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Socialist thought on law and justice:

India through its constitution adopts the policy of 'Welfare State'. The concept Welfare State means the welfare of the citizens, should be above all goals. The preamble of the constitution, assures to its citizen— social, economic and political justice; with equality of the status and of opportunity.

Socialism:

According to Cambridge Dictionary, socialism means the set of beliefs, which states that people are equal and should share equally in the wealth of the country, or the political systems based on these beliefs. Thus one can understand that Socialism is a political theory or system, in which the means of production and distribution are controlled by the people and operated according to equity and fairness rather than market principles. The principal of socialism is that, the social states should strive for, right to equality, equal wages for equal works, minimum wages, right to free and compulsory education, right to property, etc.

Socialist Nation:

Socialist nation means the policies of a country influenced with socialist thoughts. The term 'socialist' has been inserted in the preamble of Constitution by 42nd Amendment Act, 1976. This Amendment has merely explained the concept, which was already embedded in constitution. The word 'socialism' is used generally in democratic as well as socialistic constitutions. 'Socialist' means in general some form of ownership of the means of production and distribution by the State. The degree of State control will determine whether it is a democratic State or socialistic State. India has chosen, however, its own brand of socialism, i.e., mixed economy.

The word "socialist" implies a system of Government in which the means are wholly or partly controlled by the State. India's socialism is not a communist socialism but it is a democratic one. The preamble has embodied both, socialism and democracy. This is a unique combination and the combination has been criticised by many writers. It has been said that democracy and socialism cannot co-exist. However, this criticism is not justified. In the view of modern socialist thinker, India emerging as a 'Welfare State', would prevent the excess of exploitation and allow free competition without destroying individual initiative and without detriment to the political freedoms.

The Hon. Supreme Court in *Excel Wear's* case held that the addition of word 'socialist' might enable the courts to lean more in favour of nationalisation and State ownership of an industry. But so long as private ownership of industries is recognized and governs an overwhelming large proportion of our economic structure, the principle of socialism and social justice cannot

be pushed to such an extent so as to ignore completely, or to a very large extent, the interest of another section of the public; namely, the private owners of undertaking.

The Hon'ble Supreme Court, in D.S. Nakara 's case held that "...the principal aim of a socialist State is to eliminate inequality in income and status and a decent standard of life". Court further observed that "...the basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhism socialism. This is the type of socialism which we wish to establish in our county"

The Constitution of India declares India to be a socialist, republic as well as a secularcum-sovereign democratic republic. The preamble of a Constitution enlightens the path to which is to be followed by the State to set-up a sovereign, socialist, secular, democratic entity. Although, the concept of “socialism” has not been defined in the Constitution of India, it is commonly understood to mean “from each according to his ability to each according to his need”. (Malik and Raval). After the inclusion of the word “socialism” under the preamble of the Constitution (42nd Amendment), the State has aimed to eliminate inequality in life of people with the object of providing decent standards of life.

An enquiry through constitutional debates on the right to property.

A Debate on right to property in India:

Originally “right to property” was a fundamental right. Under Art. 19(1) (f) and 31 the constitution guaranteed to the Indian citizen the freedom to acquire, hold and dispose of property. However, the State by the Art. 19 (5) was permitted to impose by law reasonable restrictions on this right in the interest of general public or for protection of the interest of any Scheduled Tribe. Anyone could invoke the Supreme Court under Art.32 on the violation of right to property. But, Constitution (44th Amendment), has converted this right from fundamental right to constitutional right by inserting a new Article in the form of Art.300-A therefore, consequently, Art. 19(1) (f) & (5) and Art.31 have been deleted. The effect of the Amendment is that a person will not be entitled to invoke the writ jurisdiction of the Supreme Court under Art.32 for violation of his right to property under Art.300 A. He will however, be entitled to invoke the jurisdiction of High Court under Art.226.

The Art. 300-A reads as follows —”No person shall be deprived of his property save by authority of law”. Thus the only condition to be complied with for the acquisition of private property right is law of legislature. Where the property of any one will be taken away appropriate compensation will be paid. No one can be deprived of the possession of any property without due process of law which is also the mandate of this Article. The authority of law must mean ‘due authority’ of a ‘valid’ law (Jilabhai Kochar case).

