CHAPTER-5

SOCIAL JUSTICE AND QUASI CONTRACT

Social justice may be defined as justice to every member of society. The meaning of ‘society’ as given in Oxford Dictionary is the aggregate of people living together in a more or less ordered community. In law, a society can be recognised only when it consists of persons with lawful object. It is because the purpose of a society may be manifold but it must be within legal framework. The mutual cooperation and faith is the fundamental concept whereby a society functions and flourishes. On the other hand, as given under Oxford Dictionary ‘justice’ connotes as the administration of law. According to Paton justice is the end of law. He further said that there is clear distinction between law and justice. Law is that which is actually in force, whether it be evil or good. Justice is an ideal founded in moral nature of man. The conception of justice may develop as man’s understanding develops, but justice is not limited by what happens in the actual world of fact. However, he says that law and justice cannot be said to be entirely unrelated. Justice acts within law and it also provides external test by which law may be judged, e.g. justice emphasises good faith and this conception has greatly influenced the development of legal systems. For solving problem of the relationship of law and justice Jethro Brown

puts emphasis on and regards justice as mere conformity to law. In Kelsen’s opinion justice is an irrational idea as it cannot be proved by rational cognition. **But in broad sense the essence of justice is giving each man or group his or its due, what is due to each depends on the ethos of political system, and the property relations governing a given society.**

Before highlighting the idea of social justice it is relevant to discuss justice briefly. Coming down in existence from ancient society to the modern age, justice has always been held in very high esteem. May be it is based on different logic and arguments but the basic idea underlying it is to provide satisfaction to reasonably needed person. The Greek philosophers have contributed a lot in this respect. They have established a very closed relation between justice and ethics. To explain, it is submitted that with regard to justice Socrates is quoted with developing the idea of a social contract whereby people ought to follow the rules of a society and accept its burdens because they have accepted its benefit. In *The Republic*, regarding justice, Plato has mentioned that it would be an ideal state that every member of the community must be assigned to the class for which he finds himself best fitted. Thus, Plato has tried constructively to find out basis of justice. Again, to Aristotle justice means either what is lawful, or what is fair and equal. He divided justice into distributive justice and remedial justice. The distributive justice with distribution of honour and wealth among citizens and works accordingly to the ratio of merit of the particular society in question.

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remedial justice the law looks to the nature of injury and attempts to restore the equality that existed before the wrong. However, the definition of Aristotle applies only to citizens and not other persons like judge, king, etc. He has also drawn a line of distinction between natural justice and conventional justice. He opines that natural justice is universal while conventional justice binds only because it was decreed by a particular authority. To Aristotle State was natural because a man was political being who could recognise his personality to the full only within such an organisation. The middle age religious thinker e.g. Thomas Aquinas connected justice with purpose of serving God. Further, another jurist namely Blaise Pascal sees very close relationship between justice and power and treat one as an integral part of another. According to him, justice without power is inefficient; power without justice is tyranny. Justice without power is opposed, because there are always wicked men. Power without justice is soon questioned. Justice and power must therefore be brought together so that whatever is just may be powerful, and whatever is powerful may be just.

In modern age, justice needs certainty and requires that some law whereby an authority delivers justice. It is because when law is settled, justice can be delivered with least scope of exercise of discretionary power of concerned authority. So, in the modern age for the justice delivery system it becomes necessary that rules of law must be settled. It is concept of justice that in the present age a number of concepts have evolved by the judiciary and the legislation as well. For example, the

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9 Justice V. R. Krishna Iyer, Social Justice- Sunset or Dawn, 2nd ed., p. 18 may be seen.
principle of strict liability\textsuperscript{10}, absolute liability\textsuperscript{11}, third party insurance in motor vehicle accident\textsuperscript{12}, consumer law\textsuperscript{13}, right to information\textsuperscript{14}, e-commerce law\textsuperscript{15}, cyber law\textsuperscript{16}, fundamental rights including right to sleep\textsuperscript{17}, right to pollution free environment\textsuperscript{18}, right to live with human dignity\textsuperscript{19}, freedom from noise\textsuperscript{20}, ban on smoking at public places\textsuperscript{21}, fundamental duties\textsuperscript{22}, human rights\textsuperscript{23} and so on have been brought into operation to fulfil the demand of justice.

