                                        | 100 | 100.<br>0 | 100.<br>0 |       |

Source: - Survey Data

Lack of medicines and lack of manpower are the main problems faced by the rural households in relation to government hospitals. Government implemented new programmes on health care. But lack of information about these programmes causes hurdles in the health care of common people. Information asymmetry is highest in health care. The complexity of health care system aggravate the problems of households in relation to expenditure. Poor condition of hospitals and poor behavior of employees are the problems faced by the urban households in relation to government hospitals. While in the case of inadequate saving 9 percent and inadequate of health consciousness 15 percent are the main problems to tackle high problems of inadequate insurance participation. The least affected the problem is the sub-optimum debt

position. Lack of health consciousness and poor information on health care are the other problems faced by the households in relation to expenditure on health.

## **CONCLUSION**

Public expenditure on health is the first and foremost variable in determining the human capital formation through improvement in health- capital. However, optimum- mixture of public and household expenditure on health is inevitable to improve the productivity of the population in an equitable and sustainable manner. The public health expenditure on health is comparatively low when compared to household expenditure on health. Among major states in India, Kerala is far ahead both in terms of expenditure on health and parameters of health. In this context, the present study attempts to analyze the determinants of household expenditure on health in Kerala.

The average annual household health expenditure of rural households is significantly different from that of urban households. The average annual household health expenditure of rural households is lower than that of urban household. The annual household health expenditure of represents corresponding to the categories of cast is not significantly different from that of the reference

category. The household expenditure of poor families is low in the district. Similarly, the nature of diseases have substantially influenced on the household expenditure on health. The percentage of household budget allocated to health expenditure is also substantially influenced by the nature of diseases and income.

The study shows that even though the household health expenditure goes through a lot of stress and struggles. Household health expenditure were whole heartedly ready to work during covid-19 outbreak. Even with coverage of medical expenses and life insurance which is provided by the central government, the risk they take when they interact with patients is immense. Health workers along with a hike in remuneration, provisions for incorporating risk allowance for their field activities during epidemics and pandemics should be done

Expenditure on health comprises of two aspects: what the government spends on health and what is spent privately by citizens on looking after their health. The government spends on investing in and running hospitals, clinics, medical schools, and laboratories; it also spends on medical research.in many countries it pays the salaries of doctors and other health professionals directly. It may also procure drugs for free disbursement through clinics or pharmacies. Citizens in their private capacity

spend money for consultations, for buying drugs, paying hospitals for treatment, for investigative procedures and such, often in less developed countries, they have to pay this out of their savings or 'out-of-pocket'. In advanced countries either the government provides most or all health benefits to everyone through a system of national health services, in which case this is financed primarily from taxes, or most of the population is covered by health insurance. In either case out-of-pocket expenditure for the citizen is minimum. Thus in poorer countries people actually have a higher burden of spending on health.

### **Recommendations and Policy Implications**

The analysis revealed major determinants and constraints of the public and household spending on health. The study put forward the following policy implications.

1. The role of voluntary prepayment in expenditure on health is immense. Therefore, government should allocate more funds to the health insurance scheme of the poor families.
2. Government should make some urgent measures to improve the quality and quantity of infrastructure in government



hospitals in Kerala especially in the context of COVID-19.

3. Government expenditure is very important in determining the household expenditure on health.
4. The Central government dexterously intervened during the COVID period and passed an ordinance to protect them. But, it cannot make them stress free. Proper support and counseling should be provided to them.
5. Health- card to the poor in the private hospitals will be a viable option to converge the services of government and private medical institutions in the state.

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## Chapter 14

# **Affirmative action for women: combating gender based violence and boosting economic growth**

### **Introduction**

**"Women's rights are human rights, and human rights are women's rights. Empowering women is the right thing to do, and the smart thing to do for our economies and our societies."** These powerful words by Hillary Clinton highlight the intrinsic connection between gender equality and societal progress.

Despite constituting nearly half of the global population, women remain significantly underrepresented in leadership roles across companies and organizations. Even in the post-modernization era, the lack of women in top positions highlights persistent systemic inequalities. Age-old practices, gender stereotypes, and religious traditions continue to reinforce barriers that prevent women from reaching their full potential.

To address these disparities and create an inclusive environment, governments and private institutions have introduced affirmative action policies and programs. These measures aim to empower women, combat gender-based violence (GBV), and foster economic growth by providing equal opportunities in education, employment, and political participation. Affirmative action not only seeks to dismantle structural inequalities but also contributes to building safer societies and thriving economies by ensuring that women play a pivotal role in decision-making processes.

This article explores the transformative impact of affirmative action for women in governance, education, and employment. It highlights how these initiatives can effectively **reduce gender-based violence and promote**

**sustainable economic growth, thereby paving the way for a more equitable and inclusive society.**

### **Affirmative Action**

The U.S. Civil Rights Commission (1977) defines affirmative action as "any measure, beyond a simple termination of discriminatory practices, adopted to correct past or present discrimination or to prevent discrimination recurring in the future." This system was first introduced in the United States during the Reconstruction Era (1863–1877). The modern affirmative action policy was introduced in the early 1960s in the U.S. to combat racial discrimination in hiring practices. Affirmative action for women was also initiated during this period as a response to the Civil Rights Movement, addressing the discrimination and oppression faced by minorities and women.

The term "affirmative action" was coined by Hobart Taylor Jr., a Black attorney, in 1961. It was first used in Executive Order No. 10925, signed by President John F. Kennedy, which required government contractors to ensure employees were treated fairly and without discrimination. Affirmative action is known by different terms worldwide: in Europe, it is referred to as "positive

discrimination"; in South Africa, as "preferential treatment"; and in India, as "reservation."

Affirmative action has had a transformative impact on women's empowerment. For example, in 1979, women made up just 4% of entry-level officers in the San Francisco Police Department (SFPD). However, under an affirmative action plan implemented after the Department of Justice (DOJ) sued the city for discrimination, the number of women in the 1985 **entry class rose to 175, or 14.5%**. This demonstrates how affirmative action can significantly increase women's representation in male-dominated fields.

Globally, similar patterns of improvement have been observed. In the United States, women's share of managerial roles increased from 18% in 1970 to over 40% by 2020, largely due to affirmative action policies in hiring and promotion. In Norway, a 2006 quota system mandating 40% female representation on corporate boards led to an increase from 15% in 2003 to 42% by 2009, setting an example for other nations.

In India, affirmative action policies were introduced in the 1950s during the drafting of the Constitution to address the historical injustices faced by Dalits under the caste system. Over time,

these policies were extended to include other marginalized groups. The first significant step toward affirmative action for women in India came with the 73rd and 74th Amendments to the Constitution, which mandated 33% reservation for women in Panchayati Raj Institutions. This resulted in an increase in women's representation in local governance from virtually negligible levels to over 46% in some states by 2020, significantly empowering women in decision-making roles at the grassroots level.

Affirmative action has proven to be a powerful tool for women's empowerment, as it fosters inclusivity in traditionally male-dominated sectors and reduces systemic inequalities.

## **Status of Women in India**

India remains a predominantly male-dominated society where women often face systemic oppression and inequality. The traditional sexual division of labor assigns domestic responsibilities to women, while men dominate public and economic spheres. Although efforts are being made to address these inequalities, progress remains slow and uneven.

According to the NFHS-5 Survey (2024), there are 106 males per 100 females, a disparity largely attributed to female infanticide and son preference, which have persisted despite the implementation of stringent government measures such as the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994. On a positive note, women's literacy rates have improved significantly, rising from 65.5% in 2001 to 77% in 2021, as per Census data. This increase reflects greater access to education for women, driven by government initiatives like **Beti Bachao, Beti Padhao** and **Kasturba Gandhi Balika Vidyalaya Yojana**.

In the realm of political participation, India continues to lag. The **Global Gender Gap Report (2024)** ranked India **129th out of 146 countries**, indicating a decline from previous years. Although women's participation in Panchayati Raj Institutions has been significant due to the 33% reservation mandate under the 73rd and 74th Constitutional Amendments, representation in state legislatures and Parliament remains disproportionately low, with women currently holding only **15% of seats in the Lok Sabha (as of 2024)**.



The workforce participation of women also paints a grim picture. **India's female labor force participation rate (LFPR) is among the lowest in the world, standing at 24% in 2023**, according to the World Bank. Cultural norms, lack of safety in workplaces, and unequal pay are among the primary barriers. However, affirmative action measures, such as gender-specific skill development programs and mandatory gender audits, are gradually addressing these issues.

The status of women in India reflects a complex interplay of progress and challenges.

### **Affirmative Action for Empowering Women in India**

Let's take a quick look at the affirmative action policies for women implemented by the Indian government. Affirmative action for women in India was first introduced through the **73rd and 74th Constitutional Amendments**, which reserved **33% of seats for women in local governance**. This significant step, backed by the Constitution, aimed to empower women in decision-making roles and foster gender parity at the grassroots level.

Recently, the Indian government passed an act named the **Women's Reservation Act of 2023**, reserving **one-third of all seats for women in the Lok Sabha, state legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, including those reserved for SCs and STs.** The reservation will be effective after the publication of the census and will last for **15 years**, with potential extension determined by parliamentary action.

Commissions and committees are often formed by central and state governments to ensure women's safety. The **Hema Committee**, constituted in Kerala to address issues related to women's safety in the film industry, presented findings that shocked the nation.

The government has also taken steps to improve women's economic participation and education. **Women Industrial Institutes** were established to provide training for industrial jobs, while the **National Education Policy (NEP) 2020** emphasizes gender inclusivity in education. Programs like the **Swarna Jayanti Gram Swarozgar Yojana** and **Swaran Jayanti Sekhari Rozgar Yojana** have encouraged rural women to launch their own ventures, fostering

economic independence. In the agricultural sector, initiatives such as the **Namo Drone Didi Scheme** aim to empower rural women by providing them with agricultural drones and training them as drone pilots.

Legal frameworks have also been introduced to ensure women's safety and empowerment. Laws such as:

- **The Dowry Prohibition Act, 1961**
- **The Protection of Women from Domestic Violence Act, 2005**
- **The Sexual Harassment of Women at Workplace Act, 2013**

These laws seek to address gender-based violence and create safer environments for women.

Additionally, the Supreme Court has played a crucial role in safeguarding women's rights by questioning authorities and taking **suo moto** cases. Notable examples include the court's intervention in the **Kolkata rape case (2024)** and its landmark ruling prohibiting the controversial **'two-finger test'** for examining sexual assault survivors.

The Supreme Court's measures to address systemic inequality **in India's defense sector** are also notable. Key interventions include its landmark verdicts granting women:

- **The right to permanent commission in the Army (2020)**
- **Equal command positions**

These rulings ensure gender parity in a traditionally male-dominated sector.

Despite these efforts, the impact of affirmative actions remains limited. Women still face societal resistance, poor implementation of policies, and cultural barriers, which restrict their safety and empowerment to a smaller scale. **Greater commitment and robust measures are needed to ensure meaningful progress.**

Impact of Affirmative Action on Gender-Based Violence

Gender-based violence (GBV) encompasses harmful acts directed at individuals based on their gender, deeply rooted in systemic inequalities and power imbalances. It includes sexual, physical, mental, and economic harm, occurring both

publicly and privately, alongside threats, coercion, and manipulation.

In India, the National Crime Records Bureau (NCRB) annual report indicates a 4% increase in crimes against women in 2022, highlighting persistent safety challenges. Notably, in 2023, the rate of police-reported intimate partner violence among women and girls aged 12 to 24 years was 752 per 100,000 population, nearly seven times higher than their male counterparts, underscoring the urgent need for systemic interventions.

The *Global Gender Gap Report 2024* by the World Economic Forum ranks India 129th out of 146 countries, with a gender parity score of 64.1%, reflecting a slight decline from the previous year. This regression is primarily due to declines in educational attainment and political empowerment, despite slight improvements in economic participation and opportunity.

Affirmative action policies play a critical role in addressing gender-based violence by fostering a safer environment and empowering women. Major actions taken by the government to address these issues include:

1. **Economic Empowerment Schemes:** Initiatives like *Stand-Up India* and *Mahila-e-Haat* aim to promote female entrepreneurship, providing financial independence that helps women escape abusive situations.
2. **Political Representation:** Ensuring 33% reservation for women in grassroots-level democracy, as mandated by the 73rd and 74th Constitutional Amendments, enhances women's participation in decision-making and governance.
3. **Legal Reforms:** Laws such as the *Protection of Women from Domestic Violence Act (2005)* and the *Sexual Harassment of Women at Workplace Act (2013)* provide legal recourse and protection for victims, ensuring justice and accountability.

Delays in justice delivery, loopholes in existing laws, and ineffective implementation contribute to the persistence of gender-based violence (GBV). Stronger enforcement of laws and robust policies are essential to effectively combat GBV, ensure accountability, and protect victims.

## **Role of Affirmative Action for Women in Economic Growth**

Pandit Jawaharlal Nehru once stated, *"To awaken the people, it is women who must be awakened. Once she is on the move, the village moves and the nation moves."* This profound statement highlights the pivotal role women play in driving economic and societal progress.

Empowering women through affirmative action not only uplifts individuals but also has a transformative impact on the nation's economy. A comparison between developed and developing nations illustrates this vividly. In the United States, women contribute approximately 43% to the national economy, showcasing how gender inclusivity in the workforce propels growth. In contrast, in India, women contribute only 18%, reflecting the untapped potential of half the population.

A major factor contributing to this disparity is the burden of unpaid work, such as caregiving and domestic chores, predominantly borne by women. According to an ILO report, Indian women perform nearly 10 times more unpaid work than men, significantly reducing their participation in the formal workforce. Addressing this imbalance

through policies like childcare support, flexible work arrangements, and recognition of unpaid labor can substantially enhance women's economic contributions.

The role of women in economic development has also been highlighted by Nobel laureates like Amartya Sen, who emphasized the importance of women's empowerment in reducing poverty and fostering development. Esther Duflo, another Nobel laureate, has shown through her research that empowering women, especially in financial and political spheres, leads to better outcomes in education, health, and community well-being.

