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SOCIAL JUSTICE: A CONCEPTUAL FRAMEWORK

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All men are by nature equal. This notion can be interpreted in two ways. First, it means that every man has equal gifts and capabilities. But there are so many individual differences that men are unequal by nature. On the other hand, it may mean that all human beings have equal rights and they are by nature equal and free in this respect. There is something peculiar and common to human beings without distinction of class, race which is far deeper than the other differences. The word 'Human Being' embraces all humanity.

The right to make contracts and hold property and certain other rights were denied on discriminatory grounds in the past. The modern state after abolishing most of the older restrictions has begun to impose new restrictions of its own.

Equality does not mean identical treatment as there can be no similarity of treatment so long as men are different in want, capacity and need. It may be defined as equal conditions guaranteed to each for making the best of himself. "It implies fundamentally a certain leveling process. It means that no man shall be so placed in society that he can overreach his neighbor to the extent which constitutes a denial of the latter's citizenship. 1 Equality implies a coherence of ideas that cover spheres ranging from man's search for the development of his personality to a sort of social order in which strong and the weak not only live together, rather both have and exercise some equal rights. The very difference in the nature of men require mechanism for the expression of their wills that give to each its due hearings. *2

In a positive sense, equality means the provisions of adequate opportunities for all. Men differ in their needs, capacities and efforts. They need different opportunities for their self-development and they must be provided adequate opportunities instead of equal opportunity. Children who are brought up in an atmosphere where things of mind are accounted highly are bound to start the race of life with advantages no legislation can secure. Such forces should be liquidated so that success or failure must be made to depend on the capacity and the character of the person concerned, not on the accidents of birth or wealth.

In a negative sense, equality means the absence of undue privileges. There should be no discrimination on the grounds of race, caste, religion, sex, wealth etc. One can move forward to any public office by his ability which he is prepared to choose. No office that carries with it power can ever be rightly regarded as an incorporeal hereditament for that is to associate important functions with qualities other than fitness for their performance. Principle of equality should be linked with the principle of efficiency and public benefits, Social Inequalities can be altered since they are products of pure convention while natural ones cannot be

Justice is an equality of proportion among persons and things assigned to them. The 'things' may be office, honor, rank, money or any of the objects of human deserve. These should be distributed, not equally but in proportion to some quality, character or achievement of the persons concerned. *3

Most of the modern political ideals such as justice, liberty, constitutional government and respect for the law began with the reflection of the Greek thinkers upon the institutions of the city-state. But in the long history of political thought the meaning of such terms has been variously modified and always that meaning has been variously modified and always that meaning has to be understood in the light of the institutions by which the ideals were to be realized and of the society in which those institutions did their work. *4

At the bottom of the ancient state were the slaves, for slavery was a universal institution. Slaves did not count politically in the city-state. *5 For Plato, justice is the bond which holds a society together, a harmonious union of individuals each of whom has found his life work in accordance with his natural fitness and his training. It is both a public and a private virtue because the highest good, both of the state and of its members is thereby conserved. There is nothing better for a man than to have his work and to be fitted to do it. There is nothing better for other men and for the whole society than that each should thus be filling the station to which he is entitled. *6

For Aristotle, ideal state is a community of equals aiming at the best life possible and it ceases to be constitutional and genuinely political if the discrepancy between its members is so great that they cease to have the same virtue. Injustice arises when equals are treated unequally and also when un- equals are treated equally. *7

Cicero insists in the most unequivocal terms that all men are equal. They are not equal in learning and it is not expedient for the state to try to equalize their property, but in the possession of reason, in their underlying psychological makeup, and in their general attitude towards what they believe to be honorable or base all men are alike indeed. Cicero goes so far to suggest that it is nothing but error, bad habits and false opinions that prevent men from being infact equal. All men and all races of men possess the same capacity for experience and for the same kind of experiences and all are equally capable of discrimination between right

and wrong. *8 Out of all the material of the philosophers' discussions surely there comes nothing more valuable than the full realization that we are born for justice, and that right is based, not upon man's opinions, but upon nature. This fact will become plain a clear conception of men's fellowship and union with his fellowmen is achieved. For no single thing is so like another, so exactly its counterpart as all of us are to one another. Nay, if bad habits and false beliefs did not twist the weaker minds and turned them in whatever direction they are inclined, no one would be so like his own self as all men would be like others. *9

For Hobbes, all members of civil society are equal. It is a natural right to be realized through civil society. According to Locke life, liberty and estate are the natural rights. The right to equality was subject to these rights which the state could not take away. *10

Rousseau maintained that all men are born free and with equal rights and therefore inequalities are socially determined especially due to the institution of private property. Language and education created difference between the cultured and non-cultured. *11

Natural inequality consists in a difference of age, health, bodily strength and the qualities of the mind or of the soul and morale or political inequality depends upon a kind of convention and established or at least authorized by the consent of men. This consists of the different privileges, which some men enjoy to the prejudice of others, such as that of being more rich, more honored, more powerful or even in a position to exact obedience.