Therefore, social justice may be said to be such relation between individual and society which is fair and just. Opportunities to all the persons in society, distribution of wealth and dignity conferred to every member of society can be described as edifice of social justice. In Western countries and also in Asian countries social justice has been that individuals was to fulfil his obligation towards society and in turn was to receive what was reasonably required for him. That is it was the concept that an individual would fulfil his social obligation and in lieu of it would receive his due from society. In latter part of medieval period in Europe especially in England revolution took place whereby protest was made against supremacy of Pope’s law in all the fields. Ultimately it was

\textsuperscript{10} Rylands v. Fletcher, (1868) L.R. 3 H.L. 330.
\textsuperscript{11} M.C. Mehta v. Union of India (Oleum Gas Leak Case), AIR 1987 S.C. 1086.
\textsuperscript{13} The Consumer Protection Act, 1986.
\textsuperscript{14} The Right to Information Act, 2005.
\textsuperscript{15} The Information Technology Act, 2000.
\textsuperscript{16} The Information Technology Act, 2000.
\textsuperscript{17} Ramlila Maidan v. Home Secretary, Union of India, 212 Cr. L.J. 3516 (S.C.).
\textsuperscript{20} Re Noise Pollution, A.I.R. 2005 S.C. 3136.
\textsuperscript{22} Art. 51 A of The Constitution of India.
decided that Pope’s law will be superior only in religious affairs and all other matters will be governed by National Law. U.S.A. had become free in 1776 and it has its own Constitution. The Constitution of U.S.A. was made in 1787, it was ratified in 1788 and it came in force in 1789. It is since then that the Constitution of U.S.A. deals with all the affairs of the country. With the help of its Constitution and other laws and schemes, it is well promoting the concept of social justice. On the other hand in the medieval period, India was ruled over by foreign Muslim emperors and in the modern period until independence, India was ruled over by Britishers. So, what can be said with regard to social justice during these periods is obviously that wealth and administration of justice were in hands of a few and neither people’s condition was satisfactory nor society was happy. However, when India became free on 15 August, 1947, the Constitution framed by the constituent assembly was adopted on 26 November, 1949 and it was completely enforced on 26 January, 1950, our country became democratic and republic as well. With the help of the Constitution, different schemes and various other laws, India is making regular efforts to ensure social justice and individual justice. Various policies are made by the government from time to time to enhance social, economic, educational and political status of a member of society. These schemes include, for example, scholarship to poor students, reservation policy, subsidy on seeds and fertilizers to farmers, subsidy on L.P.G. cylinders, facility of ration, kerosene oil to needy persons on basis of Ration Card, providing drinking water facility, opportunity of jobs and works according to merit of persons and so on.

**Roscoe Pound** was also in favour of social justice by propounding his theory of Social Engineering. The view of **Karl Marx**
is that the human law and human justice are for the full and free development of every individual.\textsuperscript{24} The U.N.O. has taken drastic measures in one way or another for promotion of social justice. For example, one of the basic objectives of \textbf{World Health Organisation} is to ensure proper health care to each and every person in the world especially of such persons who are too poor to take medical help. Similarly, the Preamble of \textbf{International Labour Organisation} provides for reasonable pay for work of every labourer and equal distribution of necessary resources among them. \textbf{Universal Declaration of Human Rights} which makes it clear that every human being in the world is entitled to exercise all the human rights equally. Such notion of the Declaration can also be considered in promotion of the concept of social justice not only at the local level but also at the global level.