Abolition of the right to property as a fundamental right has been criticized by an eminent authority on Constitution Mr. H.M. Seervai. He opined that “the abolition of the right to property as fundamental right would destroy the other fundamental rights which are embodied in the

constitution”, he further states that the fundamental right to freedom of speech and expression including the freedom of press and freedom of association, the freedom to move freely throughout the territory of India to settle in any part of India, to carry business, profession or vocation in any part of India would be destroyed if the right to property, is not guaranteed as fundamental right and the obligation to pay compensation for private property, acquired for public purpose is not provided for.

After the amendment and insertion of Art., 300-A, the right to property is more definitely and largely secured under the constitution, than ever before. Now, the State will not be able to acquire private property without showing ‘public purpose’ and without paying ‘full compensation’ or the ‘market value’ of the property. If any amendment in the existing position is to be brought in, now it will not only require the procedure laid down in Art.368, but also the consent of the States as prescribed in the proviso to Art-368. Also, under Entry-42 of the Concurrent List Parliament and the State Legislatures have power to legislate on “acquisition or re-acquisition of the property”.

Although, the Government has an inherent right to take and appropriate the property belonging to individual citizen for public use. This power is known as Eminent Domain. It may be out of any public necessity. Keeping in mind the famous maxim *Salus populi est superema lex*, which means that the welfare of the people or the public is the paramount law and is also on the maxim *necessita public major est quam*, which means public necessity is greater than the private observed Justice B. K. Mukherjee (in *Bishambers case*). Thus property may be needed and acquired under this power for Government for office, libraries, and slum clearance projects of public interest, public schools, and hostels for students, colleges and universities, public highways, Public Park, railways lines, telephone lines, dams, drainage, sewer and water systems, airport and many other project of public interest, convenience and welfare schemes. That the existence of such power (compulsory acquisition of land by State) has been recognised in the jurisprudence of all civilised countries as conditioned by public necessity and payment of compensation observes the Hon. Supreme Court in *Kameshwar Sings case*.

According to Section 4 of the Land Acquisition Act, 1894 ; Whenever it appears to the Appropriate Government that land in any locality is ‘needed’ or is ‘likely to be needed’ for any ‘public purpose’ or for a ‘company’, a notification to that effect shall be published in the Official Gazette as well as in two daily newspapers circulating in that

locality of which at least one shall be in the regional language. Also the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. , the date of publication of the notification shall be considered as the last of the date of such publication and of such public notice. Before the acquisition is held to be valid, it had to pass the test of Art. 19 (5) on the ground of procedural reasonableness as held in R.C. Cooper Case.

Depriving a citizen of his private property can be challenged on the ground that it does not provide for payment of compensation and is not for 'Public purpose'. In that case, it has been held that the 'law' and procedure enacted and prescribed for the deprivation of personal liberty must be just, fair and reasonable. So, if a law under Art.300-A does not provide for taking away private property of an individual for public purpose and for payment of compensation, it will be an unjust, unfair and unreasonable law and hence can be declared unconstitutional and void. Non-payment of compensation can be challenged as expressed in the decision of the Supreme Court in Maneka Gandhi's case and a series of cases following it.

Indian Marxist critique of law and justice -

Marxism'

Marxism is a philosophy that advocates revolutionary social change. It is a method of reversing the exploitations and tyranny of the strong over the weak. It responded to the deep-rooted differences between capital and labour by looking to the materialistic background of exploitation and historical instances of class conflicts. Karl Marx believed that law was a superstructure built on the economic foundations and essentially reflected the implications of class struggle. As instrument of domination in the hands of the economically powerful, law's function consisted in crushing and eliminating the minority, they reasoned. Marx's opinion was that the dictatorship of proletariat is deliberately built was to serve the interests of the classless society on a footing of equality and gradually enable withering away of state.

Indian Marxism

Jaya Prakash Narayan: (1902-1979) was greatly influenced by the Russian Revolution in 1917. In his booklet Why Socialism! Narayan defended the new social order that took shape under the leadership of Stalin. He believed that the New Russia was free from exploitation as any other developed society free from pleasant imagination. He even supported 'political violence' in Russia as its aim was towards the betterment of the conditions of the proletarians and the peasants. Narayan laid great stress on the economic foundations of politics. He argued that inequality was not due to the natural inequalities between men in respect of intelligence, moral stamina, and physical strength. He disliked the unchecked economic inequality prevalent in

society and urged for a proportionate control of the means of production. The solving of economic problems had a priority in his thought.