Such empowerment also addresses structural barriers like wage disparities, lack of access to resources, and gender stereotypes, paving the way for a more equitable and productive society. Nehru's vision underscores the fact that when women move forward, they bring families, communities, and the nation along with them.

### **Global Examples of Affirmative Action for Women**

There is a strong connection between women's empowerment and a country's stage of development. Most developed nations have



achieved significant progress in bridging the gender gap, with many surpassing 50% closure of the gap, largely due to the implementation of affirmative action policies. These policies, which ensure women's participation in education, employment, and governance, have been instrumental in fostering gender equality and driving socio-economic growth.

Let's delve into a closer analysis of affirmative action's impact on women's empowerment across the globe to understand how these policies drive progress and foster societal advancement.

## **Iceland**

Iceland, often termed a 'feminist paradise,' is renowned for its innovative policies and programs aimed at empowering women. The country made history by electing the world's first female president, Vigdís Finnbogadóttir, in 1980. Iceland's measures to bridge the gender gap are not only unique but also serve as a model for promoting gender equality globally.

Recognizing that gender stereotypes are embedded in childhood, Iceland incorporates gender equality education from the earliest stages. The education system emphasizes a 'nurturing, not

teaching' approach. For instance, in nursery schools in the capital city, children are encouraged to engage in activities traditionally associated with the opposite gender. Icelandic girls are raised to be strong and brave, challenging traditional domestic roles. Even in male-dominated fields like film directing, women have taken the lead, showcasing the country's commitment to breaking gender norms.

To address the issue of gendered labor division, Iceland introduced the Parental Leave Act, allowing both parents to divide their parental leave equitably. This ensures that caregiving responsibilities are shared, reducing the burden traditionally placed on mothers. The Icelandic Act No. 10/2008 enforces equal pay for equal work, a key driver of gender parity.

These measures have had a profound impact on women's empowerment and national growth. Iceland boasts one of the highest rates of female labor force participation in Europe, significantly contributing to its economy. Women's political participation has also surged, with a strong representation in parliament and the current presidency held by a woman. Iceland has consistently topped the World Economic Forum's Global Gender Gap Index due to women's political

participation, access to education, and equitable healthcare.

In 2023, Iceland became the only country to achieve over 90% gender equality, with an ambitious goal of reaching 100% by 2030. This courageous vision underscores the transformative potential of affirmative action and its role in shaping a more equitable and prosperous society.

## **African Countries**

In the African continent, countries like Ethiopia, Rwanda, and Kenya have implemented affirmative action policies to enhance women's representation and participation in governance. Here's an overview of their efforts:

### **Ethiopia**

Recognizing the ineffectiveness of development policies that overlooked women's contributions, the Ethiopian government introduced affirmative action measures to bridge gender gaps. These initiatives aimed to improve women's access to education, employment, and political participation. Despite these efforts, challenges persist in fully realizing gender equality in public institutions. A study focusing on the Dabat

district highlighted that, while policies exist, their implementation faces obstacles, including limited awareness and cultural resistance.

## **Rwanda**

Rwanda is globally recognized for its gender-sensitive legal framework. As of July 2024, women hold 63.8% of the seats in the Chamber of Deputies, maintaining Rwanda's position as a global leader in women's parliamentary representation. This achievement is attributed to constitutional quotas and proactive policies by political parties. However, challenges remain in ensuring that this representation translates into broader societal gender equality, especially in rural areas where traditional gender norms persist.

## **Kenya**

Kenya's Constitution includes the "two-thirds gender rule," stipulating that no more than two-thirds of elected or appointed positions should be held by one gender. Despite this provision, implementation has been fraught with challenges. Political resistance and lack of legislative action have hindered progress. For instance, members of parliament have consistently failed to pass the necessary legislation to enforce this rule, reflecting

a lack of political will. Additionally, women face obstacles such as inadequate campaign funding, insecurity, and intimidation, further impeding their political participation.

## **Himachal Pradesh, India**

As we all know about Kerala's legacy in empowering women, it is important to highlight another state, Himachal Pradesh, which stands alongside Kerala in promoting gender equality. With over 50% reservation for women in local governments, Himachal Pradesh has empowered women to actively participate in decision-making processes. Mahila Shakti Kendras have been established to provide support services to women in rural areas, raising awareness and offering assistance in cases of Gender-Based Violence (GBV).

According to NCRB reports, Himachal Pradesh has one of the lowest rates of crimes against women compared to other states, reflecting the effectiveness of its affirmative action measures. Additionally, the state's female labor force participation rate (FLFPR) is 43.5%, significantly higher than the national average of 24%, as per World Bank data, 2023.

These figures underscore the positive impact of affirmative actions in empowering women and fostering inclusive growth in Himachal Pradesh.

### Challenges of Affirmative Action for Women

Even as women make strides toward breaking the so-called invisible glass ceiling, numerous challenges continue to hinder the effectiveness of affirmative action. These challenges stem from entrenched social norms, systemic biases, and institutional failures. Below are the key challenges that persist:

1. **Domestic Violence:** Despite affirmative action, domestic violence remains a significant issue. Many women are reluctant to report crimes within their households due to concerns about family reputation or societal judgment. For instance, in Iceland, a country lauded for gender equality, 40% of women have faced sexual or physical assault, yet many remain silent, often due to inadequate legal recourse. Delayed justice exacerbates the problem, with survivors frequently left grappling with post-traumatic stress disorder (PTSD).
2. **Objectification of Women:** Studies indicate that 45.5% of young adult female characters in media are portrayed in sexually

objectifying ways, reinforcing harmful stereotypes. Research shows that women are four times more likely than men to be depicted in revealing clothing in films, perpetuating their objectification.

3. **Cultural Resistance:** Cultural norms often view women as subordinate to men, leading to resistance against affirmative action. For instance, 42% of women report experiencing gender-related discrimination in the workplace, reflecting deeply ingrained biases. Some communities perceive affirmative action as undermining traditional values, making it difficult for authorities to implement policies effectively.
4. **Oppression Among the Masses:** Deep-rooted patriarchal norms lead to resistance from both men and women toward affirmative action. For instance, initiatives like 33% reservation for women in Panchayati Raj Institutions have faced opposition in many rural areas due to entrenched gender biases.
5. **Failure to Benefit the Target Group:** In India, the caste system often skews the benefits of affirmative action. While Dalit women are the most vulnerable to gender-related crimes, reports indicate that the

benefits of affirmative action disproportionately favor upper-caste women. According to National Crime Records Bureau (NCRB) data, Dalit women account for a significant percentage of rape and assault victims but remain underrepresented in access to justice and welfare schemes.

6. **Lack of Proper Monitoring and Safety Measures:** The absence of robust enforcement mechanisms weakens the impact of affirmative action policies. Studies reveal that inadequate enforcement and monitoring have limited the effectiveness of these initiatives in workplace environments. Moreover, justice delays exacerbate the situation. For example, in the Anna University sexual harassment case, institutional inaction resulted in prolonged delays, leaving victims without timely recourse.
7. **Urban-Rural Divide:** Significant disparities exist between urban and rural regions. Rural workers earn 24% less per hour than their urban counterparts, with only half of this gap attributable to job differences. In education, urban students complete nearly twice as many years of



schooling as rural students, further widening the gender gap.

8. **Reluctance Among Authorities:** In rural areas, authorities often consist of narrow-minded, upper-class officials who delay cases or block benefits to maintain societal hierarchies. For example, instances in Madhya Pradesh highlight how rural officials delay justice or fail to report crimes, undermining affirmative action efforts.

These challenges reveal the limitations of affirmative action in addressing systemic barriers to women's empowerment. Addressing these issues requires stronger enforcement mechanisms, public awareness campaigns, and a commitment to dismantling deeply rooted patriarchal norms.

## **Recommendations**

Affirmative action implementation has its own successes and failures. To further enhance the effectiveness of these policies, it is important to consider several recommendations.

First, increasing women's reservation beyond local governance is necessary. Studies by the National Bureau of Economic Research indicate that political reservation significantly boosts active female participation, thereby reducing gender bias.

Second, educational opportunities for women, especially in rural areas, should be expanded, focusing particularly on developing essential skills. Research from the World Bank supports this approach.

Third, legal frameworks should be strengthened to ensure women's safety and to increase female labor force participation. *The Financial Times* highlights that improving women's safety is crucial for economic growth, as it encourages higher female labor force participation, which could significantly boost India's GDP.

Fourth, increasing women's participation in STEM fields—science, technology, engineering, and mathematics—is important to address the poor employment and promotional opportunities faced by women.

Finally, establishing robust mechanisms to assess the impact of affirmative policies is essential. This assessment will help measure the effectiveness of the policies and identify areas for improvement.

Adopting these recommendations will strengthen the vision behind affirmative action, thereby empowering women and the nation.

## Conclusion

Affirmative action plays a crucial role in empowering women and fostering economic growth. Examples such as Rwanda's 63.8% female parliamentary representation (2024) and Himachal Pradesh's 43.5% female labor force participation highlight the transformative potential of such initiatives.

Despite challenges like societal resistance and poor implementation, strengthening legal frameworks, improving monitoring mechanisms, and fostering cultural change can address these barriers. Women's empowerment is vital not only in combating gender-based violence but also in driving inclusive and sustainable economic growth.

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## **Chapter 15**

# **Constitutional Values and Mediaethics : A path Towards Social Justice**

### **Introduction**

Media, often celebrated as the "fourth estate," holds a pivotal role in the functioning of democracy. Its dual capacity to inform and to educate the public while serving as a watchdog ensures that those in power remain accountable. By shaping public opinion and influencing governance, the media acts as a vital channel between the state and its citizens, upholding principles of transparency, accountability, and participatory governance. This role is deeply interwoven with the

preservation and promotion of constitutional values such as equality, freedom, and justice. As a disseminator of information, the media empowers individuals to engage in civic discourse, make informed decisions, and participate in public debate. By amplifying diverse voices and shedding light on injustices, it fosters dialogue on critical social, political, and economic issues, thereby driving social change and advancing a more equitable society.

However, the media's transformative potential is frequently undermined by structural biases, commercialization, and ethical lapses. Ownership patterns and ideological leanings often influence coverage, limiting the representation of marginalized groups and diminishing the media's capacity to promote inclusivity. The prioritization of sensationalism over substantive reporting, driven by profit motives, has eroded credibility, while the spread of misinformation and the blurring of lines between editorial content and advertisements have further undermined public trust. These challenges raise critical questions about the media's alignment with constitutional values and its role in promoting social justice. Addressing these concerns requires a concerted effort to reform media practices, strengthen regulatory frameworks, and foster a culture of ethical journalism. By recommitting to its

role as a purveyor of truth and a defender of constitutional principles, the media can continue to serve as a cornerstone of democracy and a catalyst for positive social transformation.

## **Media And Constitutional Values**

Constitutional values such as freedom of speech, equality, and justice serve as the foundation of democratic societies, guiding institutions and shaping governance. The media, as a pivotal institution in these societies, operates within the framework of these values, significantly influencing public discourse and policymaking. By amplifying voices, scrutinizing power, and fostering accountability, the media aligns itself with these constitutional ideals. However, its role is not without challenges, as structural, ethical, and systemic issues often hinder its potential to fully realize these values.

### **Freedom of Speech: Media as a Pillar of Democratic Expression**

The right to freedom of speech, a cornerstone of constitutional democracies, underscores the media's critical role in safeguarding democratic ideals. This right is enshrined in key constitutional and legal

frameworks worldwide, such as the First Amendment to the United States Constitution, which guarantees freedom of the press and speech [1]. Similarly, Article 19(1)(a) of the Indian Constitution affirms the right to freedom of speech and expression [2] while Article 10 of the European Convention on Human Rights ensures the right to freedom of expression across member states [3]. These provisions recognize the indispensable role of a free press in fostering transparency, enabling informed citizenry, and protecting democratic principles.

Courts globally have reinforced the media's role in upholding freedom of speech. In the landmark case *New York Times Co. v. Sullivan* (1964) [4], the U.S. Supreme Court emphasized that the press plays a critical role in ensuring public accountability and protecting free speech in matters of public interest. The Court established the "actual malice" standard, providing robust protections to the press against defamation claims, particularly in contexts involving public officials. Similarly, in *Sakal Papers Ltd. v. Union of India* (1962) [5], the Indian Supreme Court struck down governmental restrictions on newspaper pricing, affirming that freedom of the press is integral to the broader right to free expression [6]. These rulings underscore

that an independent and free press is vital to the health of a democracy.

### **Equality: Media's Role in Representing Diverse Voices**

Equality, another foundational value of constitutional democracies, demands that all individuals be treated fairly and impartially under the law. Media has a significant responsibility in upholding this principle by ensuring diverse representation and challenging systemic discrimination. By amplifying the voices of marginalized communities, media can serve as a powerful tool for social transformation and advocacy.

However, the media often falls short of this ideal. Structural biases and underrepresentation of certain groups in mainstream media reflect and perpetuate broader societal inequities [7]. For example, studies have shown that women, minorities, and marginalized communities often receive limited or stereotypical representation in media coverage and leadership roles within the industry. Such imbalances not only undermine the principle of equality but also perpetuate existing power dynamics, marginalizing vulnerable groups

and limiting their access to platforms that shape public discourse.

Ethical media practices that prioritize inclusivity and diversity are essential to countering these disparities. Representation of diverse voices ensures that the media reflects the pluralistic nature of society and promotes equality as a lived constitutional value rather than a mere legal ideal.

### **Justice: Media as a Catalyst for Accountability and Reform**

Justice, encompassing both procedural and substantive dimensions, is a constitutional imperative that transcends legal frameworks to address broader social and economic contexts. The media plays a critical role in advancing justice through investigative journalism and advocacy. By exposing corruption, highlighting societal injustices, and catalysing reform, the media acts as a catalyst for accountability and change.

