

Recent trends in basic human needs

Introduction

The Constitution enshrines many benevolent provisions. It is a treasure house spelling out Fundamental Rights, duties and other basic freedoms. Part III of our Constitution is a work of pride and the crowning achievement of the founding fathers. Soon after the Constitution was enacted, the process of amendment started in the very second year of the Constitution's working and has been repeated at frequent intervals. It is perhaps an irony that the first amendment to the Constitution was made in regard to the Part III of the Constitution. Article 15(4) was added to the Constitution in 1951, in the way of helping backward classes by making discriminatory provisions in their favour and to tide over the difficulties created by decisions such as Champkam Dorairajan AIR 1951 SC 226. It may be noted that the Constitution makes a few more provisions for development and amelioration of the condition of backward classes of people. Under Art.15(4), in innumerable cases the reservation of seats for SC, ST and Backward Classes in colleges has been upheld. Reservations are done under Article 15(4) for the advancement of such classes.

Art. 16(1) guarantees equality of opportunity to all citizens in matters relating to employment or appointment under the State. On a comparative basis, Art. 16 deals with a very limited subject viz., public employment. On the other hand, the scope of Art.15 (1) is much wider as it covers the entire range of state activities. Under Art. 16(4) the state may make reservation of appointments or posts in favour of any 'backward class' of citizens which, in the opinion of the state, is not adequately represented in the public services under the State. The scope of Art. 15(4) is wider than Art.16(4). Articles 15(4) and 16(4), no doubt, fall within Part III of the Constitution comprising the fundamental rights.

After Indra Sawhny judgment, two Constitutional Amendments have been incorporated in Art.16 (4) to somewhat tone down the impact of the Supreme Court pronouncement. Article 16(4A) was introduced by 77th Constitutional Amendment permitting reservation in promotion to the Schedule Castes and Schedule Tribes. The Constitutional (81st Amendment) Act, 2000, has added Art. 16(4B) to the Constitution. The amendment envisages that the unfilled reserved vacancies in a year are to be carried forward to subsequent years and that these vacancies are to be treated as distinct and separate from the current vacancies during any year.

Both these articles come under the heading of Right to Equality. The Constitution guarantees the Right to Equality through Articles 14 to 18. In the series of constitutional provisions, Art.14 is the most significant. It has been given a highly activist magnitude in recent years by the courts and, thus, it generates a large number of court cases. The voyage for opening the horizons of fundamental rights began right from Communist Leader A.K. Gopalan case, in the year 1950, wherein it was held that wider interpretation to be given to fundamental rights. Thereafter several landmark judgments were delivered construing the provisions of envisaged in Part III. Legal circles are all agog with the recent judgment of the Supreme Court in Ashoka Kumar Thakur vs. Union of India (UOI) and Ors, commonly known as OBC Judgment, (2008)6SCC1. Efforts are afoot to lift it up and place it in the company of causes

celebre like E.P. Royappa, Maneka Gandhi, M.P. Sugar Mills, International Airport Authority, Water Transport Corporation, Indra Sawhney, N.M. Thomas, and Minor P. Rajendran, which have adorned the constitutional history of India and marked the development and glorification of concept of Right to Equality for the last 4 decades or so.

In Ashoka Kumar Thakur case the Court held, inter alia, that there are structural differences in the Constitution of India and the Constitution of the United States of America. The 14th Amendment to the U.S. Constitution, inter alia, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws". Whereas in India, Articles 14 and 18 are differently structured and contain express provisions for special provision for the advancement of SEBCs, STs and SCs. Preamble to the Constitution and the Directive Principles of State Policy give a positive mandate to the State and the State is obliged to remove inequalities and backwardness from society. While considering the constitutionality of a social justice legislation, it is worthwhile to note the objectives which have been incorporated by the Constitution makers in the Preamble of the Constitution and how they are sought to be secured by enacting fundamental rights in Part III and Directives Principles of State Policy in Part IV of the Constitution. The Fundamental Rights represent the civil and political rights and the Directive Principles embody social and economic rights. Together they are intended to carry out the objectives set out in the Preamble of the Constitution. In our Constitution there is a specific provision under the Directive Principles of State Policy in Part IV of the Constitution requiring the State to strive for justice 'social, economic and political' and to minimize the inequalities of income and endeavour to eliminate inequalities in status, facilities and opportunities (Article 38).

Article 14 has stood throughout at the pinnacle as a portentous, impregnable constitutional bulwark against all excesses and illegalities of the State and its instruments. The principle of reasonableness and non-arbitrariness which pervades Article 14 like a brooding omnipresence was an adequate touchstone in it.

Right to Property

The most drastic amendment to Part III has been one culminating in the outright deletion of the fundamental right to property guaranteed under Article 19 (1) (f) and Article 31 in 1978. The history of the constitutional changes in this regard demonstrates the sea change in the public reactions to notions of private property that seemed sacrosanct at one time. The fundamental rights to property under Article 19 (1)(f) was specifically introduced by the founding fathers of the Constitution after detailed discussion and deliberation. Jawaharlal Nehru also felt that Art.19(1)(f) was a very important right to be incorporated in Part III of the Constitution under "Fundamental Rights".