Ram Manohar Lohia (1910-1967) He applauded Marx's criticism of private property, but did not accept his theory of class struggle. He appreciated Marx as well as Gandhi as he thought "there are priceless treasures to learn" from both, but didn't want to follow either of them, for him "to become either a Gandhite or a Marxist" was not a good idea. In his book, Marx, Gandhi and Socialism, he broadly accepted the Marxian analysis of capitalism as applied to England and Germany of those days. The best method, for him, to achieve the economic objectives of Marxism was to adopt the Gandhian techniques of Salyagraha and complete decentralization in the economic and political spheres. His thinking was that if socialism could absorb the essence of Gandhism, it could acquire an integral character. He stressed on economic development and eliminating all forms of exploitation as it was Marxian in orientation. His concern for the development of the total personality of an individual, ethical values and cultural ethos of the country were Gandhian in outlook.

Pt. Jawaharlal Nehru. (1889-1964): In *The Discovery of India*, Nehru wrote, "A study of Marx and Lenin produced a powerful effect on my mind and helped me to see history and current affairs in a new light." Nehru was fascinated by Marxism because he found it free from dogmatism. It had a scientific outlook and attitude to action. Although according to him Marxist theory was not complete

he thought of it as a cornerstone of the science which according to him a socialist must advance in all direction of they did not want to fall. For Nehru Marxism was an indispensable guide to understand history and social phenomenon.

Naxalite movement: Causes and cure.

The adhiars i.e the tenant was exploited at the hand of the jotedars i.e. the landlords. There was a discontent peasants and landless labourers. The organised efforts initially by the Communist Party and later on by in West Bengal got together to express their frustration in the form of organised efforts. The share of adhiars was to undergo deductions on account of supply of cattle plough, seeds and loan of paddy at a totally disproportionate rate. Free-of-cost maintenance of jotedars' labourers, stable and granary was also the burden of adhiars. The ever-increasing burden of debt, loss and fraud, in addition to feudal practices of social hierarchy, provoked the peasants to revolt against the system. Added to this were the anti-people activities of gardeners and estate owners. Thus the relation between the landlords (jotedars) and tenants (adhiars) had become deepened with the exploitative practices about crop sharing and money lending.

Naxilism:

In remote area of Darjeeling district there is a cluster of villages known as Naxalbari. In this village in 1967 the revolutionary peasants losing faith in legal remedy they resorted to revolutionary thoughts and strategies developed by leaders under influence of Marxism. Which latter was recognized as Naxilism derived after the name of the village cluster. Naxalbari proclaimed that the existing economic and political could be overthrown by the oppressed classes only through the use of revolutionary violence and then regenerated India could arise. Ultimately both the fractions the CPI and CPI(M) abandoned Marxism —Leninism and Naxalbari revolutionaries were guided by revisionist orientation, 'the new orientation' and the 'new concepts' preached by Khrushchev and his successors. Guided by Mao Tsetung thought Charu Majumdar made his contribution to what brought about the Naxalbari Struggle writes Suniti Kumar Ghosh.

Causes of Naxalite movement:

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In the report of an Expert Group submitted to the Planning Commission, in April, 2008 states that, "The analysis of roots of discontent, unrest and extremism rely upon extensive discussions based on official reports in the past, publications from the extremist groups, reports of human rights groups, books by observers of such developments, and media coverage in the background of field insight and interaction of members of the Expert Group. This has revealed that the causes are varied depending on characteristics of an area; social, economic and cultural background; a history of not working out solutions to lingering structural problems; and ineffective application of ameliorative steps undertaken since Independence and more so since the mid-sixties of the last century. Dissent movements, including the extremist Naxalite movement, are not confined to difficult hilly and forested areas but cover large contiguous tracts in the plains. They are not limited to dry land areas of recurring crop failures but extend to irrigated commands of major irrigation systems, as in the state of Bihar. The causes are, therefore, complex. The intensity of unrest resulting in extremist methods and effort to resolve issues through violent means as a challenge to state authority is in response to the gathering of unresolved social and economic issues for long durations. It creates the impression that policy making and administration responds to extreme means.