After independence, our Father of the Nation \textbf{Mahatma Gandhi} was of the opinion that in real sense freedom can be said to have been achieved when every Indian has proper facility of food, shelter and clothing. He said that every human being has a right to live and therefore to find the wherewithal to feel himself and where necessary, to clothe and house himself.\textsuperscript{25} \textbf{Pt. Jawahar Lal Nehru}, the first Prime Minister of free India expressed his opinion about social justice in the words that the service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been

\textsuperscript{24} Justice V. R. Krishna Iyer, Social Justice- Sunset or Dawn, 2\textsuperscript{nd} ed., p. 25,26 may be seen.
\textsuperscript{25} Justice V. R. Krishna Iyer, Social Justice- Sunset or Dawn, 2\textsuperscript{nd} ed., p. 16 may be seen.
to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.\textsuperscript{26}

It would be quite relevant to quote here the Preamble of Constitution of India which is generally regarded as key of the Constitution- the highest and most sacred law of our nation. The Preamble runs as under-

\begin{quote}
"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."
\end{quote}

The concept of Justice is referred to social, economic and political affairs of all the citizens. The concept of Liberty is related to thought, expression, belief, faith and worship to all the citizens of the nation. Similarly, the concept of Equality is connected with status,

\textsuperscript{26} Granville Austin, The Indian Constitution: Corner Stone Of A Nation, 1972, p. 26. Justice V. R. Krishna Iyer, Social Justice- Sunset or Dawn, 2\textsuperscript{nd} ed., p. 31 may also be seen.
opportunity and to promote among all the citizens. Likewise, the concept of Fraternity aims at assuring the dignity of the individual and the unity and the integrity of the Nation. **It is to be noted that justice, liberty, equality and fraternity are of equal importance and are so important that neither of them can be compromised for any of them.** That is, neither justice can be waived for liberty, equality and fraternity nor liberty can be compromised for justice, equality and fraternity. In the same way neither equality can be waived for fraternity, justice and liberty. Again, neither fraternity can be waived for justice, liberty and equality. It is worth mentioning that the Preamble is extremely useful for interpretation of the Constitution.\(^\text{27}\) It sets out the main objectives which the legislation is intended to achieve.\(^\text{28}\) It embodies in a solemn form all the ideals and aspirations for which the country had struggled during the British regime.\(^\text{29}\) It is further to be noted that guaranteeing the Fundamental Rights, Constitutional Rights, provisions relating to Directive Principles of State Policy and a number of other provisions of the Constitution of India consists of the idea of social justice directly or indirectly. To explain, certain provisions and judicial pronouncements can be referred to and examined here in some details as examples to substantiate the idea that our Constitution well guards, ensures and promotes social justice.

**Art. 16(1)** of the Constitution of India guarantees equality of opportunity for all citizens in employment or appointment to any post under the State. **Art. 16(2)** provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any


of them, be ineligible for or discriminated against in respect of any employment or office under the State. Thus, Clauses (1) & (2) of Art. 16 provide for equal opportunity to all the citizens for employment or appointment under the State and expressly prohibit discrimination only on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them.

Art. 16(3) enumerates that nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. Therefore, it is obvious that under Art. 16(3) the Parliament is empowered to make any law for any class or classes of employment or appointment to an office under the Government of any State or Union Territory or under any local or other authority. It is also authorised to make law regarding any requirement as to residence within that State or Union Territory prior to such employment or appointment.

Art. 16(4) stands for protective discrimination as it protects discrimination. It states that nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Thus, Clause 4 of Art. 16 enables the State to make reservation policy for posts in Government services in favour of backward class citizens. In this respect it is to be mentioned that by 77th Amendment Act to the Constitution in 1995 Clause (4-A) was added to Art. 16. To this
amended clause i.e. **Art. 16(4-A)** empowers the State to make any provision for reservation in matters of promotion for Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. Similarly, the **Constitution 81\textsuperscript{st} (Amendment) Act, 2000** has also added in new clause (4-B) to Art. 16 of the Constitution. This amendment enables to end the 80% limit for Scheduled Castes and Scheduled Tribes and Other Backward Classes in backlog vacancies which could not be filled up due to the non availability of eligible candidates of these categories in the previous year or years.

