

Social justice in india assignment



**ASSIGN
BUSTER**

An Inquiry into the Conditions of Social Justice in India [Note: 1. This study of justice concentrates on conditions of social justice in India and will not include general issues of criminal justice; the proposal refers mainly to social justice and popular ideas of justice, as linked to, but distinct from rights. 2. This proposal is built on the insights drawn from the previous research programme on autonomy, and thus while this is a new proposal it is also a follow up on the earlier exercise.

Similar to the preceding one, it has research, publications, and dialogue segments. 3. The current research plan has developed through a series of consultations; its enunciation here is thus a product of the dialogic approach of our research work. 4. This statement is divided into three sections ??? (a) Description of the theme, and its context; (b) approach of the study; (c) activities proposed] A.

The Context and the Theme of Social Justice 1. Though the theme of justice has occupied a high ground in philosophical discussions since the beginning of political philosophy, yet in terms of democracy and popular politics its exact meaning and implications have been nebulous, one of the reasons being the fact that justice in reality is a meeting ground of many ideas, situations, concepts, expectations, mechanisms, and practices.

Many things intersect to form the context of social justice ??? ethical ideas of the people, laws, the evolving nature of claims, and the pattern of collective claim making politics, institutional issues relating to the delivery mechanisms of justice, ideas about rights and entitlements, ideas among the citizens about responsibility of the rulers towards them, plus many situations

generating many conditions of justice. All these make the social context of justice, also the social form and social site of justice.

By social justice we therefore indicate as a beginning: (i) social context of justice, (ii) social content of justice, and (iii) social sites of justice. We also indicate that as "social", there can be many contexts, contents, and sites. 2. The point of plurality made in the last sentence is significant, because notions and ideas, claims and practices, and mechanisms of justice have depended on varying situations. Thus we can witness various forms of social justice in reality ??? social claim as justice, attainment and restoration of dignity as justice, end to discrimination as justice, retribution as justice, conciliation of claims as justice, social idea of minimal justice, positive discrimination as justice, protection of the vulnerable sections of society as justice, and finally autonomy as justice. Social justice can and does have strong gender implications. 3. Situations of marginality produce ideas of justice. Lack of access to means of representation / resources / survival means such as education, health, etc. produces marginality. Similarly displacement creates marginal situations.

Likewise minority status engenders marginal existence. Hereditary discriminations have the same effect. Gender has the same role. These marginal situations have one thing in common ??? they speak of power matrix. And they produce specific calls for justice. Different marginalities generate different expectations and forms of justice ??? thus gender justice, justice for the indigenous people, justice for those denied of dignity for long, justice in form of certain socio-economic rights, justice for people starving to

death or for people living below poverty line ??? all of which mean justice for those who cannot access the mechanisms for justice.

The thing to note here is that while constitution has provisions of justice in its various articles and clauses, unlike in the case of rights justice does not have a compact formulation, even though the Preamble and earlier the Objectives Resolutions of the Constituent Assembly had justice as one of the founding provisions. . 4.

One of the implications of this manifold context is that while the issue of justice is studied only or mostly closely in terms of governance, its delivery mechanisms, and the various governmental forms of justice, social justice as distinct and as the other of governmental justice emerges as a distinct category of social reality to be inquired and appreciated in its own right.

Such a study will have to concentrate on the forms of social justice indicated above, the impact of public interest litigation as an avenue of ensuring social justice and as a process contributing to the idea of social justice, the “justiciability” of social justice, and the significance of the particular relation between rights, capabilities, claims, and law in terms of the idea of social justice ??? equally significantly, in terms of making this idea a reality.

Finally, the significance of this has to be sought in the realisation of the notion of responsibility ??? responsibility of the State, its various organs, various governmental institutions, and their national and international commitments ??? to provide justice. In sum, the context of the research can be summed up as one that provides the background to the interrelation between justice and society. 5.