The more recent development is in the emergence of CPI (Maoist) after the merger and consolidation two powerful naxalite streams in September, 2004. This new formation, since its inception, is defining the official understanding of the extremist phenomenon of the level of the state as well as the Union Government. This has appeared in the public perception as a simplistic law-and-order face-off between the official coercive machinery and this more radical extremist political formation. The social consequence results, then, in undermining instruments of

social and economic amelioration as well as processes of democratic exchange to resolve persisting issues. This is the crux of the problem". After perusing the report of experts and the report of Experts (2008) and the report of the Ministry of Home Affairs (2003 -04) we get to understand that the Naxalite movement is principally a political action for armed conquest of State power.

Naxalite movement and its cure.

In 1970 Jayaprakash Narayan thought to give solution to the Naxalite problem. For him the Naxalism was basically a social, economical, political, and administrative problem and to a small extend a question of law and order. He suggested that arrests, imprisonments, and shootings could not put down Naxalism or any other kind of revolutionary violence. Therefore he undertook the work in Musahari of Bihar, the Naxal hit area, to wean the area away from violence included establishment of the Gram Sabha; redistribution of one twentieth of the land covered by gramdan; setting up of gramkosh; organisation gram shanti sena, and legal confirmation of Gramdan. By redistribution of land collected through gentle persuasion He looked into the problem of landless labourers and cases of injustice and oppression. He was of the opinion that the laws agrarian reform laws and Minimum Wages Act were not implemented properly and that had led to the growth of the rural violence. Law furnishes a false sense of promise and expectation, ultimately leading to self- deception, dissatisfaction and frustration.

Few suggestions to bring an end to violence by the tribals can be discussed as follows.

Due to acquisition of land involuntary displacement of tribes ultimately turning them landless.

Indiscriminate land acquisition should be stopped.

The land acquired in the name of public should be restricted to public welfare activities and matters of national importance.

The proposals of Land Acquisition must be such that they minimize displacement and secure the rights of affected displaced persons.

The law must be so formulated so as to protect poor and vulnerable sections in case of direct acquirement by companies.

The provision for rehabilitation and resettlement of persons whose lands are procured by companies or other private interests should be compulsory on the State.

The 'Acquired land' which is not utilised should be give back to previous land owners.

Questions for self learning

Q. 1 Answer in detail

Explain the basic concept of Ganhi's Sarvodaya.

Discuss the contribution of Vinoba Bhave and Jayaprakash Narayan for movement of Sarvodaya.

Explain the importance of Gram Nyayalayas

Salient Features Gram Nyayalaya Act. 2008.

Discuss in detail the evolution of right to property in constitution.

Discuss with the help of case law the effect Marxist's views on law and justice in India.

What are the reasons for development of Naxalite movement?

Q. 2. Write notes on

The jurisprudence of Sarvodaya.

Mahatma Gandhi's concept of Sarvodaya

Vinoba Bhave the exponent of Sarvodaya movement

Programme of Sarvodaya

Jayaprakash Narayan an Surrender of Dacoits.

Jayaprakash Narayan's notion of total revolution

Jayprakash Narayan and Sarvodaya.

Concept of Grama Nyayalaya.

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Let us sum up

Sarvodaya aims to establish a new social order on the basis of truth, love and non-violence. It is highly critical of the state and its government, because both are based on force and coercion. Gandhism and Sarvodaya are inter-related to each other. After the Independence of India, Gandhi's devoted disciple Acharya Vinoba Bhave established a Sarvodaya Society. Later on, Jayaprakash Narayan joined the Sarvodaya movement. Vinobaji's Bhoodan and Gramdan movements are to be understood as specific schemes of Sarvodaya movement. Jayaprakash Narayan visualized the plan of total revolution as continuity or rather a new version concept of Sarvodaya. By "total revolution"

he meant inclusive revolution affecting all aspects of social life including individual life. His solution to the nuisance of Chambal dacoity. The Gram Nyayalayas Act was passed in January 2004 (got President's assent on 7 January 2004) to provide for the establishment of Gram Nyayalayas at the grass roots level for the purpose of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen.

In cluster of villages known as Nazalbari the peasants resorted to revolutionary thoughts and strategies developed by leaders under influence of Marxism, which latter was recognized as Naxilism. Agrarian reform laws and Minimum Wages Act were not implemented properly and that had led to the growth of the rural violence. Establishment of the Gram Sabha; redistribution of one twentieth of the land covered by grammdan; setting up of gramkosh; organization gram shanty sena; and legal confirmation of Gramdan can be appropriate solution.