One of the most notable examples of the media's role in upholding democratic accountability is the Watergate Scandal, where investigative reporting by journalists Bob Woodward and Carl Bernstein led to the exposure of widespread corruption at the highest levels of the U.S.

government, ultimately resulting in President Richard Nixon's resignation [8]. This case exemplifies the media's capacity to uphold the principles of transparency and justice, reinforcing its role as a guardian of democracy.

However, the pursuit of justice through media is fraught with challenges. Ethical lapses, sensationalism, and instances of "trial by media" can jeopardize the integrity of judicial processes and compromise the very justice the media seeks to promote [9]. Trial by media, where public opinion is influenced by pre-trial coverage, often undermines the presumption of innocence, a fundamental tenet of justice. This phenomenon underscores the need for ethical journalism that respects the boundaries of legal processes and prioritizes the pursuit of truth and fairness.

Thus media, as a vital institution in constitutional democracies, operates at the intersection of freedom of speech, equality, and justice. While its role in upholding these values is indispensable, it must navigate the challenges of structural biases, commercialization, and ethical dilemmas. Strengthening regulatory frameworks, fostering ethical journalism, and promoting inclusivity are critical to ensuring that media practices align with constitutional principles. By

embracing its role as a champion of democratic values, the media can continue to serve as a powerful force for social progress and justice.

## **The Role Of Media In Social Justice**

The media's role in fostering social justice is undeniably multifaceted, offering both opportunities and challenges. By amplifying the voices of marginalized groups, the media has been instrumental in raising awareness about systemic injustices and advocating for equity. Movements like #MeToo and Black Lives Matter exemplify how media platforms, particularly digital and social media, have mobilized public opinion, challenged entrenched power structures, and driven systemic change. For instance, the #MeToo movement, which began as a grassroots campaign, gained global traction through social media, leading to significant institutional reforms and increased accountability for perpetrators of sexual harassment and abuse [10]. Similarly, the Black Lives Matter movement utilized media to highlight police brutality and racial injustice, culminating in widespread protests and policy debates in the United States and beyond [11]. These movements underscore the media's potential to serve as a bridge between grassroots activism and institutional reform, transforming societal norms



and legal frameworks to better align with principles of social justice.

However, the media's impact is not uniformly positive, as structural biases and commercial imperatives often constrain its ability to advance social justice effectively. Ownership patterns concentrated in the hands of a few corporations skew narratives, prioritizing elite interests over the needs and concerns of marginalized communities. This issue is particularly evident in cases where corporate media silenced dissenting voices or failed to represent diverse perspectives. The landmark case *Associated Press v. United States* (1945) [12] emphasized the dangers of media monopolies, where the U.S. Supreme Court ruled against practices that stifled competition, underscoring the need for a pluralistic media landscape to uphold democratic values.

The commercialization of media further exacerbates these issues. Profit motives often lead to the prioritization of sensationalism over substantive reporting, eroding the media's credibility and diminishing its role as a vehicle for social justice. The phenomenon of "infotainment," where entertainment value supersedes

informational content, dilutes the media's ability to act as a meaningful advocate for equity and justice. For example, in *Ramesh v. Union of India* (1988) [13], the Indian Supreme Court acknowledged the potential harm of sensationalized media content, emphasizing the importance of responsible journalism that balances freedom of speech with public interest.

The proliferation of digital media adds another layer of complexity to this landscape. While social media democratizes information dissemination and empowers grassroots movements, it also amplifies misinformation, hate speech, and polarization. The Pizzagate Conspiracy, a baseless theory propagated on digital platforms, led to real-world violence when a man fired a gun in a Washington, D.C., pizzeria under the belief it was a hub for child trafficking [14]. This incident underscores the dangers of unregulated digital platforms and highlights the urgent need for robust regulatory frameworks to mitigate the adverse impacts of media practices. Courts have increasingly recognized the need to address digital misinformation. In *Elonis v. United States* (2015) [15], the U.S. Supreme Court considered the legal boundaries of online speech, signalling the importance of distinguishing between free expression and harmful content.

To mitigate these challenges and maximize the media's potential to foster social justice, a re-evaluation of media ethics is imperative. Strengthening accountability mechanisms, ensuring diversity in media ownership, and developing legal frameworks to counteract the proliferation of misinformation are essential steps. The case of *Shreya Singhal v. Union of India* (2015) in India, where the Supreme Court struck down Section 66A of the Information Technology Act for violating free speech, also highlighted the delicate balance between regulating online content and preserving constitutional freedoms [16].

Ultimately, the media must align its practices with principles of accuracy, fairness, and inclusivity. By addressing structural biases, resisting commercialization's excesses, and embracing its role as a defender of democratic values, the media can continue to act as a powerful force for social justice in an increasingly complex and interconnected world.

## **Media Ethics And The Need For Regulation**

### **Ethics in Media: Balancing Accountability and Freedom**

Ethics in media is essential for maintaining accountability, accuracy, and fairness in journalism. Without adherence to ethical norms, media outlets risk undermining the democratic values of transparency, equality, and justice they are meant to uphold. Ethical media practices not only ensure credible reporting but also build public trust in the press as a cornerstone of democracy. Regulatory frameworks play a vital role in maintaining this balance, offering oversight to prevent abuses while safeguarding editorial independence to preserve freedom of expression.

### **Regulatory Frameworks Across Jurisdictions**

Different countries have adopted various regulatory approaches to uphold media ethics and accountability. In the UK, the Office of Communications (Ofcom) serves as an independent regulatory body overseeing broadcasting standards. Established under the Communications Act 2003, Ofcom ensures compliance with ethical norms, monitors impartiality, and protects audiences from

harmful or offensive content [17]. It also enforces rules related to misinformation and election coverage, maintaining a balance between press freedom and public interest.

In India, regulatory bodies like the Press Council of India (PCI) and the Broadcasting Content Complaints Council (BCCC) address ethical lapses in media. The PCI, established under the Press Council Act of 1978, acts as a quasi-judicial body to uphold journalistic ethics in print media, issuing guidelines on responsible reporting [18]. For television content, the BCCC provides a grievance redressal mechanism for the public. However, these regulatory bodies face challenges, including limited enforcement powers and political interference. The MediaOne Ban Case (2022) brought these challenges into sharp focus when the Indian government cited national security to revoke the broadcasting license of MediaOne TV, a decision contested on grounds of press freedom. The Supreme Court, in this case, emphasized the need for transparency in regulatory decisions while underscoring the importance of safeguarding journalistic independence [19].

### **Ethical Challenges in the Age of Commercialization**

Commercialization has introduced significant ethical dilemmas in media practices, as profit-driven revenue models often prioritize sensationalism over substantive reporting. Advertising and sponsored content frequently blur the lines between editorial independence and corporate interests. The Paid News Scandal in India, where media houses were accused of accepting payments for favourable coverage during elections, exemplifies the dangers of unchecked commercialization [20]. This incident prompted the Election Commission of India to issue guidelines for fair election coverage, reinforcing the importance of separating journalistic integrity from commercial influences.

Globally, other jurisdictions have tackled commercialization through innovative regulatory and funding approaches. In Norway, the Media Authority oversees compliance with media laws and provides subsidies to promote diversity and non-commercial content in journalism [21]. Public broadcasters like the BBC in the UK and PBS in the United States are funded by public resources, enabling them to prioritize public-interest journalism over profit motives. These models highlight the importance of alternative funding mechanisms in preserving ethical journalism.

## **Strengthening Media Regulation**

Addressing ethical challenges requires strengthening regulatory frameworks to ensure accountability while protecting press freedom. In India, amendments to the Press Council Act could enhance the PCI's enforcement powers, enabling it to impose penalties for ethical violations. Expanding the scope of the BCCC to include digital media would provide a more comprehensive oversight mechanism. Globally, frameworks like the European Union's Digital Services Act (DSA), which mandates transparency in online platform algorithms and content moderation, offer insights into regulating digital media effectively [22].

The convergence of ethical lapses, commercialization, and the evolving digital landscape underscores the need for a renewed commitment to media ethics. Encouraging transparency, promoting alternative funding models, and ensuring robust oversight mechanisms can enable the media to fulfil its democratic mandate as a purveyor of truth and a defender of constitutional values.

## **Case Studies: Media's Dual Role In Social Justice**

Case studies from various jurisdictions illustrate the media's complex dual role in both promoting and undermining social justice. On the positive side, investigative journalism has often emerged as a powerful tool for fostering accountability and transparency. One notable example is *The Hindu's* publication of the Rafale Deal Papers in India, which exposed alleged irregularities in the procurement of Rafale fighter jets by the Indian government [23]. The revelations, based on internal government documents, highlighted the critical role of the press in bringing issues of national importance into public discourse and ensuring governmental accountability despite legal and political pressure to suppress the information [24]. Similarly, *The Guardian* played a pivotal role in uncovering the Panama Papers, a massive leak of financial documents that exposed how global elites utilized offshore tax havens to evade taxes and hide wealth [25]. This exposé underscored the media's capacity to challenge entrenched systems of inequality and corruption on a global scale, sparking debates on financial transparency and policy reforms worldwide [26].



Conversely, several negative examples underscore the consequences of ethical lapses in media practices. The Aarushi Talwar Case in India serves as a stark reminder of the dangers of "trial by media." Sensationalized and speculative reporting in this high-profile murder case influenced public opinion, prejudiced judicial proceedings, and irreparably damaged reputations [27]. The coverage raised concerns about the media's overreach and its failure to respect the principle of the presumption of innocence, a cornerstone of justice [28]. Another troubling example is the spread of fake news during the COVID-19 pandemic. Irresponsible reporting and the dissemination of misinformation—ranging from false cures to conspiracy theories—amplified societal divisions, created public panic, and undermined trust in scientific and governmental institutions [29]. This phenomenon highlighted the media's potential to cause harm when it prioritizes sensationalism or speed over accuracy and responsibility.

These case studies collectively reinforce the need for ethical journalism that adheres to principles of accuracy, fairness, and public interest. They emphasize the media's potential to act as both a catalyst for social justice and a detractor from it, depending on its commitment to ethical standards and constitutional values. Strengthening regulatory

frameworks and fostering a culture of accountability within the media industry are crucial steps toward ensuring that the media fulfils its role as a guardian of democracy and a champion of justice.

### **Recommendations For Ethical Media Practices**

To align media practices with constitutional values and social justice, a multifaceted approach is necessary. Strengthening regulatory frameworks is a critical first step. Independent oversight bodies must be empowered to enforce ethical standards while safeguarding editorial freedom. These bodies should operate transparently and inclusively, reflecting diverse perspectives to ensure fairness.

Enhancing media literacy among citizens is equally vital. An informed public capable of critically evaluating media content is better equipped to navigate biases and misinformation. Educational initiatives, community programs, and digital tools can play a pivotal role in fostering media literacy.

Promoting inclusivity within media organizations is another essential measure. Diversifying ownership, leadership, and content

production can address systemic biases and ensure that marginalized voices are heard. Encouraging representation across gender, ethnicity, and socioeconomic backgrounds will enhance the media's capacity to promote social justice.

## **Conclusion**

The relationship between constitutional values and media ethics is central to the pursuit of social justice. While media has immense potential to uphold democratic principles, its effectiveness is often compromised by biases, commercialization, and ethical lapses. By fostering accountability, enhancing media literacy, and promoting inclusivity, media can fulfil its role as a catalyst for social change. A commitment to ethical practices and constitutional values will ensure that media remains a force for good, shaping a just and equitable society.

Despite its transformative potential, media often struggles to uphold constitutional values due to biases in representation and the pressures of commercialization. Ownership concentration limits diversity of perspectives, perpetuating systemic inequalities. The underrepresentation of marginalized communities in media narratives

reinforces societal biases, as noted in studies analysing media coverage patterns.

Commercialization prioritizes sensationalism over substantive reporting, with "infotainment" undermining media's ethical responsibilities. Incidents like India's Paid News Scandal illustrate how profit-driven models erode journalistic integrity and public trust. Despite its potential to uphold democratic values, media's effectiveness is often compromised by biases, commercialization, and ethical lapses. Fostering accountability, inclusivity, and media literacy, along with a commitment to ethical practices and constitutional values, is essential for media to act as a catalyst for social change and uphold a just and equitable society.

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## **Chapter 16**

# **Sons of the Soil Legalised? Analysing Domicile Reservation in India**

### **Reservation as a Tool for Upliftment**

The Constitution of India aims to provide equality to all of its citizens. Reservations and quotas were one among the ways in which the State has tried to bring Equity. Being a complex society, India had struggled with centuries-old caste systems, which oppressed and divided the society into sub-classifications. Reservations were introduced to restore the rights of groups that were

historically denied fundamental rights based on their caste and for the backward classes. Reservations in India are horizontal and vertical where vertical refers to caste-based reservations and horizontal implies women's reservations and differently-abled reservations [1].

### **Rights for the Locale: Domicile-Based Reservation**

Reservation is not something new to India. The Constitution of India provides Affirmative Action as a measure to provide sections of the population with preferential treatment in education, employment, and other areas. The system has its roots in British India, particularly in the provisions of various Government of India Acts (1919, 1935) [2]. So far, it is the largest approach the state has adopted in tackling social inequality. India historically was gripped with Systemic inequality alongside rampant oppression and discrimination. Reservation measures have greatly benefited the disadvantaged sections.

The Constitution of India states in Article 15(4): “Nothing in [article 15] or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of

citizens or for the Scheduled Castes and the Scheduled Tribes” [3]. Article 46 of the Constitution states 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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation” [4].

Debates on the aspect of domicile reservation must start from the very base in defining what exactly the words domicile, local resident mean. Articles of the Indian constitution interestingly give distinction to the two words: place of residence and place of birth. Article 15 prohibits discrimination on the basis of place of birth, whereas Article 16 prevents discrimination based upon both place of birth and residence [5]. Therefore, many state governments justify their attempts on domicile reservation through interpreting Article 16(2) and Article 16(4).