Given the significance of the idea of justice in the Indian national movement and in its associated ideas and thoughts, and the wide demand for justice from each of the underprivileged sections of the Indian society today, and the recurring incidents of communities assuming the responsibility of delivering direct justice in the background of perceived delays and determining their own norms of justice, the proposed inquiry assumes significance. During the national movement there were several articulations of the idea of justice; similarly in the constituent assembly proceedings competing and complementary ideas of justice emerged.

Likewise in the writings of several thinkers justice has been discussed from various angles. Apart from intellectual, theoretical, and literary exercises, other discursive and institutional exercises have been marked by popular thoughts and ideas. Various manifestos, leaflets, pamphlets, popular writings, sketches, songs, newspaper articles, speeches, etc. have been the other sites where ideas of justice at the popular level have been articulated.

6. Social justice is an arena only partly covered by law; rest is covered by social and political ideas and practices.

Ethical ideas about honour, right, respect, autonomy, claim, share, revenge, and shame also play significant role in determining mores of justice. A sense of entitlements also has a role to play. Justice thus propels variety of forms ??? from social-economic rights, to the forms of justiciability, forms of redistribution of wealth, the form of due process, subjective experiences of justice, and as distinct from these experiences the objective tests of justice. In this context one has to note the parts played by social movements and social mobilisations in determining the popular concepts of justice.

B. The Approach 1. One can already sense in the preceding description of the theme of inquiry the approach likely to underlie the proposed programme. References have been made already to the historical milieu of nationalist ideas, communitarian ideas, and the constituent assembly deliberations. We need to recall in this context that in colonial India, the idea of social justice had formed the core of a political movement, as in Tamil Nadu and Maharashtra; and after an interregnum justice again became the core element of many movements and formations.

Since mid 70s and early 80s of the last century one can observe in the country a significant trend in governance and the social and economic (SE) rights scenario in India. It was during this time that the government started shifting its focus from political declarations on civil and political rights to programmes, policies, legislations and Acts for delivering basic services to its citizens. In a way it began with 20-point programme of the Government in the mid-70s.

At the same time due to a crisis in legitimacy of the state following the Emergency (1975-77), a host of people's movements sprang up across the country demanding rights from the state, at the same time devising alternative models for ensuring basic services. We also began witnessing from that time the ideas and practices of committed administration, known by the phrase "developmental bureaucracy", and "committed judiciary", that is to say a judiciary, whose premise is valuing ideals of social justice. Judicial activism too emerged in that context.

This historical context provides the ground for research into the process by which justice as a social and political programme took concrete shape in the country. This historical context has also propelled citizens' bodies, and people's movements to take stock of the condition of rights, and launch campaigns at all levels to demand the right for sustainable livelihood, which includes issues of access to food, clothing, and housing and extends to the right to a dignified life with access over utilisation and control of resources.

These campaigns have become significant in making the SE rights of the people a crucial item in public agenda of social justice, and in the emergence of public demand for transparency, accountability and efficiency from the states and direct participation of society in matters of governance. Instances of the profound expression of such campaigns, which have resulted in legislations at state and national levels on various issues are not lacking. They have raised the level of legal arguments, judicial awareness, and the quality of constitutionalism including constitutional interpretations. All in all, an inquiry into conditions of justice will require an investigation of the historical milieu. 2.

The social justice scenario is to be investigated in the context of two streams of entitlements: (a) sustainable livelihood, which means access to adequate means of living, such as shelter, clothing, food, access to developmental means, employment; education, health, and resources; (b) social and political participation (enabling or empowering means), which is built on the guarantee of fundamental rights, and promotion and empowerment of the right to participation in the government, and access to all available means of

justice, and on the basis of which “ justice as a political programme” becomes a viable reality.

We require therefore a study based on select illustrations of various issues relating to government policies on topics such as: (a) the right to food and water; (b) housing, which includes resettlement and rehabilitation; (c) access to education, (d) access to provisions of health and healthcare, (e) right to work, and (f) access to information and the right to communication. In short, one of the important ways in which the inquiry will proceed will be through taking stock of various forms that have occasioned the articulation of ideas of social justice. 3.