**Art. 16(5)** saves a law from the operation of Clauses (1) & (2) of Art. 16. Art. 16(5) of the Constitution provides that nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

In this respect, provisions of **Arts. 29 & 30** which provide for cultural and educational rights to minorities, are also worth mentioning. **Art. 29(1)** of the Constitution enumerates that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. Whereas **Art. 29(2)** posits that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. On the other hand, **Art. 30(1)** provides that all minorities, whether based on religion or language, shall have the right to
establish and administer educational institutions of their choice. Art. 30(1A) says that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. While Art. 30(2) makes it clear that the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

It is relevant to mention that the aforementioned provision of Arts. 16, 29 & 30 of the Constitution are glaring examples of social justice. To substantiate the effect of Art. 16 it can be mentioned that in Balaji v. State of Mysore,\(^{30}\) it was laid down by the S.C. that ‘caste’ of a person cannot be the sole test for ascertaining whether a particular class is backward class or not. Poverty, occupation, place of habitation may all be relevant factors to be taken into consideration. Again, in State of Andhra Pradesh v. U.S.V. Balram,\(^{31}\) the S.C. held that though the caste of a person cannot be the sole test for determining the backwardness of a class, yet if an entire caste is found to be socially and educationally backward, it may be included in the list of Backward Classes. It does not mean that once a cost is considered Backward Class, it should continue to be Backward for all the times. The government should review the test and if a class reaches the state of progress where reservation is not necessary, it should delete that class from the list of the


Backward Classes. In the present case the S.C. observed that while it was open to State to prescribe the source from which the candidate might be selected for admission to the medical college, once a common entrance test was prescribed there could not be any valid classification between candidates who took that examination after the higher secondary course and those who took it after pre University course. When the scheme of the rules framed for selecting candidates for admission to the integrated M.B.B.S. course in medical colleges shows that the basis of selection will be in order of merit of marks obtained in the entrance test, reservation of 40 percent of the seats for higher secondary course candidates is discriminatory. Such a classification has no reasonable relation to the object sought to be achieved, namely selecting best candidates for admission to the medical colleges.

In another case of Devadasan v. Union of India, the constitutional validity of carry forward rule framed by the government within scope of Art. 16 (4) for regulating appointments of candidates of Backward Classes in government services was challenged. The rule provided that if sufficient number of candidates belonging to the Schedule Caste and Schedule Tribes were not available for appointment to the reserved quota, the vacancies that remained unfilled would be treated as unreserved and filled by the fresh available candidates; but a corresponding number of course would be reserved in the next year. The consequence of such rule was that the carry forward policy for the unfilled balanced vacancies was to be adopted. The effect of such policy was that 68 percent of the vacancies were reserved for Schedule Caste and Schedule Tribes. The S.C. declared the carry forward rule

unconstitutional by majority of 4:1. The reason given by the S.C. was that the power vested in the government under Art. 16 (4) could not be exercise so as to deny reasonable equality of opportunity in matters of public employments for members of classes other than Backward. The Court further observed that each year of recruitment must be considered by itself and the reservation for the Backward Communities each year should not be excessive so as to create a monopoly or to interfere unduly with the legitimate claims of other communities. Consequently the Court held that the reservation ought to be less than 50 percent but how much less than half would depend upon prevailing circumstances in each case.

However, in *Indra Sawhney v. Union of India*, the S.C. overruling Devadasan’s case laid down that the carry forward rule is valid so long as it does not, in a particular year, exceed 50 percent of vacancies. The limit of 50 percent can only be exceeded in an extraordinary situation prevailing in a State (i.e. far flung States, Nagaland etc.). But, in *Faiza Chaudhary v. State of Jammu & Kashmir*, it was held by the S.C. that carry forward policy is not applicable in absence of any rule and regulation. It observed that a medical seat has life only in the year it falls and that too till the cut off date fixed by the Court. Carry forward principle is unknown to the professional courses like medical, engineering, dental etc. In the absence of any rule and regulation conferring power on the Board to carry forward vacant seat to a succeeding year, indulgence will be at the expense of other meritorious candidates waiting for admission in the succeeding year.