As the nineteenth century advanced the volume of social legislation steadily increased, until, in the opinion of observers, by the end of the third quarter of the century. Parliament had in effect discarded individualism as its guiding principle and had accepted collectivism. Legislation passed in the interest of social welfare and, therefore of the greatest happiness, ran counter to accepted liberal ideas. *12

In its early history, English liberalism was a middle class political movement which reflected the efforts of resigning in industrial class to gain a political position consonant with its increasing importance in an economy rapidly becoming more industrialized. Its policy was directed largely towards abolishing absolute restrictions on industry and trade, and its opponent was landowning class with a vested interest in retaining these restrictions. Laissez Faire was not un-natural slogans for a liberal program. By exaggerating the fact that laws always limit freedom, it minimized the more important fact that freedom without law is impossible. *13

For Marxists equality has mainly an economic aspect so long as the communism ushers in with the withering away of the state. There can be no equality so long as there are class contradictions between capitalists and proletariats. Unless capitalism is thoroughly liquidated by the dictatorship of the proletariat there can be nothing like real equality. The eradication of economic injustice was the base of Marx's writings. *14

Scientific communism calls for a concrete, historical, not abstract approach to this problem, for equality has never existed in general outside a given socio-economic and political structure of society. Since the social status of the individual in the class society is determined by his affiliation to a certain class. According to the Marxist-Leninist view, equality does not simply mean the liquidation of certain legal privileges of particular classes, but also the abolition of those classes, the complete elimination of all social and class discriminations, the creation of a classless, socially homogeneous communist society. Abolition of the classes is must for equality. *15

Among the critics of Marx, the most notable is Max Weber. His contribution lies mainly in classifying the nature of social inequality which refers to a distribution of power in society. The economic dimension of power is an important one though it does not necessarily form the substructure. Besides economic hierarchy, he indicated the hierarchies of status that is social elimination of honor. This honor may be connected with any equality shared by a plurality. Class distinctions are linked in most varied ways with status distinctions. The classes are stratified according to their relations to the production and acquisition of goods, whereas status groups are stratified according to the principles of their consumption of goods as reflected by special styles of life. 16

For Beteille culture with its inherent tendency to evaluate is the first source of inequality. The other essential source is organization. The natural inequalities result in social inequality. *19

According to Hobhouse under the authority of law rules are applied impartially. The rules themselves may be wise or unwise, just or unjust. If they are such as to serve the common good and are most effective that can be devised for the purpose they are wise and good, and if the just is a rule that is wise and good, we must call them justice. Justice is the impartial application of a rule founded on the common good. This inequality under the very divergent conditions that arise out of the complexities of life may involve sorts of inequalities of treatment. Notwithstanding all impartiality in the application of rules there may be great variety in the dealings which they contemplate and this variation will be just if the sum it works for the common good. Justice appears as something purely dependent on, or derivative from the common good. Equality which is essential to the common good will figure on the one hand as impartiality in the application of rules on the other some constituent of the common good on which the rules are ethically based. 20

All members of the community then, simply as members have an equal claim upon the common good. While any difference in what is due to them or from them must itself be a difference required by the common good. It does not mean that all claims are of equal strength. The claim of the individual may be for the condition in which he can live in harmony with himself and his society. This is his real good, and its condition his real need. For the common good, such conditions should be satisfied, as the common good is simply the total of all the lives that are mutual harmony, which is in general the needs of its members. There is an equal claim to equal needs. *21

The distributive justice can be denied as equal satisfaction of equal needs, subject to the adequate maintenance of useful functions. This invalids differential treatment if individuals in accordance with the nature of their services to the community with regard to ill desert, as functions of common life are to be maintained, anything that obstructs them must be prevented. We should deal as tenderly with the weak as the case admits, but we must not allow them to handicap us in the race.*22 The rational good is one in which all the persons share in proportion to the capacity of their social personality. This is the fundamental principle of proportionate equality in the common good, the governing conception of social justice *23 when the conception of desert is translated in the working code of society, it justifies and develops the adequate maintenance of useful functions and by consequence and contrast, the arrest of malfunction. This should be the application of desert, *24 John Rawls together with his most vehement critics agrees that social justice is the whole of justice despite some lip-service to personal justice. Moreover these writers largely agree that social justice is nothing more than distributive justice. They limit distributive justice to the distribution

of the benefits ignoring the burdens of social life. The final ingredients to the abstract rational Individualism of so much of social justice is its deontological character. The meaning of deontological is best explained by contrasting it with teleology. Rawls has described a teleological theory as one that distinguishes the good from right. *25 The good is the ends that people seek, while the right designates proper conduct. If proper conduct is not defined in reference to ends we have deontology. Where conduct is judged by the ends we have teleology. In the light of this distinction between the good and the right, the goodness of the things may be judged without referring to what is right. *26