The all-important question however will be ??? how are we to make sense of different notions and realities of justice, which we have already noted?

Governmental justice consists of various welfare schemes, law, legal literacy, administrative forms of arbitration such as tribunals, boards, courts, public interest litigation, new legal education, plus the constitutional idea of protection of weaker sections of the society and introduction of positive discrimination. But this dominant governmental form cannot satisfy the requirements expressed in other forms of justice, indicated above.

The inquiry conducted through historical investigations into conditions of social justice, and select case studies, has to provide us an answer as to: What constitutes a just society or just social relations? Or, how can people having conflicting interests and values agree on principles of justice? What constitutes in the main the world of social justice in India? Where?? and how?? do the social-justice-talks feature in Indian political and social

discourse? People talk of lack of or inadequate?? access to?? legal justice; dalits talk of?? social justice against the backdrop of discrimination, caste society and social and govt. nterventions; activists?? talk about how the people’s notion of social justice is often trumped?? by economic rationality and growth and other powerful interest associated with?? them; women activists also talk about?? justice in the context of discrimination, patriarchy and?? so on. For the sake of clarity then we can say that the project will be about critically examining the ways people/groups encompassing different contexts use the language of ‘ social justice’ to advance their interests, to critique and to promote their values, and advance their claims in the context of their respective notions of what constitute “ injustices”. . Thus, the inquiry will be conducted keeping its eyes on the various uses of the social justice language in India; its multiple contexts, its myriad invocations and its varied renditions. One might say the ways in which people/groups/ activists?? use the social justice language may not be coherent; may not even?? pass the standard?? set by political philosophers. But?? a critical?? examination of these usages?? will?? do?? an important job. As a result of the work, these discourses can become the elements of a new theoretical explanation of the dynamics of justice and critique the existing ones.

We can term thus the approach of the proposed study as part ethnographic, if it is part historical, part analytical. 5. In its analytic dimension, the study will remember that in its present form legal theory views liberty bearing provisions of a country’s basic text as negative rights, that is they do not require state resources; the actual obligation of the state is not to do something, i. e. not to subject an individual to torture or not to carry out

arbitrary arrests. On the other hand, justice bearing provisions are viewed as positive, require state resources since they are seen as obligations to do something, e. . to provide free primary or secondary education or health care facilities. Presented in this manner, it is easy to see why states have been more receptive to implementing liberty-bearing provisions and why today the public attention is increasingly on a set of entitlements ??? such as an adequate standard of living or the right to work, which are seen as benefits given by the state. They are also viewed as aspirations that the state would one day like to fulfil through a process of progressive realisation.

The growing public opinion is however quite different from this perception. Justice in popular politics is seen as the congealed form of entitlements, and as a set of provisions inextricably linked to differential notions of rights and responsibilities, Since most of the governmental responses to these urgings for justice have been much more through executive policies, rather than through fundamental recognition of entitlements, the problem is that most of these policies operate in an ad-hoc basis.

The government assumes that it knows about how to provide welfare, but ignores the fact that a welfare approach in order to be successful has to be based on a consensus on the notion of justice rather than be based on the benevolence of a mai-baap sarkar (benefactor government). The analytic dimension in this inquiry therefore has to take stock of public interest litigations in recent years fought on the terrain of justice.

The process of analysing the legal dynamics of social justice should include a study of various approaches undertaken by the government from time to

time in guaranteeing justice - the welfare approach, equity in development approach, efficiency approach, empowerment approach, and the entitlements-approach.

