

SOCIAL CONTEXT ADJUDICATION

‘A Tool that can be used by the District Judiciary to provide social justice without Writs and PILs’

OBJECT

The object of this article is to examine and emphasize the relevance of social context adjudication for trial courts and magistrates. “*Social context*” must not be ignored in adjudication, especially in an adversarial system where the judge is not an active participant of the judicial proceedings. India being unique in terms of diversity is also unique in terms of the inequalities prevalent in all systems: caste, religion, gender to name a few. It is in this context that “social context” judging or adjudication becomes all the more important.

The ‘Preamble promises’ of *justice, liberty, equality and fraternity* give the blue print of the type of society which ‘We the people of India’ resolved to give to ourselves. The Constitution of India provides a roadmap by weaving a pattern of rights and duties for establishing an egalitarian society based on the principles of fraternity and social justice. When India gained independence, the three main goals to be achieved were *national integration, bringing dignity and justice to those at the bottom of the social order and eliminating mass poverty*. The Judiciary from the top to bottom has been entrusted with the task of the realization of the Preamble promises by ensuring the proper implementation of not only social justice legislations but also social justice as a ‘constitutional norm’ and to ensure dignity and justice for those who were at the bottom of the social order. While the Superior Courts have admirably performed this task by pursuing ‘activism’ through PILs, writ jurisdiction, constitutional tort, environmental jurisprudence, *the trend has to be followed and strengthened by the trial courts as well, as these are the courts of first instance and the foundation of the entire judicial hierarchy*. The statute books are also replete with social justice legislations giving concessions to special classes and protection to the vulnerable groups, like minors, persons of unsound mind, juveniles etc.

'Social context' must be used as a tool of adjudication by the trial courts, and their approach must be guided by the **social realities**, not ignoring the sex, financial status and the strata of society to which the parties belong. The Magistrates, Civil Judges and all Judges working in the district judiciary can be termed as the '*captains*' of the judicial system as litigants normally have their claims decided by these first level courts and sometimes by Special Courts constituted under special legislations, presided over by District/Additional District Judges and the image of the Judiciary largely depends on the functioning of the trial Courts as these are Courts of first instance with which the public has a direct interface. The beneficial approach and constructive interpretation of the Constitutional Courts must inform and illuminate the approach and attitude of the trial courts as well. The judges must be '*sensitive*' and '*compassionate*' to the problems of the vulnerable, disadvantaged and the marginalized sections of the society, especially in an adversarial system like ours.

According to Prof. Madhva Menon social context judging is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before Courts where unequal parties are pitted in adversarial proceedings and where Courts are called upon to dispense equal justice. Apart from the social –economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of the parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.

The inherent inequalities in the adversarial system can be moderated to some extent if the Judge is *socially sensitive to the special needs* of the vulnerable sections of the society and even without the powers of writs and PILs the District Courts can play a major role in doing social justice. To illustrate:

- While dealing with the applications of maintenance of destitute wives or hapless children or parents under **S.125 CrPC** or awarding monetary relief or other reliefs under the **Domestic Violence Act, 2005**, the Court is dealing with the marginalized sections of the society. In such cases *purposive interpretation* must inform the approach of the Court, and the Courts must be guided by the Constitutional vision of social justice, and be positively inclined towards such marginalized sections. The Courts must be proactive in

their approach and such applications must be expeditiously dealt without going into technicalities inviting delays.

- The cases pertaining to senior citizens must be taken up on a priority basis, and their special needs must be felt by the presiding officers, and there must be a genuine endeavor to decide such cases expeditiously, which is already being done.
- If an extremely aged or ailing witness or an extremely poor witness (who would lose his/her daily wage) is to be cross examined on a particular date, then the Courts must take special care to ensure that they must not be sent back unexamined, and if at all due to extraordinary reasons the other party moves an adjournment then realistic costs must be imposed by the Courts mentioning the disability or special condition of the witness. **This would ensure the confidence of the vulnerable classes in the Courts, that they are taken care of and not forgotten by the system.**
- DLSAs can play a major role by providing quality legal aid to the economically weaker sections of the society and by sensitizing the stakeholders towards the problems being faced by the socially disadvantaged sections and also by making the marginalized sections aware of their legal rights. Even after more than two decades of the Domestic Violence Act being enacted not many women even know that domestic violence is an offence and that they have a *legal right to be taken care of* and being protected.
- Even in case of ADR (alternate dispute resolution) especially mediation, people from the marginalized groups are often at a disadvantage in mediations due to the unequal bargaining power. Tangible resources such as income, education, occupation, and intangible resources such as social status and self-esteem impact the ability of the parties to negotiate effectively. The mediator has to be sensitive and conscious of such inequalities and must ensure that such *automatically depriving circumstances* do not operate to the disadvantage of the marginalized groups

People who hold high status command automatic deference and exert a subtle and covert control over the people who hold a lower social status. Marginalized sections hold lesser tangible and intangible resources and so they are in a disadvantageous position in an adversarial system of adjudication. It is the duty of the trial courts throughout the country to translate the Constitutional vision of 'social justice' into reality by social context judging and being alive to the needs of the marginalized and vulnerable sections of the society, *else they may end up settling for less than what the law mandates*. Society does not always

demand changes in the law, or new laws, the need of the hour is the change in attitude, approach and mindset of the judges and people attached with the justice delivery system.

Written by,

Aishwarya Pratap Singh

Addl. Chief Judicial Magistrate,

Aligarh, Uttar Pradesh

Email id: apslex@gmail.com