Rawls devotes a good deal of attention to utilitarianism and he defines the deontological character of his theory of justice in contrast to the teleology of the utilitarianism. In contrast to utilitarianism, a deontological theory stipulates that action must be judged right or wrong in themselves. Rawls' justice as fairness is pure procedural justice. In Justice as Fairness' Rawls' defines justice as a compromise between different persons of roughly equal power but in "A Theory of Justice" Justice is the rational choice of an individual in the original position. *27 In this book desert is expressly forbidden. Justice is not only primary. It is also exclusive. Meta-ethical ignorance and normative fairness assume and prescribe an absolute equality. In spite of some unequal material reward, his theory maintains an over-riding moral equality. This fixed moral equality denies the need and possibility of making moral distinction, so the theory is limited to the material good of income and wealth. Persons in the original position are ignorant of their own identity and they must think of themselves as abstract individuals. Knowledge of their identities would be knowledge of their affiliations with other people. In the original position they must think of themselves as every person, as any person. In this way Rawls bridges the gap from individual to collectivity but the collectivity is composed of atomic individuals.

The rationality of any person in the original position means that talents cannot be regarded as the possession of particular person, as they are in reality. Talents would be known to exist but it would not be known to whom they belonged. Consequently, talents would be regarded as the property of the collectivity as a whole. Any benefit from the exercise of that talent belongs to the collectivity and not to the individual. Rawls derives his communism from the Meta-ethical rationality of the original position with emphasis on equality which is limited by the difference principle that rewards those whose efforts specifically benefit those who are the least advantaged in the society. Rawls' argument influenced many writers on justice to turn away from utilitarianism and towards a similar egalitarianism because in the original position there is no reason to discriminate between persons. It is major challenge to the validity of the indiscriminate policy. The exception that Rawls admits in the application of justice to reality is the difference principle.

The difference principle is the justification of discrimination. According to this principle unequal reward is not justified where the result is common good. The principle permits rewards in excess of the equal minimum stipend if and only if a person has exercised his abilities to benefit the least advantaged class. The two principles of justice, according to Rawls are - First, each person is to have as equal liberty to the most extensive total system of basic liberties compatible with a similar liberty for all and Second - social and economic inequalities are to be arranged so that they both are (a) to the greatest benefit of the least advantaged, consistent with the just savings principles for future generations, and (b) attached to offices and positions open to all under conditions of their equality of opportunity. *28

Rawls contribution fails to appreciate at any point the actual situation of least advantaged groups. That is so merely as an explication of their distributive, historical, social or least fortunate position in itself. A sort of universalistic, Idealistic, formal or empty distributed sense of individuality is assumed throughout. We refer to benefits and disadvantages to concrete individuals but benefits or disadvantages in terms of an improvement or deterioration in the life of a representative person.

The just saving principle is an inherent part of his principles of justice. Unless Rawls can solve the problem of time, like the rights on one generation as against another, and of those who make sacrifices now as the most disadvantaged classes for benefits to someone or other, what follows from the principle is an ideological justification for exploitation and accumulation as such.

Though at the outset the primary goods are said to consist of liberty, self-respect, power, opportunities, income and wealth, but later only income and wealth count. Justice is only a matter of primary goods and not final ends, which are interminably contentions. *29

The importance which Rawls gives to liberty is clear from the first priority rule. Further he makes clear that the principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. A less extensive liberty must strengthen the total system of liberty shared by all and a less than equal liberty must be acceptable to those with the lesser liberty. The second priority rule is lexically prior to the principle of efficiency and to that of maximizing the sum advantages; and fair opportunity is prior to the difference principle. The inequality of opportunity must enhance the opportunities of those with the lesser opportunity and the saving must on balance mitigate the burden of those bearing the hardship. Higher expectation of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society. *30

According to Rawls those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, irrespective of the social class in which they are born. 31 Prevention of excessive accumulation of property and wealth and provision of equal educational opportunities for all the needed. School system should mitigate the class barriers. The principle of fair equality of opportunity provides for neutralizing the disadvantages arising from individual differences like intelligence and physical traits. But the atmosphere in which a person lives also determines his talents and skill. The inequalities arising from such disadvantages are taken care of by the difference principle. He also assumes that government policing of private funds and associations and measures against restrictions will ensure fair equality of opportunity in economic affairs and free choice of occupations. Taxation and modification of property right is necessary for preserving an approximate justice.