Indian states are organized on the primary basis of languages. The States Reorganisation Commission found it favourable and just to divide India’s fragmented landscape after independence into states. Karnataka was formed for Kannada speakers. Karnataka’s own Domicile bill is not without predecessors. States have felt the need for

protecting the local job market for its own people. Many states such as Haryana, Jharkhand, Maharashtra, Madhya Pradesh, etc., have attempted to provide Job reservation in many kinds for their own local population. Even the draft IT Policy of Kerala 2023 imparts benefits to companies if half of the unit's working population are Local [6]. State Governments echo the sentiments and aspirations of their own people. But to how much extent those sentiments must be allowed to go unchecked is a major question to consider. However, the unique aspect being the requirement of Kannada puts the Karnataka bill as distinctive.

After Independence, many public sector units and Banks found their home in Karnataka, such as BHEL, HAL, etc. The IT boom and the neo-liberal atmosphere created an investor-friendly backdrop in the area now known as the silicon valley of India. In 1950, there were 746,000 inhabitants in Bengaluru. As of 2024, it has grown up to 14 million. It is a reflection of the growth and development achieved by the region benefiting from the service sector. Obviously, people around the country found Bangalore their home. Migrant population was one of the key factors driving the Region's economic development. However, many of the local population felt they were being left out of

the local job market. It was unfortunately connected to the language movement—a language movement whose evolution was in parallel with the rising of the insider-outsider sentiment [7]. So unsurprisingly enough, both of these culminated in the regionalism debate as we have now.

Multiple governments of Karnataka have attempted to enforce preferences or frameworks for the benefit of the local population. The Ramakrishna Hegde government in 1983 employed a commission to enquire about the status of employment of the local population in public sector undertakings and institutions [8]. Then afterwards, there were repeated recommendations done by the government to the private sector for such arrangements in ensuring the local population is employed. It was done by the so-called national mainstream political parties. The Siddaramaiah Government of Karnataka justified the very recent actions saying it was in the interest of Kannadigas. However, after getting strong backlash from different corners, the government hasn't proceeded on the bill. Opposition came from the Industrial and Business community. By requiring reservation in the private sector, the government is re-igniting the age-old reservation in the private sector debate. Karnataka's bill effectively prioritizes anyone born in Karnataka. This is extremely interesting because

Bangalore is one of the largest IT hubs in Asia. It hosts a plethora of information technology companies and workers from around the nation. The local workforce however felt left out from the whole IT boom. They feel they are not part of the development happening around them since it is not benefiting them. Furthermore, this issue was criticised for being used as a political strategy to get votes. Even though the government had now backed upon introducing a legislation like this, the concern remains unaddressed in the people of Karnataka. Effective response to such concerns are mandatory in a democracy like India.

### **Domicile Reservation in India: History of Judicial Response**

Indian constituent assembly debates saw the discussion on domicile reservation among other things. It was ultimately put down in favour and in the interest of the integration of the nation. During the debates in the Constituent Assembly, Ananthasayanam Ayyangar raised concerns about the idea of local reservation in India. He argued that the residence criteria would undermine the idea of single citizenship of national integration. This however didn't stop the successive state Governments in Independent India in allocating

seats in educational institutions for people of a particular area or region.

One of the first incidents was in erstwhile Madhya Pradesh where there was a fee incentive for students whose domicile was in Madhya Pradesh. The arrangement was challenged by a petitioner from Delhi who was a student of the college. The petition challenged the arrangement based on the provisions of Article 14 and 15(1) of the Constitution. This was the famous *D.P. Joshi vs. State of Madhya Bharat* 1955. However, the court didn't exactly strike down the provisions but upheld the legitimate objective and rational decision of the state in that matter. The Court ruled that a state action that benefits one's own people is not unconstitutional. The Court differentiated domicile from place of birth. It judged that according to the Constitution, any provision benefiting the local population based on the criterion of domicile is not against fundamental rights [9].

The decision of many states to implement local-based reservation for students in medical colleges resulted in its challenging in *Dr. Pradeep Jain vs. Union of India*. Its detailed judgement became a glorious milestone. It was argued that such local-based reservations challenged Articles 14, 15, and 16(2) of the Indian constitution. The

Court opined that utmost care must be done in legislating such provisions in a way that it is not in conflict with the values of the constitution. The Court upheld the many provisions set apart for local students in different institutions. However, it warns the parties not to fall prey into promoting excessive provisions. This might violate the fundamental right of equality (Article 14). Finally, the court suggested the doctrine of balanced reservation where the reservation for local candidates exists while a significant portion of seats is open to candidates from other states [10].

On November 17, 2023, the High court of Punjab and Haryana squashed an attempt by the Haryana government at local-based reservation. It was named the Haryana State Employment of Local Candidates Act, 2020, which became law in 2022. It mandated some 75% of job reservation for locals in the private sector. Challenged by industrialists that this law would undermine their fundamental right to conduct business and recruit candidates from outside the state. The law was justified by the Haryana government on the basis that it was a protective measure to address unemployment and to prioritize their local population. However, the Judiciary upheld the rights of private companies to accept candidates of their own choice and observed that the state cannot put restrictions on the basis of



the fact that some people don't belong to a certain state. The Court gave importance to the fact that domicile reservations, if carefully made with respect to the provisions of the constitution, can withstand constitutional scrutiny. However, extreme measures that infringe upon fundamental rights will become unconstitutional [11]. These events show just how crucial the issue of such reservations are and demonstrate how the judiciary have effectively become the guardians of the constitution in the light of populism.

### **Reflections of Imbalances**

An objective study of the underlying reason behind such legislations puts into the limelight certain issues. Fact-based analysis will lead to a balanced conclusion. India houses a complex social and developmental pattern. It is thus natural that inequalities occur in its sphere. However, the importance lies in how to effectively address it. The insider-outsider concern is not anything new. It is based upon deep identity politics and scuffled with the issue of loss of autonomy when one area is experiencing a boom in employment. As early as during the National Movement, in Travancore, the Malayali Memorial movement wanted the Travancore government to stop employing Tamil Brahmins in top official positions and instead give

those places to locally qualified candidates. It was crafted by G.P. Pillai, Dr. Palpu who were among the most intellectual minds of the region at the time. The slogan of the movement was ‘Travancore for Travancore citizens’ [12]. Later, such sentiments historically became literal reasons for the separation of states such as Telangana from Andhra Pradesh and Jharkhand from Bihar.

In the case of Andhra Pradesh and Telangana, historically speaking, it was the issue of employment among others that alienated the people of the state into communities of Telangana and Andhra. New job opportunities after independence created an influx of Andhra people into the job market of Telangana. Since many Andhra people looking for jobs in Hyderabad had command over English, they were selected. Andhra was directly under the control of the British, so English education was there. People of Hyderabad, which only had Urdu and Telugu as its official languages, couldn’t catch up. It was argued that gradually Hyderabad became dominated by people from Andhra. Private and public employment became dominated by so-called outsiders. Note even the fact that they were from literally the same state couldn’t stop the regionalist sentiment. It was a classic case of insider vs. outsider debate according to Telangana activists. It turned out to be

so fierce that during the closer years of attaining statehood for Telangana, people attacked Andhra-run businesses. All of which was started with the feeling of local people being neglected [13].

Jharkhand offers another different but unique story. It was populated by historically tribal and oppressed populations in large numbers. Independence brought them newer struggles. The geography of Jharkhand was such that minerals and metals were abundant. It brought mines, factories, heavy industries, and employment. Unfortunately, they didn't taste the benefits of such a mining transformation. Jharkhand people saw many of the jobs and social status being taken away from them by the so-called outsiders or migrants. The influence and interest of 'dikhus' (the name given by tribal leaders for outsiders) was pretty high. This ultimately created the tribal and non-tribal dichotomy. The Constitution of India granted special provisions so that the scheduled tribes are protected and rights so they are not discriminated against. This was under the basis of the 5th and 6th schedule of the Constitution. The concerns of the tribal community are considered by many to be genuine. But even if the issue is grave, it should not amount to the demonization of outsiders. Anyways, these issues in no time converted into a full-fledged statehood movement which ultimately paved the

way to the formation of the tribal state of Jharkhand. It must be noted that the Jharkhand movement here was conducted amidst the background of the social atmosphere engulfed on the issue of reservation which was initiated by the then Bihar chief minister Karpoori Thakur in 1978 [14]. The government made an appeal to the employers to prefer local candidates. After getting statehood, the general tendency of Jharkhand's successive governments was to promote domicile reservations. It was obviously challenged through the judiciary. The most recent of which was initiated by the Hemant Soren government called the Local Resident of Jharkhand bill. The government of Jharkhand stands firm in the matter.

Jammu and Kashmir's local population enjoyed some reservations and privileges in the local job market until Article 370 was scrapped. However, there was outrage from the local population when the amendment indicated that any Indian can come and work in Kashmir [15]. Critics argue unemployment is a major issue in Jammu and Kashmir, and the giving of jobs to so-called outsiders will only aggregate it. The North Eastern States of India too have concerns on this aspect [16]. As Sikkim, Assam, and Arunachal Pradesh have voiced out concerns on so-called outsiders

getting jobs. Many sought to strengthen the Inner Line Permit required in these areas. It comes off with xenophobic comments such as loss of values and identity and so on [17].

Thus, this sentiment is echoed in many different parts of India. It must not be considered as something which is surprising. It is high time the Union Government and State governments must work to effectively address this concern. The concern is a reasonable and valid concern indeed. Deliberations shall only be fruitful if the unity and integrity of the nation is upheld. Extreme Regionalism serves none.

### **Growing Concerns**

The Judiciary sees extreme regionalism and the distinction of the Insider-Outsider concept as indeed a dangerous feeling and something if allowed to grow might break up the country. There is no regional citizenship in India. Only one based upon a single national imagination. It's important to keep in mind that the National movement of India was largely fuelled by migration and inter-province travel facilitated by railways. In a way, it created a sense of solidarity among the people of India. While it is a thing of the past, more unity and solidarity among the people of India is much

needed now, especially since the current social atmosphere is brooded by polarizing beliefs. Any narrow approach from the state will only be counterproductive. In an age of free global trade and free market, narrow-mindedness only deeply divided society [18]. Tolerance and open-mindedness shall be preached. It is parochial in a modern world, and such measures only help in deepening enmity towards different sections of people. This might even backstab if companies collectively decide to move towards any other place.

Moreover, it is argued that domicile reservation undermines the fundamental right of private companies to manage their own affairs freely as guaranteed by Article 19(1)(g). Thus, some say any government intervention is an attack on the constitutional values. In a country like India, the state has a big role to play in tackling social inequality. Thus, the debates around domicile-based reservation must also flow towards discussion on an even greater issue - reservation in the private sector. Governments and public policy analysts must address the elephant in the room. The question of reservation in the private sector and how efficiently the government can intervene in the matter without being an 'Inspector Raj' [19]. The state indeed has a very creative role to play in this issue. However, it must not be approached in a

binary manner. The complexities of society should be considered. Any Legislative measures for the protection of regional identity shall be done in a way that the constitutional values are upheld, and one should creatively attain for the establishment of a cosmopolitan society where the hosts as well as the immigrant population feel themselves welcome. Political parties and politicians must refrain from using reservation as a mere tool to get votes but to be aware of their constitutional responsibility and vouch for any arrangement that is inclusive, constitutional, and well-prepared. Any haste legislation will deepen the already burning issue.

## **Conclusion**

As stated, the concerns of the local population are indeed genuine. All these discussions arrive at a certain point: the primacy of the constitution. The Judiciary through the *Pradeep Jain* case beautifully sums up the essence and way upon which the State must proceed to enact such provisions. Courts have repeatedly stated that if the government is following procedures and respecting the established provisions of the constitution in determining how to tackle this issue, then no intervention of the judiciary is necessary at all. Constitutional principles must be followed in every

single way. For every action, the constitutional morality should be in mind, not populism.

A successful solution to the Domicile reservation and the outsider vs. insider issue is to move according to the constitution. Balancing the interest of the locals along with ensuring the oneness of the country must be done. Every action of the state must be done in a way that is inclusive and democratic. Extreme measures are good for none. It is counterproductive. The rights of every party involved shall be maintained. The state must not be a place for narrow-mindedness but a beacon for inclusivity. Every action must follow that.

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## **Chapter 17**

# **Constitutional Aspect of Social Justice and its Legal Implications**

### **Introduction**

In the ancient Indian approach, justice was concerned with the performance of duties, not with the notion of rights. In ancient Indian tradition, there were two approaches: 'Dandaniti' and 'Dharma', which were concerned with justice. 'Dandaniti' was very close to the modern notions of justice (law and punishment). It suggested the legal aspect of justice. Dharma was another name for the code of duties, and justice was nothing but virtuous conduct with dharma. Thus, like Platonic justice,

the Hindu tradition linked justice with the performance of duties prescribed by dharma.

The modern approaches to justice are broadly Liberal and Marxist approaches. The Liberal argument is that the individual's rights and liberty are necessary for a just society, while the Marxist approach relies upon equality for a just society. The latter believe that unless and until the existing inequalities in society are removed, society will not be just. The basic premises of justice are liberty, equality, and rights.

The concept of social justice emerged out of a process of evolution of social norms, order, law, and morality. It laid emphasis upon just action and created space for intervention in the society by enforcing rules and regulations based on the principles of social equality. The term 'Social justice' consists of two words: one is social and the second is justice. The term 'social' is concerned with all human beings who live in society, while the term 'justice' is related to liberty, equality, and rights. Thus, social justice is concerned with ensuring liberty, providing equality, and maintaining individual rights for every human being in society. In other words, securing the highest possible development of the capabilities of all members of the society may be called social justice.

According to Professor R.M.W. Dias, ‘Justice is not something which can be captured in a formula once and for all; it is a process, a complex and shifting balance between many factors.’ The tasks of justice are ‘just allocation of advantages and disadvantages, preventing the abuse of power, preventing the abuse of liberty, the just decision of disputes and adapting to change’ [1]. Justice may be natural justice or distributive justice. Social justice is basically a term that provides sustenance to the rule of law. It has a wider connotation in the sense that it includes economic justice also. It aims at removing all kinds of inequalities and affording equal opportunities to all citizens in social as well as economic affairs. Thus, the aim of social justice is to remove all kinds of inequalities based upon caste, race, sex, power, position, and wealth and to bring about a balance between social rights and social controls.

