

L.10. NAGABHOOSHANAM P.- Social Justice and Weaker Sections: Role of Judiciary -1989-Dr. P. Leelakrishnan.

The thesis examines the role of judiciary in rendering justice to two distinct groups of weaker sections mentioned in the Constitution of India, viz., (i) Backward classes and (ii) Women.

Attempting to find out the meaning and extent of the concept of social justice chapter I looks into the views of statesman and philosophers and tries to show that social justice is linked with the right to equality.

In Chapter II the Constituent Assembly Debates and the provisions of the Constitution are examined to determine the true scope of the constitutional ideal of social justice. Judicial decisions relating to right to property are analysed to show that the courts had a slow start which prompted Parliament to act and to declare specifically in the preamble that ours is a 'Socialist' republic, opening the way for the new orientation in the juristic techniques of the Supreme Court.

The recent pronouncements of the Supreme Court which created a wave of judicial activism are discussed in Chapter III. Many a hurdle blocks the way of the socially handicapped millions in reaching the doors of the courts and getting their grievances vindicated. The evolving access jurisprudence indicates that the judiciary keeps pace with the changing mores of the day informed by the values of social justice enshrined in the Constitution.

'Backward Classes' is not defined in the Constitution. The Chapter IV examines the criteria on which these classes are identified. The view in Champakam Dorairajan that caste is not a criterion led to the first amendment introducing class (4) to Article 15. This is examined. Reports of various Commissions appointed by the State Governments and Central Government are elaborately discussed. Holding that backwardness in social hierarchy as the basis some of

those studies suggested a blended approach, i.e., a means-cum-caste test.

What is the judicial approach throughout these years towards the criteria of backwardness? Chapter V represents a probe into this approach. Poverty-cum-below 50% of state average of student enrolment is one of the significant factors in deciding the social and educational backwardness. The Balaji decision presents the correct perspectives laying down certain significant criteria although the decision was subject to pulls and counter pulls in later decisions. 'Undignified' and 'filthy' occupations such as those of scavengers, washer men and fishing folk, may be indicators of social and economic backwardness. That a group comes from hilly and similar inaccessible areas is relevant factor although the habitation in rural and backward areas may not always be germane. The list of backward classes should be adopted even in the case of scheduled castes so that the economically well-off top creamy layers of a class may not reap the benefits. Only in this way, the ideals of social justice can be achieved.

The problems of the quantum of reservation of the backward classes and of the time span for such reservation are discussed in the Chapter VI. Here also it is pointed out that the earlier decision in Balaji is the better guide in fixing reasonable quantum of 50%. There is a reasoned ruthless criticism on decisions in Thomas and Vasantkumar which jumped this limit. Compensatory discrimination will be a creative instrument to render social justice to weaker sections if the Balaji rules are observed.

Important decisions on Article 16 (4) are discussed in Chapter VII. The carry-forward rule had qualified the quantum rule. Promotion of backward classes after exempting them from passing the departmental tests will open the flood gate of indiscriminate practices of reservation for groups other than Scheduled Castes and Scheduled Tribes. Article 16 (4) is only a provision for protective discrimination and not one for guaranteeing fundamental rights to persons belonging to backward classes. Decisions to the contrary are criticised vehemently.

The position of women as a weaker section of the society demands the need for greater emphasis on gender justice. Chapter VIII looks back into the past practice and precepts. The alarming practice Sathi leaves one wonder how 'in the midst of scientific growth, an ugly aspect of religious fundamentalism has been rising steadily and has been making its forays into political arena.' Sthridhana meant in the past as a technique to make a woman economically independent has now boomeranged and become a practice for her eventual destruction.

Constitution guarantees woman rights to equality, protective discrimination and safeguards against exploitation. Chapter IX makes an inquiry whether these ideals protect the interests of woman in practice. The absence of the word 'sex' in Article 29 (2) is pointed out as a lacuna that enables the State as well as private management in discriminating woman by establishing educational institution for men only. A strong plea is made for amendment of the provision. The continued recognition of qualified polygamy under the Mohamedan law is a clear indication of the failure to realize social justice or gender justice. Plea for more stringent law on dowry is also mooted. The case law, culminating Shah Banu, on maintenance of Muslim divorced woman was analysed thoroughly to hold that the Muslim women (Protection of Rights on Divorce) Act 1986 enacted to bypass the celebrated decisions is a misnomer.

Chapter X sums the conclusions and suggestions already made in other chapters.