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It is pertinent to discuss *Indra Sawhney’s* case with much attention drawing on it which is also known as *Mandal Commission’s case* because it is a landmark judgment on reservation to candidates belonging to Backward Classes. It was decided by 9 Judges Constitution Bench of the S.C. by a majority of 6:3 Judges. In that case it was laid down by the S.C. that 27 percent reservation in government jobs for Backward Classes decided by the Union government is constitutionally valid provided socially advanced persons—Creamy layer among them—are eliminated. Briefly the facts of the case were as follows:

On January 1, 1979, the government headed by the Prime Minister Sri Morarji Desai appointed the second Backward Classes Commission under Art. 340 of the Constitution under the Chairmanship of Sri B.P. Mandal (M.P.) to investigate the socially and educationally Backward Classes within the territory of India and recommend steps to be taken for their advancement including desirability for making provisions for reservation of seats for them in government jobs. The Commission submitted its report in December 1980. It had identified as many as 3743 castes as socially and educationally Backward Classes and recommended for reservation of 20 percent seats in government jobs for them. In the meantime, the Janta Government collapsed and the Congress Party headed by the Prime Minister Smt. Indira Gandhi came to power at the Centre. However, the Congress Government did not implement the Mandal Commission’s report till 1989. The Congress Party was defeated in 1989 in the Parliamentary Election and Janta Dal came to power. Sri V.P. Singh became the Prime Minister. He had promised to implement the Mandal Commission’s report. Ultimately, the government of India, headed by the Prime Minister Sri V.P. Singh
implemented the report by issuing an Office Memoranda (O.M.) on August 13, 1990. Thus, 27 percent seats for Backward Classes in government services were reserved. As a result a violent anti reservation movement rocked the Nation for about 3 months causing heavy loss of person and property. Bar Association of the S.C. filed a writ petition in the S.C. challenging the validity of Office Memoranda and requested for staying its operation. The 5 Judges Bench of the S.C. stayed the operation of O.M. till the final disposal of the case. But, the Janta Dal Government collapsed and the Congress party again came to power at the Centre in 1991.

On September 25, 1991, the Congress Party Government headed by Sri P.V. Narsimha Rao issued another O.M. and made two changes in the earlier O.M. (i) by introducing the economic criterion in granting reservation by giving preference to the poorer sections of socially and educationally Backward Classes (SEBCs) in 27 percent quota, and (ii) reserved another 10 percent of vacancies for other SEBCs and economically Backward sections of Higher Class. The economic criterion was to be specified separately. Looking at the importance of the matter, the 5 Judges Bench referred the matter to a special Constitution Bench of 9 Judges. However the Central Government failed to submit the economic criteria as mentioned in O.M.

The matter was examined in the light of scope of Art. 16(4) of the Constitution and also in the light of earlier decisions. The S.C. by a majority of 6:3 held that the decision of the Union Government to reserve 27 percent government jobs for Backward Classes is constitutionally valid provided socially advanced persons- creamy layer among them- are eliminated. It further observed that the reservation of
seats shall only confine to initial appointments and not to promotions and the **total reservation shall not exceed 50 percent**. The policy of 10 percent reservation in government jobs for economically Backward Classes among Higher Classes was struck down by the Court.

The descending Judges struck down both O.M. as well as Mandal Report as being unconstitutional and recommended for appointment of another Commission for identifying the SEBCs of citizens. After **Indra Sawhney’s** case the Parliament made 77th amendment to Art. 16 of the Constitution by adding new Clause 4-A. This Clause empowers the State for making any provision for reservation in matters of promotions also in favour of SCs and STs categories candidates.