### **The Meaning of Social Justice**

The concept of social justice is broader than that of justice. The word ‘social’ is connected with society. Its scope is wide, including social issues, problems, and reforms. Thereby it encompasses social and economic change. Social Justice involves measures taken for the advancement of the depressed and disadvantaged classes of society. Hence, it calls for

social engineering which is an attempt to change society in order to deal with social problems. Such socio-economic changes can be brought through law.

Social justice aims towards creating political, economic, and social democracy, ending class and caste distinctions. It combines the principles of socialism with the personal freedom granted by democracy. So, the word 'Social' has a wide connotation, connected with society and how it should be organized, and what should be its social values and structure [2].

The concept of justice can be defined by different perspectives. The Greek Philosopher Plato saw justice as the true principle of social life. According to Ernest Barker, an English Political scientist, justice was the hinge of Plato's thoughts and the text of his discourse [3]. Plato in his book *The Republic* discusses the concept of justice through a dialogue with friends like Cephalus, Polemarchus, and Glaucon. Cephalus says justice consists in speaking the truth and paying one's debt, while Polemarchus explains justice as giving to each man what is proper for him. "Justice is the art which gives good to friends and evil to enemies." Glaucon argues justice is in "the interest of the weaker". Thrasymachus, a sophist of ancient Greece, saw



justice as the interest of the stronger, in other words, might is right.

Plato rejected all these definitions because they treated justice as something external and artificial. For Plato, justice is the primary moral value and is intrinsically linked with other essential and moral qualities [4].

Another Greek Philosopher, Aristotle, propounded the concept of 'distributive justice'. Aristotle's distributive justice is the name of that principle of distribution by which goods, services, honour and offices are distributed among the citizens of the state. But the principle of distribution is based upon the worth or virtue of an individual. The principle recognizes and preserves distinction between the worthy and the non-worthy. It counters equality of the unequal and ensures that a man's rights, duties and rewards correspond to his merit and social contribution. Aristotelian distributive justice is thus, another name for proportionate equality. The word 'justice' means fair treatment of people: which means law based on the principles of justice and rationality, that is, equal rights and justice for all, irrespective of class, sex, race or caste distinctions. It means that the state should deal with people correctly and completely: it should be morally fair

and reasonable; and it should frame just laws and enact them justly [5].

Justice V. R. Krishna Iyer, a former judge of the Supreme Court of India, says, “Social justice is not cant but conscience, not verbal borrowing from liked documents but the social force of the supreme law”. Social justice is people-oriented, legal justice is canalized, controlled and conferred by law [6].

### **Ambedkar’s Views on Social Justice**

According to B.R. Ambedkar, social justice is a means to create an ideal or a just society. To him, a just society is a casteless society, based on the principles of social justice and a combination of three components: liberty, equality, and fraternity. Ambedkar’s ideal society is based upon two fundamental principles.

The first is that the individual is an end in himself and that the aim and object of society is the growth of the individual and development of his personality. Society is not above the individual, and if the individual has to subordinate himself to society, it is because such subordination is for his betterment and only to the extent necessary. The second essential is that the terms of associated life between members of society must be regarded by

consideration founded on liberty, equality, and fraternity [7].

James Massey writes that in Ambedkar's view, a caste-based society gives no place to an

individual, whereas, in Ambedkar's proposed society, the individual is the final end. In a caste-based society, a person's relationship with members of other classes is already fixed. But in the society envisioned by Ambedkar, relations have to be based on liberty, equality, and fraternity [8]. Besides the two essential elements, one of the most important components is 'justice', or the 'principle of justice', because for Ambedkar, "the norm or the criterion for judging right and wrong in the modern society is justice". Justice, according to him, was "simply another name for liberty, equality, and fraternity" [9]. Thus, the key components of Ambedkar's concept of social justice are liberty, equality, and fraternity.

The first component is liberty. Ambedkar, quoting Laski, said that for liberty to be real, it must be accompanied by certain social conditions. Firstly, there should be social equality. Privilege tilts the balance of social action in favour of its possessors. The more equal are the social rights of citizens, the more able they are to utilize their freedom... If

liberty is to move to its appointed end, it is important that there should be equality [10].

Secondly, there must be economic security. A man may be free to enter any vocation he may choose... yet if he is deprived of security in employment, he becomes a prey of mental and physical servitude incompatible with the very essence of liberty... The perpetual fear of the morrow, its haunting sense of impending disaster, its fitful search for happiness and beauty which perpetually eludes, shows that without economic security, liberty is not worth having. Men may well be free and yet remain unable to realize the purposes of freedom [11].

Thirdly, knowledge must be made available to all individuals. In the modern complex world, man lives at his peril and must find his way in it without losing his freedom. There can, under these conditions, be no freedom that is worthwhile unless the mind is trained to use its freedom. The right of man to education becomes fundamental to his freedom. Deprive a man of knowledge and you will make him inevitably the slave of those more fortunate than himself... deprivation of knowledge is a denial of the power to use liberty for great ends. An ignorant man may be free... but he cannot employ his freedom, so as to give him assurance of happiness [12].

So, Ambedkar believed that the three essential conditions that make liberty real were:

- Social equality
- Economic equality
- Access to knowledge

He believed that there can be no real liberty in ancient societies and under Hinduism because of the absence of these three conditions. The second component of social justice is equality. It means all men are of the same essence, all men are equal, and everyone is entitled to the same fundamental rights and to equal liberty. Ambedkar says, “The system of rank and gradation is simply another way of enunciating the principle of inequality so that it may be truly said that Hinduism does not recognize equality” [13]. It is to be noted that in ancient societies there is no equality because they are based on the principle of gradation and rank. The antique society as also Hinduism lead to a degradation of human personality because of the denial of social and religious equality. Ambedkar held that with social justice, equality would be the mainstay of a modern society. The third component of social justice is fraternity. Ambedkar, talking about the importance of fraternity in a society, writes, “There are two forces prevalent in society such as Individualism and fraternity.”

Hence Ambedkar's concept of social justice included:

- Unity and equality of all human beings
- Equal worth of men and women
- Respect for the weak and the lowly
- Regard for human rights
- Benevolence, mutual love, sympathy, tolerance, and charity towards fellow beings
- Humane treatment in all cases
- Dignity of all citizens
- Abolition of caste distinctions
- Education and property for all
- Goodwill and gentleness

He emphasized more on fraternity and emotional integration. His view on social justice was to remove man-made inequalities of all shades through law, morality, and public conscience. He stood for justice for a sustainable society [14]. He further maintained that the root of untouchability was the caste system; the root of the caste system was religion; the root of the religion was attached to varnashram; the root of the varnashram was Brahminism, and the root of Brahminism lies in political power [15].

## **Constitutional Aspect of Social Justice**

The preamble of our Constitution begins with the words:

We, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens:

JUSTICE, social, economic and political.....

So, the very opening lines in the Preamble of our great Constitution lay down one of the most significant purposes of our Constitution. The concept of justice is as old as civilization and society. It is deeply ingrained in the roots of our Indian Civilization. The word 'Justice' finds its roots in the Latin term 'JUSTITIA' which signifies righteousness or equity. It is also derived from the French word 'JOSTISE' which means uprightness, equity, vindication of right, administration of law. The idea of justice is most frequently linked to the underlying presumption that justice is synonymous with the idea of equal rights and opportunities and to get fair treatment. Justice is the quality that ensures that each person receives their rightful compensation in opposition to any violation or harm. Justice means to give each and every person what they deserve. Justice means the standard of

rightfulness, by standard of righteousness one means to say that the minimum threshold should be applicable of what will amount to right or wrong. 'Justice can also be understood as the correct application of law, as opposed to arbitrariness'.

The idea of justice is so ancient that everything has been said about it, and at the same time, it is so modern that it constitutes an ever-changing context of contemporary society. From this perspective, we may say that justice has a traditional meaning and has also acquired a more technical and complex meaning in modern times. Traditionally, justice was seen as a moral virtue of character as well as an important and desirable attribute that a political society requires. For Plato, justice is "giving to each person his due". Justice in this sense involves the fair, equal, moral, and impartial treatment of all. In a simple sense, therefore, justice traditionally means ensuring that fair results are produced and each person duly receives what he is entitled to.

To understand the idea of justice in today's date, it is important to understand that the concept of justice is enshrined in the preamble of the Indian Constitution. The framers of the Indian constitution were aware of the need for establishing justice in a country; therefore, they made sure that it is included in the Indian constitution. Articles 14, 15,



16, and 17 of the Indian constitution also reflect the idea of justice enshrined in the preamble of the constitution. All these articles are incorporated under Part III of the constitution, which gives fundamental rights to every citizen. Provisions relating to 'Equal Justice and Free Legal Aid' are enshrined under article 39A of the Indian constitution, which gives every citizen the right to get free legal help from officers of the court. No one can be denied access to free legal aid. It is the duty of the State to secure that the working of the legal system is based on justice, it should provide equal opportunity, and also provide free legal aid, to ensure that any opportunity for securing justice is not denied to any citizen due to his economic or other disabilities.

One of the important concepts of justice as enshrined in the constitution is the concept of Distributive justice. Distributive justice means the fair distribution of resources among those who are in need of it. This has been described in Article 38 and 39 of the Indian Constitution. Natural justice, economic justice, political justice, social justice, and legal justice are a few examples of the many diverse types of justice. The Indian Constitution defines 3 types of justice: Social Justice, Economic Justice, and Political Justice.

## Social Justice

Social justice as a concept arose during the industrial revolution of the 19th century. Different definitions of social justice are provided by different institutions; for a few, it is the fair and comprehensive distribution of goods among people for economic growth, and for a few, it is equality of status among individuals. Social justice means greater good for a larger number of people, and unequals should be treated equally. The apex court in the *Kesavananda Bharati* case [16] held that social justice is part of the Basic structure of the Indian Constitution. Social justice means that equal social opportunities are available to every person for the personal development of every person without any discrimination based on race, sex, or caste. No person should be deprived of social conditions necessary for development due to these differences. The concept of social justice is based on the practice of social equality. Social justice can only be enforced in a society where the exploitation of man by a man is not present.

In the Case of *S.R. Bommai v. Union of India* [17], the apex court held that social justice and judicial review are two basic features of the Indian constitution.

## **Economic Justice**

Economic justice is somehow part of social justice itself; the Indian constitution visualizes socio-economic justice as incorporated under Directive principles of state policy. Economic justice means providing economic opportunity, economic equality and removing economic disabilities. It is always implemented under the umbrella of social justice. Economic justice means there should be economic equality among everyone in the society. There should not exist any inequality among individuals based on their economic status. No one should be deprived of any opportunity due to his/her economic status.

## **Political Justice**

Political Justice means a system free from political arbitrariness. There should be political fairness in the working of the government. Political status of any person should not give him any advantage. In *Raghunathrao Ganpatrao v. Union of India* [18], the Court attempted to provide a meaning to the term political justice and observed thus: “Political justice relates to the principle of rights of the people, i.e., right to universal suffrage, right to democratic form of Government and right to participation in political affairs”.

In *Canara Bank v. V.K. Awasthy* [19], the Court highlighted the fundamental premise of natural justice and observed thus: “The expressions ‘natural justice’ and ‘legal justice’ do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omission of a formulated law”.

Reference could also be had to *State Bank of Patiala & Ors. v. S.K. Sharma* [20] wherein the Court had noted thus: “Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.”

The Indian Constitution under Part III enforces all three types of justice by making provisions relating to equality under Articles 14 and 15. Also in 2019, the 103rd constitutional amendment was enacted to

ensure economic justice for everyone. The jurisprudence behind this amendment was the implementation of economic justice.

## **Role of Judiciary**

The judiciary has played an important role in the establishment of justice in the country and to make the concept of justice given in the preamble a reality. The approach of the judiciary has been progressive in this regard, and it has shown through its decisions that justice is an essential ingredient of a developed and law-abiding society. In cases like *Maneka Gandhi v. UOI* [21] (right of liberty), the court has enforced the concept of social justice time and again.

The role of the judiciary has also changed over the years, and the courts have taken a more active role in the realization of justice through judicial activism. In recent years, courts have risen in power across the world, and the Indian Supreme Court has rightly been pointed to as an example of this global trend. In many ways, the Indian Court has become a court of good governance that sits in judgment over the rest of the Indian government. The Court has been able to expand its mandate as a result of the shortcomings (real, perceived, or feared) of India's representative institutions. The Indian

Supreme Court's institutional structure has also aided its rise, and it helps explain why the Indian Courts have gained more influence than most other judiciaries in the world. The Indian Supreme Court has been called the most powerful court in the world for its wide jurisdiction, its expansive understanding of its own powers, and the billion-plus people under its authority.

The Doctrine of Basic Structure was propounded by the Indian Judiciary on 24th April 1973 in the *Keshavananda Bharati* case [7] to put a limitation on the amending powers of the Parliament so that the 'basic structure of the basic law of the land' cannot be amended in exercise of its 'constituent power' under the Constitution. What constitutes basic structure, although not explicitly defined, most of its constituents can be derived from various Supreme Court judgements over the years like supremacy of the Constitution of India, Rule of law, judicial review, federalism, secularism, Fundamental rights, Article 32, balance between Fundamental Rights and Directive Principles of State Policy etc. The basic structure of our constitution is not static but dynamic and continuously evolving.

Judicial activism is seen as a success in liberalizing access to justice and giving relief to disadvantaged

groups because of the efforts of Justice V.R. Krishna Iyer and Justice P.N. Bhagwati. It is an effective tool for upholding the citizens' rights and implementing the constitutional principles when the executive and legislative fail to do so. The shift from *locus standi* to Public Interest Litigation has made the Indian Judicial process more participatory and democratic. Judicial activism therefore counters the opinion that the judiciary is a mere spectator.