The attempt should be to find out how much these approaches have mixed with each other in activist, juridical, and governmental discourses over the years, and have contributed to the development of the idea of justice, which are marked by notions of (i) non-negotiability of justice-centric provisions, (ii) non-derogability of these provisions, (iii) accommodation and harmonisation of various popular interests and claims on the basis of fairness, compensation, guarantee, joint custodianship, and differential needs. . In sum, the approach of the inquiry will be part historical, part ethnographic, and part analytic. The purpose is composite consisting of the following aims: The inquiry will enormously enrich our ideas of responsibility, rights, entitlements, and claims, ??? It will give an idea of the index of of social justice in the light of rights and entitlements; ??? The role of popular politics and the extent of participation of the people's organisations in programme and implementation of the welfare schemes towards ensuring provisions of social justice; ??? Debate between rights versus welfare based approaches to development; ??? Shift in the governance agenda towards policies and programmes rather than enacting legislations, which would bestow rights on citizens; ??? Impact of women's awareness on the justice discourse in India; ??? Similarly, the impact of the awareness about various marginal situations in a democracy which call for differential notions, dynamics, and institutional operations of justice; ??? The close relation between the idea of justice and the political issue of the delivery mechanisms of justice; ??? An

investigation into the twin reality ??? justice as a strong idea in politics and justice as practice; ??? And therefore an investigation into two forms of social justice ??? justice as a function of government, that is to say, governmental form of justice, and justice as a product of dialogues in contested and differential situations, that is to say, dialogic justice. C. Activities Proposed 1. The programme will have two segments ??? (a) research (b) dialogues. The research segment will contain three types of research ??? historical, ethnographic, and analytic. 2. The research will produce a series of status reports on justice, and a comprehensive volume. The volume will be based on study papers based on the researches on the following themes:?? a.

Historical investigation into the development of the idea of justice as a fundamental element of popular politics in the colonial time, and different intellectual discourses on justice b. Historical investigation into the succeeding constitutional deliberations on justice c. Ethnographies of justice I (dalits and justice) d. Ethnographies of justice II (indigenous people and justice) e. Ethnographies of justice III (survival rights, property notions, and justice) f. Ethnographies of justice IV (women and justice) g. Justice as legal activity ??? a review of the history of Public Interest Litigation (PIL) h. The literary site of justice i.

Justice and injustice: who are the victims and how do they perceive? j. Social justice in form of two binaries ??? legalities and illegalities; and governmental justice and dialogic justice The volume will throw light on how the idea of justice has played its part in refashioning democratic politics ??? its relation to the popular discourse on rights, welfare, and law. 3. Since the study agenda as proposed here is strongly perched on an appreciation of

differential circumstances and the marginalities producing the most immanent forms of justice, a dialogue programme on the basis of the appreciation of differences and marginalities becomes an essential part of the study agenda.

Such dialogue would include conversations with and among different actors in the arena of social justice process who are marginally situated in the world of formal politics and governance, or are actors in propelling the idea of justice as a political programme, or are critical in shaping a new politico-judicial discourse on justice. As has always been the CRG practice, research will be combined with dialogue, will gather strength from the latter, and must go back in terms of its inputs to the dialogic partners. This was done in the preceding programme on autonomy; it is proposed that study and dialogue will be combined again. This dialogue will focus on social movements.

Thus dalit activists, activists of social justice, lawyers, sub-divisional and tehsil-level judges, gender rights activists, people involved in water sharing movements and other environmental movements will become the dialogue partners. Similarly decentralisation and justice will become another significant theme and site for dialogue. Dialogue with victims of injustice can become one of the most significant occasions for dialogue on justice.

Dialogues on Justice A series of three dialogues on justice was carried out by the Calcutta Research Group (CRG), in 2006 where about seventy people took part from diverse backgrounds. These dialogues were combined with public lectures in Kolkata and Darjeeling. These dialogues are also part of the CRG's research programme on social justice in India.

<https://assignbuster.com/social-justice-in-india-assignment/>

They have immensely contributed to the collective knowledge on the state of social justice in the country, thrown up new ideas and questions, and have shed light on how collective struggles for justice go on in this country with or without the help of law. At a fundamental level, they have been instrumental in clarifying various notions about the relations between justice and law, ethics and justice, respect, revenge, and restitution, or rights and justice. These dialogues have also helped us in gaining knowledge about various repositories of archival material on justice, such as popular tracts, manifestos, legal materials, other popular writings, political declarations, and reportages that tell us lot about various perceptions on justice. Dialogue has been an integral part of the research design of CRG.