**Art. 17** of the Constitution which abolishes **untouchability** and forbids its practice is another provision of Constitution which can be regarded as an illustrious example of social justice. This Article provides that untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. It is clear from Art. 17 that untouchability has not only been abolished but its practice has been declared as an offence punishable by law. Untouchability has been the result of caste system prevalent in the country from the ancient period. Nevertheless, a person may be treated untouchable not only because of caste but also due to suffering from such disease which is infectious. In pursuance of **Art. 35**, the Untouchability (Offences) Act, 1955 has been enacted by the Parliament. To make this law more strict it was amended in 1976 so that untouchability is removed from society. According to the amendment, any discrimination on the ground of untouchability will be considered an offence This Act has been given new title and now it is
called as The Protection of Civil Rights Act, 1955. Here the term ‘Civil Rights’ is defined in form of any right accruing to a person by reason of the abolition of untouchability by Art. 17 of the Constitution. Further, it is pertinent to mention that judicial approach strongly supports the fundamental right guaranteed under Art. 17 of the Constitution. For example, in People’s Union for Democratic Rights v. Union of India\textsuperscript{35} (popularly known as ASIAD Project Worker’s Case) it was held by the S.C. that the fundamental right under Art. 17 are available against private individuals and it is the Constitutional duty of the State to take necessary steps to see that this fundamental right is not violated. Again, when we focus our attention on cumulative effect of Clauses 1 & 2 of Art. 15 we can submit that it also helps in abolition of untouchability in society by providing that no person can be denied access to shops, public restaurants, hotels, places of entertainment, use of wells, tanks, bathing ghats, road, and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public only on the ground of religion, race, caste, sex, place of birth or any of them.

In State of Karnataka v. Appa Balu Ingale\textsuperscript{36} the respondents were accused of the charge that they restrained the complainant by show of force from taking water from a newly constructed tubewell in the ground that they were untouchable. The respondents were tried for offences under Ss. 4 & 7 of the Civil Rights Act, 1955 and were punished for of simple imprisonment for 1 month and a fine of Rs. 100/- each. But the H.C. ordered their acquittal. However, the conviction of the Trial Court was upheld by the S.C. the Court observed that the object

\textsuperscript{35} A.I.R. 1982 S.C. 1473.
\textsuperscript{36} A.I.R. 1993 S.C. 1126.
of Art. 17 and the protection of Civil Rights Act, 1955 is to liberate society from blind and ritualistic adherence and traditional belief which has lost all legal or normal base. It seeks to establish new ideas for society- equality to dalits at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion.

**Article 21** of the Constitution can also be quoted for the promotion of the concept of social justice and social security. It guarantees fundamental right of life and personal liberty. It posits that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Swami Vivekanand has given his very impressive view about the term ‘liberty’. He says that liberty is the first condition of growth. Just as man must have liberty to think and speak, so he must have liberty with food, dress, and marriage, and in every other thing…

The expression ‘life and personal liberty’ has been very nicely interpreted by the S.C. in a number of cases from time to time in such a way as to include a number of non enumerated rights implicit under its horizon. For example, right to livelihood, right to shelter, right to privacy, right to health and medical assistance, right to protection of health of workers, right to sleep, right to get pollution free water and air, etc.

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to education\textsuperscript{45}, right to live with dignity,\textsuperscript{46} right to get release from bonded labour system\textsuperscript{47} and so on are such rights which have been included within the scope of the expression ‘right to life and personal liberty.’ These rights do not only extend the domain of the fundamental right enshrined under Art. 21 of the Constitution but also strengthen the idea of social justice and ensure social security. The right to life and personal liberty including all the rights added to it by the S.C. are available to all the persons (i.e. citizens and non citizens).