The Higher Courts of the country innovatively interpreted the Constitution in a manner as to give effective rights to the citizens which are important in day-to-day life. The framers of the constitution wished to empower citizens with certain rights which are levied as fundamental rights, and they cannot be taken away by the government. In the years that followed, the judiciary, on its part, innovatively interpreted the constitution and gave us various rights like the right to information, right to education, right to free legal aid, to include the right to live with dignity in the right to life.

But we must also understand that Judicial activism challenges the concept of separation of powers of the three arms of the state. Many times, in the name of judicial activism, the judiciary interferes in the administrative domain and ventures into

judicial adventurism or overreach. This is when judicial restraint comes into the picture. If judges are to freely decide and make laws of their choices, it would not only go against the principles of separation of powers, but it would also result in chaos and uncertainty in the laws.

The five rights that shaped India are –

1. **Substantive equality** – India is no stranger to discrimination on the basis of sex. At one point, Air India air hostesses were compulsorily retired at 35 years of age or on getting married or pregnant. The Supreme Court in the case of *Air India vs. Nargesh Meerza* [13], ruled that this represented official arbitrariness and hostile prejudice. Similarly, the criteria for the promotion of women where they are benchmarked with men shall be the same; otherwise, it is indirectly discriminatory and against substantive equality.

Another such example is the decision of the Supreme Court in the case of the eligibility of women officers in the short service commission in the army for permanent commission. The persistence of the Supreme Court in this case persuaded the Armed



Forces to change their mindset and support equal status for women officers.

The Second fundamental right shaped by the Higher Courts is the

2. **Right to creative expression** - The Courts in India have developed the law and held that Article 19(1)(a) of the Constitution of India, which states that, “all citizens shall have the right to freedom of speech and expression”, includes the right to creative expression. The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizens, liberty of thought and expression. The Supreme Court has recently said that when the ability to portray art in any form is subject to extra-constitutional authority, there is a grave danger that fundamental human freedoms will be imperilled by a cloud of opacity and arbitrary state behaviour. A declaration attributed to Voltaire: “I despise what you say but will defend to the death your right to say it” encapsulates the essence of the protection of free speech. I may quote from the landmark judgment by Justice Dr. D.Y. Chandrachud, in the case of *Indibility*

*Creative Pvt Ltd versus Govt of West Bengal* [14]: “The true purpose of art, as manifest in its myriad forms, is to question and provoke. Art in an elemental sense reflects a human urge to question the assumptions on which societal values may be founded. In questioning prevailing social values and popular cultures, every art form seeks to espouse a vision. Underlying the vision of the artist is a desire to find a new meaning for existence. The artist, in an effort to do so, is entitled to the fullest liberty and freedom to critique and criticise. Satire and irony are willing allies of the quest to entertain while at the same time to lead to self-reflection.”

The third is

3. **Right to practice one's religion** – The Right to freedom of religion is well described in the Articles 25, 26, 27, and 28 of the Indian constitution. Religion is a matter of belief or faith. The constitution of India recognizes the fact, how important religion is in the life of people of India and hence, provides for the right to freedom of religion under Articles 25 to Article 28. The Constitution of India envisages a secular model and provides that every person has

the right and freedom to choose and practice his or her religion. In a number of cases, the Apex Court has held that secularism is the basic structure of the Constitution, the most important being the *Kesavananda Bharati* case [7]. Article 25 of the Constitution guarantees the “freedom of conscience and the right freely to profess, practise and propagate religion”. However, this right isn’t absolute and is subject to public order, morality, health, and other fundamental rights. While Article 25 itself does not read any other condition into the protection of this right, courts, over the years, have ruled that the right would protect only “essential religious practices” and not all religious practices. So, this test developed over the years by the Constitutional Courts decides which religious practices are protected under the Constitution.

Similarly, another essential right developed by the Apex Court is the

4. **Right to privacy** – which is now a fundamental right that does not need to be separately articulated but can be derived from Articles 14, 19, and 21 of the Constitution of India. It is a natural right

that subsists as an integral part of the right to life and liberty. It is a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/she makes. It protects an individual from the scrutiny of the State in their home, of their movements, and over their reproductive choices, choice of partners, food habits, etc. Therefore, any action by the State that results in an infringement of the right to privacy is subject to judicial review. A nine-judge bench of the Supreme Court in the case of *Puttuswamy v. Union of India* [15] declared the right to privacy as a fundamental right protected under Part III of the Constitution of India. In declaring that this right stems from the fundamental right to life and liberty, the Court's decision has far-reaching consequences.

While primarily focused on the individual's right against the State for violations of their privacy, this landmark judgement has repercussions across both State and non-State actors and lays down the foundation for the enactment of a comprehensive law on privacy. This decision has connected our privacy jurisprudence over the years with our

international commitments and established our conformity with comparative laws around the world. The Supreme Court has also recognized sexual integrity as an aspect of privacy, and consensual sexual intercourse between two adults of the same sex was decriminalized. And lastly, and perhaps one of the most important, is the

5. **Right to enforce fundamental rights –**  
Our Constitution has also put in place a legal mechanism through which a person can enforce his fundamental rights where there is an existing or threatened infringement to the exercise of such rights. The law also stipulates the constitutional remedies that can be sought and given to an aggrieved applicant. The Supreme Court under Article 32 and the High Courts under Article 226 of the Constitution have the power to issue suitable writs for the enforcement of a citizen's fundamental right. The fundamental rights created under the Indian constitution are necessary for a democratic society, and Articles 32 and 226 are very vital provisions, as they give citizens the remedy for the enforcement of their fundamental rights – a medium through which they can enforce

their fundamental rights and seek appropriate remedies.

Thus, the Idea of Justice is intricately interlinked with our Constitution. Just like our ever-evolving and dynamic Constitution, the Idea of Justice is also forever evolving. Rather, it is our evolving Idea of Justice that drives the evolution of our constitution. We can see examples of this in the landmark changes made in our laws in recent times like the decisions of the Supreme Court on the Right to Privacy, Section 377 of IPC, Coparcenary rights of Daughters under Hindu Succession, Triple Talaq, access to the internet as a fundamental right, and many more.

## **Conclusion**

Thus, we can see that the Idea of Justice has forever been evolving since the adoption of our Constitution. The most general way to understand the Idea of Justice can be to say that Justice is the enforcement of the fundamental principles and values enshrined in our Constitution. Justice is when a person's fundamental rights are protected. Justice is when the State Machinery functions in accordance with the Constitutional principles and ethos. Justice is when the Constitutional Courts uphold the Constitutional Values. One might also

say that to test whether justice has been done or not, one can simply see whether the act conforms to our Constitution, its fundamental principles, and values. Justice is not merely a literal interpretation of the provisions of the constitution in black and white, but it is to understand the aims and objectives of the particular provision and the principles outlined in our constitution by our constitution framers. Our judicial system is the enforcer and protector of Justice. In this 76th year of Independence, with society evolving at its most rapid pace, we have to focus towards the goal of a welfare state. The Directive Principles of State Policy contained in Part IV of the constitution set out the aims and objectives to be taken by the state. The idea of a welfare state and constitution can only be achieved if the state endeavours to implement them with a high sense of moral duty. We should strive to promote the Welfare of the people by securing and protecting a social order in which justice, social, economic, and political shall inform all the Institutions of National life. In the celebrated case of *Kesavananda Bharati vs. State of Kerala* [7], the Supreme Court has said that fundamental rights and directive principles aim at the same goal of bringing about a social Revolution and the establishment of a welfare state and that they can be interpreted and applied together and that they

are supplementary and complementary to each other.

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## **Chapter 18**

# **Constitutionalism: A Pathway to Social Justice**

### **Introduction**

India had grappled with not just colonialism, but also social ills such as untouchability, caste discrimination, gender inequality which has been prevalent in India since ancient times. The Indian constitution-making exercise was motivated by the need to overthrow its colonial past and to bring about a new social and political order, based on democratic values. The Indian constitution was constructed as a „moral autobiography“, which promised a new future while explicitly rejecting the

colonial past. Various provisions under the Indian constitution exemplify the transformative goal of the constitution. The Preamble contains the aspirations of the people, with the cherished goals of liberty, equality, fraternity, and justice. It establishes a secular, democratic, socialist state. Part III of the Constitution provides Fundamental Rights against the state, including the ideals of equality, non-discrimination, freedom of speech and expression, movement, association, freedom of religion, and personal liberty. It abolishes untouchability, feudal titles, and *begar*. Thus, the quest for the establishment of a new social order through political power is implicit in the constitution. Bhargava believes that the Indian constitution was „designed to break social hierarchies“ and open up a new chapter of freedom, equality, and justice. It was a revolutionary moment, especially for the deprived classes, who hoped to receive equal treatment in society after its adoption.

Constitutionalism serves as a guiding principle in the governance of a state, emphasizing the limitation of power, accountability, and adherence to the rule of law. Beyond its structural and procedural mandates, constitutionalism is inherently transformative, aiming to create a society grounded in equality, liberty, and justice.

Social justice, as a fundamental aspiration of constitutionalism, seeks to address historical inequalities, promote inclusivity, and ensure the dignity of all individuals.

## **Concepts of Constitutionalism**

Every country has its own constitution, which describes the duties, rules, and regulations that help a country in governing itself. Besides the concept of the constitution, there is also the all-important concept of constitutionalism. In order to understand the term „Constitutionalism“, one has to understand the meaning of the term „Constitution“.

Lord Bryce defines Constitutional Law as “Constitution is the aggregate of laws and customs under which the life of the states goes on” (Cruz, 2022). According to Thomas Maine and Tocqueville, “Constitution means aggregate of only those written principles which regulates the administration of the state” (University of Michigan Library, 1791).

Sir Ivor Jennings, while analyzing the Definition of Constitution given by Thomas Paine and De Tocqueville, points out that if the constitution means a written document then Great Britain has

no constitution at all because in the United Kingdom the constitution is not reduced into writing.

While analyzing the definition of Bryce, it is limited but is most suitable to the British Constitutional system since Britain's Constitution is said to be an aggregate of laws and customs.

Professor K.C. Wheare defines the Constitution of states as; "The whole system of government of the country, the collection of the rules that establish and regulate or govern the Government. The constitution is also defined as a document which contains the rules regarding the framework of the government" (K.C. Wheare, 1960).

Thus, the Constitution means a document which is dynamic and possesses a special legal Sanctity and describes the structure, the primary functions of the various branches of the government and declares the principles governing the operation of these branches of the government.

According to C.H. MCLLWAIN, "Constitutionalism has one essential quality: It is a legal limitation on the government: It is the antithesis of arbitrary rule; its opposite is despotic government, the

government of will instead of law” (MCLLWAIN, 1947).

Constitutionalism is a concept of having the spirit of abiding by the rules enshrined in the constitution.

Modern political thought tries to draw a clear-cut difference between “Constitutionalism” and “Constitution”. A state may have the „Constitution“ but need not necessarily have Constitutionalism. E.g., In the case of an absolute monarch exercising unlimited power in all three domains. The monarch has all powers as well as the authority to exercise them at his pleasure. The Constitution of this state might then be said to have only one rule, which permits unlimited power to the monarch. He is not legally accountable for the morality of his decrees, nor is he obliged by procedures, nor any kind of limitations in exercising his powers. Thus, the monarch’s decree is constitutionally valid. Constitutionalism implies an essence of limited government or a limitation on the government. It is the antithesis of arbitrary powers.

According to David Feldman, the touchstone of constitutionalism is the concept of limited government under a higher law. The concept of constitutionalism is of prime importance in any

democratic country. Every country has a constitution, it may be written or unwritten, but that does not mean that every country has constitutionalism.

Sir John Dahlberg-Acton said, “Power corrupts, and absolute power corrupts absolutely.” Undoubtedly, unlimited powers in the hands of the ruling government can be dangerous to the freedom of people. This led to despotism, wherein individuals are denied their rights and freedom. So, there is a need to impose a limitation on the powers of the government authority. This restriction on the power of government is envisaged by the concept of constitutionalism (Singh, 2022).

### **Pre-requisites of Constitutionalism**

Now, to identify whether constitutionalism is present in India or not, it can be analyzed with the help of various provisions or principles of the constitution. In the Indian context, the preamble makes a point to check the presence of constitutionalism. According to Justice Subbarao, the preamble is the soul of the constitution without which a body in the form of a case cannot survive. The objectives of the constitution ensure the dignity of the people of India and provide them all the rights and liberties within the ambit of the spirit of



constitutionalism embodied in the Indian constitution.

### **Rule of Law**

It is an important requirement of constitutionalism. It was propounded by A. V. Dicey and signifies the supremacy of law. It denotes the rule of law and not the rule of men. The government cannot act arbitrarily while using its discretionary powers. The rule of law requires that all persons should be treated equally before the law. The constitution of India, by many of its provisions, seeks to uphold the rule of law. The constitutions, through many of their provisions, declare the independence of the judiciary. In fact, judicial review has been ensured through several constitutional provisions. In *Minerva Mills Ltd. v. Union of India*, the Supreme Court has characterized judicial review as a basic feature of the constitution. Article 14 of the constitution guarantees equality before law and equal protection of law. The court upheld the rule of law several times to emphasize certain constitutional values and principles. Justice Bhagwati has emphasized that the rule of law excludes arbitrariness and unreasonableness (*Bachan Singh v. State of Punjab*, 1980).

## **Separation of Powers**

The doctrine of separation of powers, as propounded by Montesquieu, emphasizes the division of governmental responsibilities among the legislative, executive, and judicial branches to prevent the concentration of power and ensure checks and balances (G.S. Pande, 2018).

Constitutionalism requires that power is not concentrated in only one organ of the state. The doctrine of separation of powers has no place in a strict sense in the Indian constitution. If there is a complete separation of powers, the government cannot run effectively and smoothly.

In *Kesavananda Bharati v. State of Kerala*, Hon. C. J. Sikri observed that the separation of powers amongst the legislature, executive, and judiciary is a part of the basic structure of the constitution, and this structure cannot be destroyed by any form of amendment.

## **Fundamental Rights**

Fundamental Rights are the most fundamental guarantee against the arbitrary exercise of power by the state.