If there is no least advantaged class, then no differences are just. As Rousseau indicated that desert in a social rather than natural quality that arises from artificial sentiments, but once they arise they reflect genuine and existing communities of interest. 32 Desert is nothing but the idea that to the extent, that people act voluntarily, they are responsible for their voluntary acts since these could have been otherwise in the future. The particular qualities encouraged in a society are certainly a product of the history, geography, culture and sociology of those people. What a person deserves for his work should depend not on what he has accomplished nor on how much efforts he has put into it but on what he would accomplish if he had been given a chance. *33

While Rawls theory of justice permits a certain scope to coercion. Rawls opposes state intervention even on behalf of those facing starvation as that would be a coercive course. State should restrict itself to functions like providing protections

against force, theft and fraud and enforcing contracts. A wider role will restrict the rights of the people. Individuals have rights and there things no person or group may do to them because of those rights. *34 The rights of individuals are imprescriptible, but they are not inalienable for they can be surrendered if the individual so desires. The fullest realization of Individual rights is a utopia in which individuals may choose to sell themselves into slavery. Nozick makes slavery just in some circumstances but for him no taxation at all would be just. *35

Nozick offers an historical theory of justice, which is based on the production of benefits through the assumption of burdens. If no injustice occurs in the production and acquisition of benefits, then there is no ground for any taxation. A just distribution lies in the labor of acquisition and the skill of transfer. Injustice, the only ground for re-distribution consists only in coercion and fraud. A right watchman or minimal state is needed for the protection against anarchy. *36 Interpreting Lock's right to property as an expression of individual right, Nozick alters its character as a limitation on acquisition. Nozick rejects Rawls idea of the communism of talents. There is no social entity over and above the individuals who compose it.³⁷ According to his entitlement theory of justice, property holding is a natural right as the right of protection from coercion. His principles of justice are acquisition, transfer and rectification. A person who requires a holding in accordance with the principle of justice in acquisition is entitled to that holding. Again if a person requires a holding in accordance with the principle of justice in transfer from someone else entitled to that holding. No one is entitled to the holding except by application of these principles. Property holdings inconsistent with these principles are to be rectified. Whatever arises from a just situation by just steps is itself just. *38 Interpreting Lock's right to property as an expression of individual right, Nozick alters its character as a limitation on acquisition. For him all the acquisition is just, if it does not harm others by violating their rights. *39 Scarcity is no limit to Just acquisition.

Nozick criticizes Rawls for his assumption that individuals are the helpless product of their environment, with no consideration at all of how persons have chosen to develop their natural talents. ⁴⁰ For Rawls to deny completely the morale importance of human action is to deny the very Kantian autonomy he wishes to achieve. For Nozick, institutionalization and interest are not assumed away but are at the heart of the matter. The implications of the record of redistribution necessitates thinking about having a say over what affects you'. ⁴¹ The distributive interventions will always be unfair. The only answer to have as few of them as possible. This is true in relation to redistributive procedures.

The approach of Amartya Sen is rigorously to follow through the implications of basic theorem of welfare economics, ⁴² He shows that it is not necessary to demolish the functional relation completely, but only to rule out those which express distributional judgements. He proves that one person's preference, however weak in contrast even to an opposite preferences by all other members of society will mean that both distributions are equally good. He notices that it is possible to dispose of utilitarianism's egalitarian associations by showing that this only applies if the special assumption is made that everyone has the same utility function ^s that the equation of marginal utilities amounts to equating total utilities as well. The main thrust of the utilitarian approach has by contrast been that of maximizing the sum of individual utilities and is supremely unconcerned with the interpersonal distribution of that sum. Indeed in terms of interpersonal distribution utilitarianism would require the maximization of aggregate utility by transferring income from those with a lower utility, who are weak to those with the higher utility. Sen shows that utilitarianism is an egalitarian conception of equitable distribution. Sen gives personal expression to interpersonal comparisons in the Weak Equity Axioms, to make a great deal of sense in considering the possibility of making in different persons' and then choosing among them. ⁴³ Sen's interpersonal comparison and the non- compulsive quasi-ordering approach to measurement allows the introduction of quite complex considerations of different preferences as between individuals and also different interests. His interpretation of interpersonal comparison is by putting oneself in another's place. The final step in this process is to base the notion of equitable distribution on the concept of individual needs rather than deserts which is based on the debate about equality and just social recompense. He chooses to locate his discussion on Marx's approach about remuneration according to needs and work rather than factors of production. He disposes of some notions of deserts based on marginal productivity, ability or natural talent. As interpersonal comparison on a purely needs basis equality remains peculiarly abstracted from society and social relations by its subjectivism and by its relatively uncritical confinement of the notion of equality to the sphere of distribution. There is the enunciation of principles of deciding on the equitable treatment of Individual human subjects and to deciding on the basis of notions of income and needs which do not seem to be explicitly related either to a collective social existence or to a definite and explicit division of labor from which both income and deprivation are ultimately derived. Need that is the level of minimum subsistence and general conditions of labor is in all societies the object of intense struggle and conflicts. They are socially defined and public action in this field goes deeply to the social relations of production and reproduction. The definition of equality in terms of conception of needs does not adequately resolve by the advocacy of complete equality of income.