The Directive Principles of State Policy are examples of consisting of the idea of distributive justice as well as social justice. For example, \textbf{Arts. 38 & 39} of the Constitution embody the concept of distributive justice and social justice as well by bringing a social order in all the fields- social, economic and political. Distributive justice aims at removing economic inequalities. It rectifies injustice arising out of transactions between unequal in society.\textsuperscript{48} \textbf{44\textsuperscript{th} amendment} of the Constitution inserted a new directive principle in \textbf{Art. 38} of the Constitution which provides that the State shall, in particular, strive to minimise inequalities in income and endeavour to eliminate inequalities in status. It also directs the State to make effort for providing facilities and opportunities among individuals and groups of individuals in different area or engaged in different vocation. Thus, this new Clause to Art. 38 enable the State to ensure equality in all sphere of life. It is in this respect that three Judges Bench of the S.C. has very clearly and exhaustively explained the concept of social justice in the light of Art. 38

in *Air India Statutory Corporation v. United Labour Union*,\(^{49}\) as follows-

The concept of ‘social justice’ consists of diverse principles essential for orderly growth and development of personality of every citizen. Justice is genus of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relive the poor etc. From handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal.

In a developing society like ours, steeped with unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc, to reach the ladder of social justice. What is due cannot be ascertained by an absolute standard which keeps changing, depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc, are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of

social justice embodies equality to flavour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results. It was accordingly held that right to social justice and right to health were held to be Fundamental Rights. The management was directed to provide health insurance during service and at least 15 years after retirement and periodical tests protecting the health of the workmen.50

The aforementioned approach of the S.C. is very clear in defining the concept of social justice.

Similarly, in the light of Art. 39(d) Parliament has enacted the Equal Remuneration Act, 1976. The validity of this Act was upheld by the S.C. in Randhir Singh v. Union of India51 where the Court observed that equal pay for equal work though not fundamental right is certainly a constitutional goal and therefore, capable of enforcement through constitutional remedies under Art. 32 of the Constitution.

Art. 39-A directs the State to ensure that the operation of the legal system promote justice, on a basis of equal opportunities and shall in particular provide free legal aid by suitable legislation or scheme. Thus, it ensures equal justice and free legal aid to economically backward classes. It has been supported by judicial decisions.52 In State of Maharashtra v. Manubhai Pragaji Vashi53 the S.C. held that right

50 Daulatshinhji Savanthsinhji v. Executive Engineer, Himatnagar, A.I.R. 1997 Guj. 64.
to free legal aid and speedy trial are fundamental rights implied under Art. 21 of the Constitution. Thus, the S.C. by its verdicts in the cases as mentioned here has ensured and promoted the concept of social justice.

**Art. 43** provides that State should try to secure by suitable legislation living wage for workers. Here the term ‘living wage’ is different from ‘minimum wage’ because living wage includes bare necessities of life and also provisions for education of children, etc. **Art. 41** directs the State to ensure the people within the limit of its economic capacity and development- employment, education and public assistance in cases of unemployment, old age, sickness and disablement. Likewise, **Art. 46** provides for promotion of educational and economic interest of weaker sections of society. Again, in pursuance of **Art. 51** of the Constitution the effort of Parliament in enacting the Protection of Human Rights Act, 1993 is a dynamic example of promotion of social justice by ensuring and protecting human rights to every person in the nation.

In the same way it can be submitted that the whole area of Criminal Law strengthens the idea of social justice. The Judiciary by its various judgments at different interval of times provides not only remedial justice to the victim of an offence but it also aims at ensuring social justice and sense of social security, Insurance Law, Industrial Law, Consumer Protection Law, Environmental Protection Law etc. are, for example, such laws which inter alia, imply the concept of social justice.

It is in this stride, it is relevant to submit that the **whole domain of the Law of Contract can be treated to be based on the idea of social justice**. With certain qualifications every person has right to make
a contract and fulfil his needs. In other words, a contractual relation is treated as consensual but at the same time a contract can also be regarded as potential means to fulfil needs of parties to it and achieve the ultimate goal underlying the contract. Likewise, a quasi contract or restitutionary obligation can also be said to have the idea of social justice implicit under it. To discuss at some length, the provisions relating to it incorporated under S. 68 to 72 of the Indian Contract Act, 1872, can be examined separately and effort can be made to correlate them with social justice.

