

Distribute Justice – Poverty

V.S. Elizabeth
National Law School of India University
India

The Indian Constitution came into force on 26th January, 1950. It is the product of the Indian National Movement, a struggle against the colonial rule of Britain. During the course of this struggle people from all walks of life participated, bringing their diverse experiences, knowledge, philosophies and values to the movement. It was many of these people who went on to become the members of the Constituent Assembly that drafted this Constitution. We can see a reflection of these diverse interests in every part of the Indian Constitution. Two hundred years of colonial rule had wrought havoc on the economy of the Indian subcontinent leading to the impoverishment of a large section of its population. Even during the course of the Indian National Movement the struggles of the peasants and the working class and therefore the questions of poverty and development had often come to the fore in the discussions of the Indian National Congress. It is thus no surprise that these questions troubled the Constitution Makers and therefore found their way into the Constitution as well. In fact the Supreme Court in its role as interpreters of the Constitution debated on these issues in the matters that came before them.

The percentage of population below the poverty line in India in 1993-94 was 36%. It is said that in 2003-04 it had reduced to around 28%.¹ (The last claim has been much disputed by various non-governmental organizations and others.) It is more than one-third the total population and when this is converted into figures it is several millions of people that we are talking about. India, thus, since its independence has had to deal with the issue of poverty – the needs and interests of these millions of Indian citizens had necessarily to be addressed – questions of employment, housing, education, health etc. By the time the British left India in August 1947 the Constituent Assembly was already at work. This was necessarily one of the important issues that they had to grapple with and that might explain the nature and content of the Indian Constitution. The fact that there is the Fundamental Rights Part which encapsulates the political and civil rights of citizens which are justiciable and the Directive Principles of State Policy that are in the form of instructions to the Government that are not and yet have been the reason for the Indian Government's interventions in the economy in order to bring about a more egalitarian society. In fact it is used to be said that the India followed neither a capitalist nor a socialist model but had a mixed economy.

In this paper I wish to specifically look at those provisions of the Constitution itself and the decisions of the Supreme Court in order to highlight how the Constitution address the issues

¹ <http://indiabudget.nic.in/es2007-08/chapt2008/chap17.pdf>

relating to poverty and the provisions that have made it possible for the kind of governmental intervention in the economy in India.

As I mentioned earlier Part IV of the Indian Constitution comprises of what is called Directive Principles of State Policy. Dr. B.R. Ambedkar said that “What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive.”² In fact, Art. 37 states that “The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.” The Supreme Court in *Air India Statutory Corporation v. United Labour Union* elevated them to human rights, describing them as forerunners of the U.N. Convention on Right to Development as an inalienable human right.³ The Supreme Court has further stated in several other decisions that the Directive Principles supplement the Fundamental Rights and that Parliament can amend Fundamental Rights for implementing the Directive Principles.⁴

Why has the Supreme Court given so much importance to the Directive Principles? How can the Directive Principles be of any use or relevance in addressing the issues relating to poverty? A brief overview of a few of the provisions might answer this question. Art. 38 (2)⁵ of the Indian Constitution states “The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.” Similarly in Article 39 amongst other things it is stated that “The State shall, in particular, direct its policy towards securing – (a) that the citizens, men and women equally have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;” Article 41 “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” In relation to this provision the Supreme Court in *Jacob v. Kerala Water Authority*⁶, stated that the Court should so interpret an Act as to advance this article’s purpose.

Right to Life is articulated in Article 21 of the Indian Constitution. It is stated therein that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This might seem to be a pretty straightforward right with little ambiguity and therefore little possibility for any interpretation that could lead to a form of distributive justice. However, the Indian Supreme Court, through various decisions widened the scope of this Right to Life so as to incorporate interpretations that led to inclusions of right to

² **The Essential Writings of B.R. Ambedkar**, p. 490

³ AIR 1997 SC 645: (1997) 9 SCC 377: 1997 Lab IC 365 paragraph 38

⁴ *Chandra Bhavan v. State of Mysore*, AIR 1970 SC 2042, paragraph 13, *State of Kerala v. N.M. Thomas*, AIR 1976 SC 496, *Lingappa v. State of Maharashtra*, AIR 1985 SC 389, *Mukesh v. Ste of Madhya Pradesh*, AIR 1985 SC 537