According to Sen the weak Equity Axiom requires that a person whose primary power or basic abilities are less for the same level of income are entitled to get more income. ⁴⁴ The disadvantaged should be deemed to include not only the handicapped like the crippled and blind, but the old, infirm and the weaker sections which cannot claim their due share of liberty because of ignorance or intimidation by the rich and the powerful. Measures must be taken for increasing their capabilities, raising their consciousness and enabling them to exercise their rights without fear and obstruction, ⁴⁵

Justice demands equality of result which can be attained only by the mitigation of inequalities of men by positive state action. Equalities as aspect by the justice requires the state to adopt a standard which takes into account the differing economic and social conditions of the people whenever those differences and disparities stand in the way of equal access to basic rights. The principle of proportional equality would involve an appeal to some reason justifying differential treatment. With the penetration of democracy into social and economic spheres, the meaning of justice has expanded itself so as to cover all walks of human life. A new awareness has developed that informs that the rights of an individual should be reasonably restricted in the wider interest of the community so that the ends of social justice are properly achieved. The idea of social justice not only aims at the proper reconciliation of the interest of an individual with the overall interest of community, it also constitutes an essential part of the great complex of social change, for which something may have to be sacrificed for greater good. *46

The standard of proportional equality requires the distribution of benefits according to merit or distribution according to need. Both principles are consistent with constitutional equality. Because of the past failure to ensure equality of opportunity to deprived groups society can move towards genuine equality by providing social justice which is a very wide term that comes within its fold everything pertaining to the norm of general interest ranging from the protection of poverty and illiteracy.

Moreover, it relates to the eradication of gigantic social evils like pauperism, diseased, unemployment and starvation. It also includes the liquidation of the vested interests that obstruct the achievements of common good. The idea of social justice enjoins upon the state to make concerted efforts for the improvement of the lot of the downtrodden and weaker sections of the society. It implies the notion of equality in result which involves an equilibrium oriented protective discrimination. The reservation in legislative bodies, public offices and educational institution is an aspect of it. It is only one of the various other means to promote equality for the weaker sections of the society. 'Equals must be treated equally and unequal must be treated unequally, not to perpetuate the existing inequalities but to achieve and maintain a real state of effective equality for ensuring justice to the people across the ideological bounds. *47

The modern state found itself engaged in developing for itself an interventionist role of social development. One device of it is the earmarking of a certain percentage of jobs in public institutions for the disadvantaged sections of the society. This policy is termed as reservation policy. It is a selective application of rights, laws or organizational policies for weaker sections who had previously been discriminated against because of their race, national origin, sex, age, religion or handicap. The purpose is to incorporate them into the mainstream of political, social and economic institution. Reservation is an attempt to equalize inequalities rejecting the principles of Darwin.

In a limited sense, the right to social justice may be defined as the right of the weak, aged, destitute, poor, women, children and other underprivileged persons to the protection of the state against the ruthless competition of life. It seeks to give the necessary adventitious aid to the underprivileged so that they may have the equal opportunity with the more advanced in the race of life. It is a bundle of rights, in the sense it is carved of other rights; in other sense it is a preserver of other rights. It is the balancing wheel between haves and have-nots. *48

The concept of social justice is a revolutionary one which gives meaning and significance to the democratic way of life and makes the rule of law dynamic. It creates in the mind of the masses a sense of participation in the political freedom. Constant endeavor has to be made to sustain individual freedom and liberty and subject them to only such reasonable restrictions and regulations as are absolutely essential for the purpose of achieving socio-economic justice. It can only be achieved by adopting necessary and reasonable measures with courage, wisdom, foresight, sense of balance and fair play to all the interests concerned.

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