The court stated in *I.R. Coelho v. State of Tamil Nadu and others* that the notion of constitutionalism is today a legal principle that needs control over the exercise of government authority in order to ensure that democratic norms such as the preservation of fundamental rights are not destroyed (*I.R. Coelho v. State of Tamil Nadu*, 2007).

No law may be passed by the state that treats two persons in the same situation unequally. It may be a breach of Article 14. Similarly, Article 19(1)(a), freedom of speech and expression, can be restricted only if the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, or order, decency, or morality are threatened, or if the speech is in relation to contempt of court, defamation, or incitement to an offense is threatened. Articles 12 to 35 deal with the fundamental rights, provide rights to citizens and to every person for whose infringement people may approach the courts under Article 32 and 226 respectively, which shows that citizens have the right to protect themselves from arbitrariness. The directive principle of state policy under Articles 36 to 51 connotes that these principles should be in consideration while forming policy because it helps to provide social and economic equality among people. Government cannot do anything without

the contribution of the public. That's why the fundamental duties of the citizens are explained in Article 51A. In this way, this provision shows the check and balance among the actions of governmental organizations and the public.

### **Democracy**

Constitutionalism can be realized only in a democracy. In a democratic system, the government is accountable to the public. As said by Abraham Lincoln, democracy is of the people, for the people, and by the people. Thomas Jefferson once said, "When people fear the government, there is tyranny. When the government fears the people, there is liberty." So, liberty is a very important value of democracy (Pandey, 2017). Elucidating the same, Patrick Henry had said, "Give me liberty or give me death." Former Chief Justice of India Deepak Mishra also stated, "When you lose liberty without the proper procedure of law, then you are half dead." Constitutionalism is vital to ensure that the liberty of every person is guaranteed and protected.

In the case of *Indira Nehru-Gandhi v. Raj Narayanan* (*Indira Nehru Gandhi v. Raj Narain*, 1975), Justice Mathew had said that the correct proportion of law needs to be mixed with the correct proportion of liberty. If the law is more, it

will lead to tyranny, and if liberty is more, it will lead to license.

The importance of constitutionalism was explained by the Supreme Court of India in the case of *S.R. Choudhury v. State of Punjab*, where it was said that constitutional restraint must not be bypassed or ignored, even if they are found to be inconvenient. They must also not be bent to suit political expediency.

### **Popular Sovereignty**

It means that people are the main and prime source of the authority of the government, and the source of all sovereignty is the nation which consists of the public. This means the public is directly or indirectly involved in the decision-making process, and the most common method is the election of representatives where the public elects the representatives who will represent them. Constitutionalism requires such elections to be fair and free.

### **Universal Adult Suffrage**

Article 326 states that every person gets the right to vote once they reach the age of 18.

## **Judicial Review**

*Marbury v. Madison* was the first case to raise this issue, and through this judgment, judicial review was evolved. Article 137 gives the Supreme Court and High Courts the authority of judicial review. If legislation or conduct violates the constitution, the court can declare it illegal and void.

## **Transformative Constitutionalism**

The Indian Constitution is a dynamic and organic document. So, it is an instrument used by the court to ensure a more equitable society, which aims to fulfill the basic goal of the Constitution, which is to ensure that society is transformed for the better. Dr. B.R. Ambedkar, emphasizing the need for liberty, equality, and fraternity, remarked that there is a need for making a political democracy into social democracy. He added that political democracy cannot survive unless social democracy is at its core. Chief Justice Langa, in his analysis of the definition of transformative constitutionalism, remarked that the meaning of transformation in juridical terms is as highly contested as it is difficult to formulate. It is perhaps in keeping with the spirit of transformation that there is no single stable understanding of transformative constitutionalism. In terms of the understanding co-related to the idea

of transformative constitutionalism, indeed, judges are custodians of constitutional values such as human dignity, equality, and freedom, and bear the obligation to ensure that constitutional provisions are applied in ways that “improve the quality of life of all citizens and free the potential of each person.”

Reflecting on the need to interpret the Constitution as a transformative document, Justice Krishna Iyer, in *Akhil Bharatiya Soshit Karamchhari Sangh v. Union of India*, voiced the need for considering the aspirations, ethos, and frustrations of the people who are socially disadvantaged, while interpreting the constitution (*Akhil Bharatiya Soshit Karamchhari v. Union of India*, 1980).

In *Joseph Shine v. Union of India*, the Supreme Court struck down section 497 of IPC, which criminalized adultery on the grounds that it was arbitrary and discriminatory.

In the case of *NALSA v. Union of India*, the Supreme Court, recognizing the agony, pain, and trauma of the transgender community, recognized their right to self-determination and guaranteed and affirmed their rights under Arts. 14, 19, and 21 of the Constitution of India. In yet another case relating to the decriminalization of S. 377 of the Penal Code, 1860, the Supreme Court of India

decriminalized voluntary sexual intercourse among same-sex couples. Further, in *Indian Young Lawyers Association v. State of Kerala*, dealing with the prohibition imposed on women of menstruating age from entering into the temple premises, the Supreme Court of India struck down the prohibition on the entry of women of menstruating age in Sabarimala Temple in Kerala, on the grounds of it being violative of the fundamental rights of an individual. In the judgment, Justice D.Y. Chandrachud offered a vision of the constitution as being transformative in character, in setting up independent institutions of governance and granting the promise of full citizenship to those hitherto deprived and marginalized. In *Justice K.S. Puttaswamy v. Union of India*, the court affirmed the right to privacy as a fundamental right. In *Harsh Mander v. Union of India*, the Delhi High Court decriminalized begging by declaring several provisions of the Anti-Beggary Act as unconstitutional. Similarly, as stated above, the Supreme Court has played a pivotal role in establishing and expanding jurisprudence related to human dignity, gender justice, environmental justice, affirmative action, and education, among other fundamental rights and freedoms guaranteed under the Indian Constitution (Rajsingh, 2021).



In these cases, we can see the important role played by the judiciary in transforming the state and society through transformative constitutionalism.

## **How Transformative Constitutionalism Became a Pathway to Social Justice**

### **Empowerment of Weaker Sections**

Empowering marginalized communities is a key objective of transformative constitutionalism, aiming to establish a fair and inclusive society. Transformative constitutionalism addresses systemic inequalities by ensuring representation and opportunities for historically disadvantaged communities, such as women, Scheduled Castes, Scheduled Tribes, and minorities. E.g., Reservation policies in legislatures, employment, and education (*Indra Sawhney Case*, 1992). Provisions like Article 15 and Article 17 combat caste, gender, and other forms of discrimination, ensuring inclusivity within democratic institutions. Dalits, who were traditionally oppressed in the caste-ridden society, were provided with greater opportunities for social mobility as Ambedkar's legacy provided for reserved seats in educational institutions and politics. This system of affirmative action, known as reservation, is highly controversial and has been the subject of debate in contemporary India. Some

argue it to be an unjust system of reverse discrimination which perpetuates casteism; others see it as a necessary but not sufficient condition to correcting historical injustices and social disparities.

### **Ensures Accountability and Rule of Law**

By strengthening the independence of institutions like the judiciary and the Election Commission, transformative constitutionalism ensures transparency and accountability. Courts play a proactive role in safeguarding fundamental rights and addressing institutional failures. *Vishaka Guidelines* (1997) established workplace harassment protections before legislative intervention.

### **Strengthens Participatory Democracy**

The Right to Information promotes transparency by enabling citizens to hold institutions accountable. Decentralization empowers local self-governments, such as Panchayati Raj institutions, ensuring grassroots participation in democracy (73rd and 74th Amendments). Public Interest Litigation (PIL) facilitates access to justice for all, particularly for those unable to approach courts due to socio-economic barriers.

## Challenges Facing Constitutionalism

- **Furthering of political agenda:** Politicians have gradually destroyed the institutional morality to make the parliamentary system subservient.
- **Growing strength of neoliberal economic and political forces:** The National Economic Policy 1991 placed India firmly on the capitalist path. This affected steadily India's economic and political sovereignty.
- **Overreach of judicial activism:** In India, there is no strict separation of powers. The recent CAA has also challenged the fundamental principles of constitutionalism provided by secularism.
- **Corruption:** It is an issue that affects the functioning of the system unfairly.

## Conclusion

In the context of India, the Constitution is not merely a legal framework but a moral compass that steers the nation toward achieving socio-economic and political justice. The Preamble, Fundamental Rights, Directive Principles of State Policy, and the principle of transformative constitutionalism collectively underscore the commitment to social

justice. Landmark judicial pronouncements and progressive legislative measures have reinforced the role of constitutionalism in dismantling systemic inequities and fostering a more equitable society.

By balancing individual rights with collective welfare, constitutionalism emerges as a powerful pathway to social justice, ensuring that democratic ideals are realized in the lived experiences of all citizens. This interplay between constitutional principles and social justice underscores the Constitution's dynamic role in shaping a just and inclusive society.

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## **Chapter 19**

# **Evolution of Reservation Policy and Meritocracy in India: A Review**

### **Introduction**

Reservation in India is a system of affirmative action designed to uplift socially and economically disadvantaged groups by ensuring their representation in education, employment, and governance. Originating during the colonial period, this policy has witnessed numerous reforms and extensions over the years. The Constitution of India institutionalised reservation policies to address

historical injustices by earmarking a specific percentage of seats and positions for Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), and, more recently, Economically Weaker Sections (EWS) of the general category. However, since its inception, reservation has remained a contentious issue, influencing political discourse and shaping social dynamics. This review explores the historical evolution of reservation policies, their post-independence trajectory, and the landmark judicial interpretations that have shaped the course of affirmative action in India.

## **Historical Background Of Reservation**

### **Pre-Independence Initiatives:**

The concept of reservation in India predates independence and was introduced during British rule to address the underrepresentation of certain communities. The earliest recorded initiative was in 1902, when *Chhatrapati Shahu Maharaj*, the ruler of Kolhapur, implemented 50% reservations for non-Brahmins and backward classes. He also promoted free education and established hostels to facilitate quality education for marginalised communities.



In 1918, the Maharaja of Mysore, *NalvadiKrishnarajaWadiyar*, responding to the demands of non-Brahmin groups, appointed a committee to introduce reservations in education and public services. Despite facing opposition from his Diwan, *Sir M. Visvesvaraya*, who later resigned, the committee's recommendations resulted in landmark reforms.

The Government of India Act of 1909 introduced provisions for communal representation, which were expanded by the Government of India Act of 1919. Subsequently, the 1921 Communal Government Order passed by the Justice Party in Madras Presidency formally introduced caste-based reservations, becoming the first legislative measure of its kind.

The Communal Award of 1932, introduced by British Prime Minister *Ramsay MacDonald* during the Round Table Conference, proposed separate electorates for various communities, including Muslims, Sikhs, Indian Christians, Anglo-Indians, and Europeans. Depressed classes (now recognised as SCs and STs) were also granted separate electorates. This measure, however, met with strong opposition from *Mahatma Gandhi*, leading to his historic fast in protest. A compromise was eventually reached through the Poona Pact between

Gandhi and Dr B.R. Ambedkar, which resulted in a unified Hindu electorate with increased reserved seats for backward classes. Separate electorates were retained for religious minorities.

Reservation for Scheduled Castes in central services and other public facilities was introduced in 1942, further institutionalising affirmative action in colonial India.

## **Post-Independence Evolution Of Reservation**

### **Constitutional Provisions and Initial Policies:**

After India gained independence in 1947, significant measures were taken to protect the interests of Scheduled Castes and Scheduled Tribes. The Constitution of India, adopted in 1950, provided a legal framework for affirmative action. Article 15(4) empowered the State to make special provisions for the advancement of socially and educationally backward classes, including SCs and STs. Article 46 further mandated the State to promote the educational and economic interests of weaker sections while protecting them from social injustice and exploitation.

In 1954, the Ministry of Education recommended that 20% of seats in educational institutions be reserved for SCs and STs, with a 5% relaxation in minimum qualifying marks where necessary. By 1982, these percentages were formalised, with 15% of vacancies in public sector employment and government-aided educational institutions reserved for SCs and 7.5% for STs.

### **Mandal Commission and Inclusion of OBCs:**

A significant turning point in the evolution of reservation policies occurred in 1979 when the *Mandal Commission*, formally known as the “**Socially and Educationally Backward Classes (SEBC) Commission**”, was constituted to assess the socio-economic conditions of backward classes. Due to the unavailability of post-independence population data, the Commission relied on the 1931 Census, estimating the OBC population at 52%. In 1980, the Mandal Commission recommended 27% reservation for OBCs in central services and educational institutions, in addition to the existing SC and ST quotas.

However, these recommendations were implemented only in 1990 by Prime Minister *V.P. Singh*, triggering widespread political and social

debates. The extension of reservations to OBCs altered the socio-political landscape, ushering in new dimensions to the discourse on affirmative action.

### **Extension to Higher Education Institutions:**

In 2006, the Union Government extended reservations for OBCs in centrally funded institutions of higher education. This decision faced significant opposition and legal challenges but was ultimately upheld by the Supreme Court, reaffirming the government's authority to promote affirmative action.

### **Reservation for Economically Weaker Sections (EWS):**

In 2019, the 103<sup>rd</sup> Constitutional Amendment introduced a 10% reservation for Economically Weaker Sections (EWS) within the general category. This marked a paradigm shift by introducing economic criteria as a basis for affirmative action. The amendment pushed the total reservation in central institutions to 59.5%, exceeding the 50% limit established by judicial precedent.

## **Judicial Interpretations And Legal Developments**

50% Cap on Reservation In the landmark case of *Indra Sawhney vs Union of India* (1992), the Supreme Court ruled that reservation could not exceed 50%, establishing a cap to prevent excessive dilution of merit-based opportunities. However, this limit has been exceeded in several states, including Tamil Nadu, where reservation currently stands at 69%. Many of these deviations remain under judicial scrutiny.

### **Validation of EWS Reservation:**

The Supreme Court, in *Janhit Abhiyan vs Union of India* (2022), upheld the validity of the 103<sup>rd</sup> Constitutional Amendment, affirming that economic criteria could form the basis for reservation and that the 50% limit was not inviolable. The Court recognised the need for addressing economic inequality through affirmative action.