Our colleagues from various institutions participating in these discussions reinforced our belief and emphasis on this procedure. To say the least, no amount of scholarly paper presentation in seminars or philosophical treatise would have clarified the plural character of justice, the historically predicated nature of it, or its contentious character, as these dialogues have done. Our fear is that we may not have been able to do justice to the richness of the discussions on the three occasions. Several institutions came forward to assist us in holding these three dialogues: the Ford Foundation, the Lok Niti Centre for the Study of Developing Societies, the European Union and the International IDEA.

The first dialogue was held in Kolkata on 5 June 2006 on the theme of “ Conditions of Social Justice in India”. One of the aims in convening the dialogue in Kolkata was to take note of the two trends in the literature on social justice. Of these two, one consists of existing writings focused on

<https://assignbuster.com/social-justice-in-india-assignment/>

formulating or analyzing some normative principles of justice, which states and other delivering agencies ought to follow in course of their administrative and welfare actions. The second trend is made up of ethnographic researches, which concentrate on how people negotiate their ways through different systems of justice ??? customary or modern ??? existing in society, and make their own meanings of justice.

The highlights of this of this dialogue was Identifying themes and case studies with special reference to West Bengal and eastern India, and developing an appropriate research design; understanding in this context the complex relationship between theory and ethnography; preparing a comprehensive, annotated bibliography that will include a list of texts of relevant policies, enactments, public interest litigations and relevant legal decisions, parliamentary and legislative assembly debates and material relating to popular demands for justice, and popular tracts on justice and finally, identifying the institutional locations, resources and individual researches in the country particularly in West Bengal and eastern India.

The second dialogue was “ An inquiry into the Conditions of Social Justice in India” and was held in Darjeeling, on 26-28 June 2006. Continuing from where the Kolkata deliberations left, it was once again noted that situations of marginality produce ideas of justice. Lack of access to means of representation/resources/ survival means such as education, health, etc. produces marginality. Similarly displacement creates marginal situations. Likewise minority status engenders marginal existence. Hereditary discriminations have the same effect. Gender has the same role. These

marginal situations have one thing in common ??? they speak of power matrix.

Many things intersect to form the context of social justice ??? ethical ideas of the people, laws, the evolving nature of claims, and the pattern of collective claim making politics, institutional issues relating to the delivery mechanisms of justice, ideas about rights and entitlements, ideas among the citizens about responsibility of the rulers towards them, plus many situations generating many conditions of justice. All these make the social context of justice, also the social form and social site of justice. By social justice we therefore indicate as a beginning: (i) social context of justice, (ii) social content of justice, and (iii) social sites of justice. The third dialogue took place in Bhubaneswar, on the specific theme of “ Justice and Democracy in Divided Societies”. It was held on 20-22 November 2006.

The main objectives of the dialogue in this context were: To explore the dynamics of social divisions in contemporary South Asian societies compounded by governmental operations, which transform divisions into marginalities; To propose a possible agenda of social justice in the context of divided societies ??? an agenda that bases itself on marginalities and can address therefore the issues of justice in a new way; To suggest policy alternatives in terms of their bearing on democracy. The legal fiction of a homogeneous public immune from the operations of power in the society is nowhere more sharply focused than in the writings of Jurgen Habermas, Axel Honneth and their associates.

As the legal fiction subsumes governmentally produced social divisions ??? mentioned above, issues of justice get continuously sidetracked and pushed into the background. In other words, democracies of modern times bring into play a discourse where they produce injustice without being seen as such. Thus, it is not surprising that marginalities, livelihood crises and hunger deaths do not get constituted as public agenda in societies revisited by them. A post-colonial engagement with the issue of democracy helps demystify the fiction, and thus can seek to push democracy beyond the grids of governmentality by teasing out the implications of social divisions for issues of justice and bring them to bear on the functioning of contemporary democracies in divided societies.