⁵ Inserted by the Constitution (Forty-fourth Amendment) Act, 1978, sec 9 (w.e.f. 20-6-1979)

⁶ (1991) 1 SCC 28

livelihood⁷, “Public Trust” doctrine,⁸ health,⁹ housing¹⁰ etc. So much so that today after a constitutional amendment Right to Education is a Fundamental Right under Article 21 A.¹¹

It is in the light of this Constitutional Mandate as reflected in the Preamble and the provisions that the Government of India since Independence has been pursuing a planned economy model and implemented programmes that aim to end poverty – like the Twenty point programme¹², the National Rural Employment Guarantee Scheme, etc. In 1975, the then Government of India devised the Twenty Point Programme. It was revised in 1985 for the first time and finally a restructured TPP came into force in April 2007¹³. The two objectives of this programme then and now are eradication of poverty and improvement in the quality of the life of the common man.

The fact that the Constitution addresses the question of equality of status and opportunity and provided for guarantees has enabled the Judiciary as well as the Legislature and Executive to address the questions of poverty in India. If that had not happened and it was left to the market to bring it about or to the actions of individuals even the little advancement that has been made towards ending poverty in India would not have been possible. A Libertarian Constitution would not have allowed it.

It is to be kept in mind, of course that the Government being the product of democratic processes is bound to change over a period of time and given the context of globalization and liberalization the Government of India is not always in consonance with the constitutional mandate. However, the people’s movements in India, despite the fact that they have to deal with the Government and business groups have resisted some of the attempts that might have further impoverished them. The movements against the Special Economic Zones¹⁴ is an example of this. There has been much criticism of this policy of the government and opposition to it from the farming community as in many instances the Government has acquired fertile cultivable lands, either through playing on the ignorance of the farmers or by using force at heavily discounted prices. Rather than ending poverty these SEZ’s would only aggravate the

⁷ Narendera Kumar v. State of Haryana, JT (1994) 2 SC 94;(1994) 4 SCC 460

⁸ M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388 wherein the Supreme Court enunciated the theory that certain common properties such water, rivers, forests etc were held by the Government in trusteeship for the free and unimpeded use of the public since they are of great importance to the people as a whole and that it would be totally unjustified to make them a subject of private ownership.

⁹ State of Punjab v. Mahinder Singh Chawla, AIR 1997 SC 1225; 1997 6 SCC 294

¹⁰ Shantistar v. Narayanan, (1990) 2 SCJ 10 paragraphs 8 and 13 speak of right to housing, though later in Shankar Gauri v. Union of India, JT (1994) 2 SCC 83 it was held that shelter is not a fundamental right.

¹¹ Inserted by the Constitution (Eighty-sixth Amendment) Act, 2002

¹² <http://delhiplanning.nic.in/TPP2006.pdf>

¹³ As of now the TPP consists of 20 points and 66 monitorable items like Poverty Eradication, Power to the People, Support of Farmers, Labour Welfare, Food Security, Housing For All, Clean Drinking Water for All, Education for All, Health for All etc. Under Poverty Eradication are basically employment generation schemes.

¹⁴ The protest by the people of Nandigram in West Bengal is one example of this. The Government of India in 2000 decided to create the SEZ’s. The basic objective was to enhance foreign investment and promote exports from the country. These would be deemed foreign territory for the purposes of trade operations, duties and tariffs. More than 500 SEZ’s were proposed, as of now about 220 have been created.

conditions in which many of the small farmers live, adding to the ranks of the poor. Many of the amendments that have already taken place and some that are still on the anvil and a few recent judgments all seem to be going away from the vision that the members of the Constituent Assembly had and the way the Government of India and the Judiciary approached economic issues and poverty till the 1990's.

Thus even this constitutional protection to the poor seems to have been eroded in the face of the power of the market forces. How then is an egalitarian society to be brought about? One would have thought that Constitutional Safeguards were sufficient in a democracy. In a way it is still valid when one considers the recent electoral results and the Government's commitment to the eradication of poverty and the economic problems of especially the rural population. Today India is following the capitalist model by and large together with a planned economy. With a such a large part of the population below the poverty line there can be no other way out for India. In fact this is probably the strength of India which is provided for in the Constitution and safeguarded by the Judiciary.