### **Sub-Quotas for SCs and STs:**

On 1<sup>st</sup> August 2024, the Supreme Court delivered a 6:1 verdict allowing states to create sub-quotas within SC and ST reservations. Chief Justice *D.Y.*

*Chandrachud* opined that Article 14 should be interpreted to ensure equitable application of laws to those similarly placed. However, Justice *Bela Trivedi* dissented, arguing that such sub-quotas violated the 1950 Presidential List and undermined Article 14. Justice *B.R. Gavai*, concurring with the majority, suggested that the ‘creamy layer’ principle, excluding economically advanced individuals within OBCs from availing reservation benefits, should also apply to SC and ST categories to ensure targeted benefits.

## **CHALLENGES AND CONTROVERSIES**

The reservation system in India has remained a subject of intense debate and controversy. While it aims to rectify historical injustices and promote social equity, critics argue that it perpetuates caste-based divisions and undermines meritocracy. Concerns have been raised about the exclusion of economically disadvantaged sections within unreserved categories and the disproportionate benefits availed by the ‘creamy layer’ within reserved communities. The introduction of EWS reservations and recent judicial verdicts have further complicated the landscape, with ongoing debates about balancing affirmative action with the principles of equality and meritocracy.

## **MERITOCRACY AND ITS IMPLICATIONS IN THE CONTEXT OF RESERVATION IN INDIA**

*Meritocracy*, a system where individuals advance based on talent, effort, and achievement, remains a dominant ideal in modern societies. It advocates for equal opportunity, where the most capable individuals, regardless of their social background, rise to positions of power and influence. In India, however, the principle of meritocracy exists in constant tension with the policy of reservations, designed to promote social justice by uplifting historically disadvantaged communities.

### **Origins and Theoretical Underpinnings:**

The concept of meritocracy can be traced to British sociologist *Michael Young*, who coined the term in his 1958 satirical work, *The Rise of the Meritocracy*. Originally intended as a critique of an overemphasis on intellectual merit, the term evolved to denote a positive ideal where individual capabilities, not birth or privilege, determine success. Meritocracy rests on principles of fairness, efficiency, and competition, wherein rewards and recognition are distributed according to individual merit, ensuring that the most capable contribute to societal progress.

## **Meritocracy versus Reservation; the Indian Dilemma:**

In India, reservation policies for SCs, STs, and OBCs aim to address deep-rooted inequalities arising from historical oppression and marginalisation. Articles 15(4), 16(4), and 46 of the Indian Constitution mandate affirmative action to ensure equitable representation in education, employment, and governance. However, critics argue that reservation compromises merit by allowing less qualified individuals to occupy positions that could be filled by more deserving candidates. This view asserts that merit should be the sole criterion for advancement, and any deviation undermines efficiency and standards.

## **The Fallacy of Pure Meritocracy in an Unequal Society:**

The argument that reservation dilutes merit overlooks the structural inequalities embedded in Indian society. In a stratified society where access to quality education, healthcare, and resources remains uneven, merit is often a reflection of privilege rather than inherent capability. Philosopher John Rawls, in his *Theory of Justice*, argued that a just society compensates for unearned



disadvantages, ensuring that opportunities are genuinely accessible to all.

Moreover, merit is socially constructed and often privileges those with better schooling, exposure, and coaching, creating an illusion of merit that benefits the privileged. In this context, reservations serve as a corrective mechanism that not only ensures representation but also challenges entrenched structures of privilege masquerading as merit.

### **Empirical Insights on Reservation and Merit:**

Empirical evidence indicates that individuals from reserved categories, when given opportunities, perform as well as their general category counterparts. *Thorat and Newman's* (2007) study underscored that caste-based discrimination, not a lack of merit, often restricts the upward mobility of marginalised communities. Similarly, data from premier institutions like the Indian Institutes of Technology (IITs) and Indian Institutes of Management (IIMs) reveal that reservation policies have enhanced diversity without compromising academic standards.

## **Harmonising Meritocracy with Social Justice:**

A balanced approach is necessary to harmonise meritocracy with the pursuit of social justice. Genuine meritocracy cannot function in isolation from societal realities. It requires a level playing field where disadvantaged communities receive adequate support to realise their potential. Affirmative action, including reservations, does not undermine merit but facilitates the creation of conditions where true merit can emerge. *Amartya Sen's* capability approach highlights that real progress lies not just in ensuring formal equality but in enhancing the capabilities of the marginalised to participate meaningfully in society.

## **Advancing an Inclusive Meritocracy:**

To establish an inclusive meritocracy, India needs to implement policies that balance merit with equity. This includes improving the quality of primary education, offering skill development programmes, and expanding access to higher education for disadvantaged communities. Periodic reviews of reservation policies, sub-categorisation of OBCs, and addressing the aspirations of economically weaker sections (EWS) are essential

to ensuring that affirmative action remains effective and relevant.

## **CONCLUSION**

The discourse surrounding reservation and meritocracy in India highlights a complex and ongoing effort to balance historical injustices with the ideals of fairness and excellence. Reservation policies, deeply embedded in the constitutional framework of social justice, aim to address structural inequalities by ensuring that marginalised communities have access to education, employment, and governance. While critics often argue that reservations undermine meritocracy, consistent empirical evidence shows that individuals from reserved categories, when provided with equal opportunities, perform just as well as their general category counterparts. This challenges the notion of a purely merit-based system in a society where socio-economic disparities still determine access to quality education, resources, and opportunities.

A true meritocracy can only thrive when all individuals, regardless of caste, class, or economic background, have a fair chance to develop their potential and contribute meaningfully to society. Far from diminishing merit, affirmative action

serves as an essential corrective tool that cultivates genuine merit by enabling disadvantaged groups to compete on an equal footing. *AmartyaSen's* capability approach reinforces this perspective by emphasising that true development lies in enhancing the capabilities of marginalised communities, empowering them to engage actively in societal advancement.

To establish an inclusive meritocracy, India must adopt a comprehensive approach that strengthens the foundation of primary education and broadens access to skill development and higher education for underprivileged communities. Regular reviews of reservation policies, nuanced sub-categorisation within backward groups, and addressing the aspirations of economically weaker sections (EWS) are necessary to ensure that affirmative action remains relevant and effective in an evolving socio-economic context. Recent judicial pronouncements, including the recognition of sub-quotas for SCs and STs, highlight the importance of refining policies to promote fairer outcomes.

As India aspires to become a global knowledge powerhouse, the challenge lies not in dismantling affirmative action but in enhancing and adapting it to create a balance between merit and equity. Building an inclusive meritocracy, where

opportunities are not confined to a privileged few but are accessible to all, is not only a moral obligation but also essential for sustainable national growth. By striking a careful balance between merit and justice, India can nurture a future where talent flourishes across all sections of society, fostering collective progress and strengthening the foundations of an equitable and inclusive democracy.

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## **Chapter 20**

# **Gender Struggles in Kerala: A Socio-Cultural Analysis**

### **Introduction**

Kerala, touted as having high literacy rates and advanced social indicators, is a paradox regarding gender equality. Though women in Kerala have more access to health care and education than their counterparts in other Indian states, they continue to endure great challenges in every sector of life. The gap between men and women is most apparent in working environments, household duties, and societal roles. This article

discusses the challenges of women in Kerala, more specifically married women who have to carry out office tasks, household work, and child care, and contrast them with those of men. This research also points to the social taboos that limit women's freedom, happiness, self-expression, and autonomy.

**Educational Attainment vs. Job Opportunities** Kerala has one of the highest female literacy rates in India. Yet this educational benefit does not reveal itself in equal opportunities in employment. Even as they excel academically, women in Kerala are often bound by socially constructed roles and family expectations that demand they assume their traditional role as caregivers over professional ambitions. Men, on the other hand, with lower levels of education, enjoy greater ease in finding secure jobs and advancing in careers. The pay gap between men and women and the underrepresentation of women in leadership positions exacerbate this disparity further.

**Workplace Issues and Gender Discrimination** Women in Kerala encounter a number of workplace issues, such as discrimination in the form of wages, non-availability of leadership positions, and workplace harassment. Even if they do get jobs, they are asked to prefer family over

professional advancement. Most women are compelled to take career breaks for marriage, childbearing, or childcare duties, whereas men are not typically made to face the same kind of expectations. Additionally, most employed women lack institutional assistance, including poor maternity leave policies and few childcare centers, which makes their continued career efforts even more difficult.

**The Double Burden of Dual Responsibilities:**  
**Home and Office** One of the major difficulties that married women in Kerala face is the double burden of carrying out professional and domestic duties. In contrast to men, who usually concentrate on a single duty at work, women have to carry out domestic tasks like cooking, cleaning, and taking care of children and elderly relatives. The "double burden" produces physical and psychological fatigue, not leaving much time for leisure or personal development. Some men have begun to contribute to domestic work, but most domestic work still falls on women by societal demands.

**Pressures of Child-rearing and Parenting**  
Child-rearing is largely a woman's domain in Kerala. Married working women find it difficult to balance their professional lives and motherhood responsibilities. They feel guilty and under criticism

whether they work full-time, part-time, or remain at home. Men, on the other hand, do not experience the same kind of criticism over their fathering roles. Fathers who engage in childcare are frequently complimented, but mothers are assumed to manage parenting responsibilities on their own without recognition or support.

**Social Taboos and Control of Women**  
 Women in Kerala experience severe control over personal autonomy, self-expression, and sovereignty. Social norms state that women need to follow traditional roles, and any transgression of this norm results in judgment and exclusion. Some of the most important social taboos are:

- Freedom:** It is deemed to be inappropriate for women to enjoy personal freedom, whether in selecting their way of life, profession, or social life. Men, however, have these privileges unquestionably.
- Happiness and Self-Expression:** Women, who express openly happiness, independence, or aspirations beyond traditional gender roles, end up being criticized and portrayed as immoral or disobedient.
- Living Alone:** Women who live alone or by themselves are suspicious and socially stigmatized,

whereas men living alone are considered a natural way of life.

- Putting Themselves First:** A woman who puts herself first, either in terms of her own health, career, or happiness, at the expense of familial responsibilities is considered selfish or ethically wrong according to patriarchal values. Men, however, are expected to strive for personal achievement and goals.

**Safety and Mobility Issues** Although Kerala is arguably as safe as any other place for women, problems such as harassment, domestic violence, and cyberbullying also exist. Women's mobility is restricted, particularly in late evenings, for reasons of safety. They get limited access to opportunities, while men have the luxury of unlimited mobility. Public transport and workplace settings are not invariably conducive for women as well, posing an additional obstacle for working women.

## **Conclusion**

Though Kerala has achieved great strides in literacy, health, and women's rights, considerable gender inequalities persist in work, home, and societal roles. Women, especially married working women, carry the heavy burden of shouldering professional and domestic duties. The additional

constraints from social taboos further inhibit their freedom, happiness, and independence. The contrast with men shows a glaring disparity, with men having better career prospects, lesser household chores, and greater societal benefits. To overcome these issues, an across-the-board effort needs to be undertaken by society, policymakers, and families to make Kerala more inclusive for women.

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## **Chapter 21**

# **Constitutional Morality and Social Justice: The Dialectics of Law, Democracy, and Equality**

Constitutional morality, as a foundational principle of democratic governance, provides the ethical framework necessary for upholding constitutional values beyond the text of the law. It ensures that state institutions and legal processes adhere to principles of justice, equality, and liberty, even when societal norms and majoritarian preferences diverge from these ideals. B.R. Ambedkar, a key architect of the Indian Constitution, emphasized that constitutional

morality is “not a natural sentiment” but one that must be cultivated through institutional practices and legal interpretation (Ambedkar, 1949). This idea underscores the role of constitutional morality in securing social justice by ensuring that constitutional principles, rather than transient social or political majorities, guide governance.

Social justice, in turn, is a normative goal that seeks to rectify historical and structural inequalities through legal and institutional mechanisms. John Rawls (1971) defines social justice as the arrangement of institutions in a manner that ensures fairness and equitable distribution of resources. Amartya Sen (2009) extends this argument by emphasizing the need for capabilities that enable individuals to exercise their rights meaningfully. The Indian constitutional framework, through its Fundamental Rights and Directive Principles of State Policy, embodies these principles by mandating affirmative action, protection of marginalized communities, and judicial interventions that promote substantive equality.

The intersection of constitutional morality and social justice has been a subject of evolving judicial interpretation. The Supreme Court of India has invoked constitutional morality in landmark

cases such as *Kesavananda Bharati v. State of Kerala* (1973), which established the basic structure doctrine, and *Navtej Singh Johar v. Union of India* (2018), which decriminalized same-sex relationships, reaffirming that constitutional principles must take precedence over majoritarian morality. However, this reliance on constitutional morality has also been critiqued for granting excessive judicial discretion, leading to debates over its legitimacy and scope in a democratic society.

This paper aims to critically examine the role of constitutional morality in shaping social justice, analyzing its theoretical underpinnings, judicial interpretations, and practical challenges. It adopts a doctrinal and comparative approach, drawing from Indian jurisprudence as well as insights from other constitutional democracies. The study will address key research questions: To what extent does constitutional morality facilitate the realization of social justice? How has the judiciary interpreted and applied constitutional morality in advancing rights-based governance? What are the limitations and critiques of constitutional morality as a judicially developed doctrine?

The discourse on constitutional morality and social justice is deeply embedded in legal philosophy, democratic theory, and constitutional

interpretation. This section provides a conceptual foundation for both terms, tracing their intellectual evolution and their interconnectedness in shaping governance and rights-based frameworks. Constitutional morality refers to adherence to the fundamental values and principles enshrined in a constitution, ensuring that governance operates within the bounds of justice, fairness, and equality. Unlike conventional morality, which may be shaped by religious or cultural norms, constitutional morality is rooted in the principles of democracy, individual rights, and rule of law.

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# DEMOCRACY, CONSTITUTION, AND SOCIAL JUSTICE : CONTEMPORARY CHALLENGES AND FUTURE DIRECTIONS

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