Section 68 of the Act provides that if a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

According to principle of this Section it is obvious that the person who is incapable of entering into a contract (such as minor or lunatic or a person debarred by law) is supplied with the necessaries suitable to the condition of his life, he owes a quasi contractual obligation through his property to reimburse the person who has supplied the necessaries. In a particular case no doubt, the quasi contractual obligation is imposed by law on the incapable person receiving benefits of necessaries but the principle of this section is a clear message to society as well of social justice. That is to say, it is the incapable person receiving benefits of necessaries who is held liable to make reimbursement to the person who has supplied necessaries. Thus, individual justice is done by law under this section. However, if we examine and apply the provision in broad sense we can say that any
person of society can supply necessaries to a person incapable of making a contract and he can be sure that he will receive reimbursement from the incapable person provided he has property. Thus, justice to incapable person is done on the one hand and on the other hand, justice is also done to the person furnishing the necessaries by granting reimbursement to him. So it can be submitted that the provision of the section is though directly related to the parties but indirectly it promotes the idea of social justice, social solidarity and social security among members of society.

Section 69 of the Act states that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

The principle which has found its place in this Section aims at providing reimbursement by a person on whose behalf some money has been paid by another person voluntarily and having some interest in such payment. A quasi contract is inferred between these two persons and the person on whose behalf money is paid is quasi contractually liable to reimburse the person who pays money. Thus, undoubtedly justice is done to the person who pays money by granting reimbursement in his favour under this section but broadly speaking the situation as it has been dealt with under this section can be faced by any person in society and it can also be overcome with the help of voluntary act of payment of money by another person. The provision therefore, implies an idea of promoting the feeling of brotherhood and mutual cooperation among society and impliedly promotes the concept of social justice in addition to remedial justice to the concerned parties.
**Section 70** of the Act posits that where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

It is evident that provision mentioned under S. 70 of the Act represents the English doctrine of quantum meruit and suggests that the person should be reimbursed for the voluntary act done by him or voluntary service rendered by him to another person provided such other person derives benefit of the act or service so rendered. The principle underlying this Section aims at preventing unjust enrichment. It is from this standpoint that in spite of doing justice to the party who has done voluntary act or rendered service voluntarily, this principle gives a message of social justice impliedly.

**Section 71** of the Act provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

The principle of law stated under this Section places finder of goods in the same status where a bailee stands. It gives right to the finder of goods to seek compensation from true owner of the goods for discovering, finding and delivering the goods to the true owner. A quasi contract is inferred between finder of goods and the true owner whereby the true owner owes an obligation by implication of law to make compensation to the finder of goods. Therefore, it can be submitted that the provision of this section stands not only for justice to the finder of goods but it also indirectly implies the idea of social justice.
Section 72 of the Act makes it clear that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

The principle incorporated under aforementioned Section of the Act also aims at preventing an unjust enrichment by one person at the cost of another person. When money is paid by one person to another or some goods is delivered to him under mistake or coercion, law does not permit the retention of such money or goods by the person to whom it is paid or delivered because if it is done so injustice will be done to the person paying the money for delivering the goods. So, provision of this Section implies the idea of quasi contract by providing remedy to the party paying the money or delivering the goods and at the same time it can be said that it employs the concept of social justice as well in the sense that no person in society doing such act which has been mentioned under it can be left unremedied.

It can therefore be submitted that the provisions of Section 68 to 72 of the Indian Contract Act, in addition to providing remedial justice can also be said to reverberate with the rhythm of social justice. That is to say, quasi contractual obligations can be regarded to imply, in one way or other, the idea of social justice; rather it would be more appropriate and logical to say that the social justice is a current flowing under quasi contractual or restitutionary obligations.