No doubt, under the same Amendment of 1978 Art.300A has been introduced but not in Part III. That is only recognition of a pre-constitutional right. It is not a new right. This sort of right already exists in Transfer of Property Act and Land Acquisition Act, thus the introduction of Art.300A is an eye-wash. Now the right to property is made an ordinary right which can be taken away by a Legislature. I am of the humble opinion that deletion of Article 19(1)(f) and Article 31 would amount to altering the basic structure of the Constitution. Even the United

Nations has recognized the right to property as a human right under Article 17 of the Declaration of Human Rights.

Secrecy of Vote –

Negative Voting Recently in People's Union for Civil Liberties and Another vs. Union of India and Anr. (2013)10SCC1, wherein the provision of a "None of the Above" (NOTA) button in the EVMs was prayed for. The question before the Hon'ble Supreme Court was that whether there is a violation of right not to vote in secrecy by Rules 41(2) and (3) and 49(O) of the Conduct of Elections Rules, 1961; whether violation of secrecy amounts to violation of rights granted under Articles 19(1)(a) and 21 of the Constitution. The Court held that Article 19 guarantees all individuals the right to speak, criticize, and disagree on a particular issue. It stands on the spirit of tolerance and allows people to have diverse views, ideas and ideologies. Not allowing a person to cast vote negatively defeats the very freedom of expression and the right ensured in Article 21 i.e. right to liberty. In the end, the court held that Rules 41(2) and (3) and Rule 49(O) are ultra vires Article 19(1)(a) of the Constitution to the extent they violate secrecy of voting.

Right to Sleep

In another recent case of Ramlila Maidan (2012)5SCC1 the Supreme Court has expanded scope of right to life under Article 21 of the Constitution to include right to sleep and elevated this right to the category of fundamental rights. Article 21 is the foundation of the constitutional scheme. In this landmark judgment, the Court held, inter alia, that Sleep is a biological necessity; its deprivation affects a person's health and mental condition. Interference with a person's sleep is, therefore, a form of third-degree method of torture prohibited by the Constitution. The Court further held that in many countries there are complete night curfews (at the airport i.e. banning of landing and taking off between the night hours), for the reason that the concept of sound sleep has been associated with sound health which is inseparable facet of Article 21 of the Constitution. The Court also held that privacy, right to silence, freedom from noise and to have proper rest and sleep, as essential constituents of right to life under Article 21.

The Supreme Court in Ramlila Maidan case, while discussing Article 19, held, inter alia, that the Indian Constitution spells out the right to freedom of speech and expression under Article 19(1)(a). Freedom of speech is the bulwark of democratic government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. Article 19 by clause 1 sub-clause b also provides the right to assemble peacefully and without arms to every citizen of the country. However, these rights are not free from any restrictions and are not absolute in their terms and applications. Articles 19(2) and 19(3), respectively, control the freedoms available to a citizen. However, Article 19(2) was subjected to number of amendments. The framers of our Constitution, in unambiguous terms, granted the right to freedom of speech and expression and the right to assemble peaceably and without arms. This gave to the citizens of this country a very valuable right, which is the essence of any democratic system. There could be no expression without these rights. With the development of law in India, the right to freedom of

speech and expression has taken within its ambit the right to receive information as well as the right of press.

Further, in Ramlila maidan case (Supra) the Court held, inter alia, that with the development of law, even certain matters covered under Part IV of the Constitution relating to Directive Principles have been uplifted to the status of fundamental rights, for instance, the right to education (Article 21A). Though these right forms part of the Directive Principles of State Policy, compulsory and primary education has been treated as a part of Article 21 of the Constitution of India by the courts, which consequently led to the enactment of the Right of Children to Free and Compulsory Education Act, 2009.

RIGHT TO ADOPT

In another recent case of Shabnam Hashmi vs. Union of India (UOI) and Ors. AIR2014SC1281, the question put forwarded before the Hon'ble Supreme Court was whether right to adopt and to be adopted could be recognized as Fundamental Rights under Part III of the Constitution. It was held, inter alia, that the "Fundamental Rights embodied in Part-III of the Constitution constitute the basic human rights which inhere in every person and such other rights which are fundamental to the dignity and well being of citizens. While it is correct that the dimensions and perspectives of the meaning and content of fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adopt or to be adopted to the status of a Fundamental Right, in our considered view, will have to await a dissipation of the conflicting thought processes in this sphere of practices and belief prevailing in the country. The legislature which is better equipped to comprehend the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view, for the present, by the enactment of the JJ Act 2000 and the same must receive due respect. Conflicting view points prevailing between different communities, as on date, on the subject makes the vision contemplated by Article 44 of the Constitution i.e. a Uniform Civil Code a goal yet to be fully reached and the Court is reminded of the anxiety expressed by it earlier with regard to the necessity to maintain restraint. All these impel us to take the view that the present is not an appropriate time and stage where the right to adopt and the right to be adopted can be raised to the status of a fundamental right and/or to understand such a right to be encompassed by Article 21 of the Constitution."

BLACK MONEY CASE – RIGHT TO KNOW – RIGHT TO INFORMATION

In another recent case of Ram Jethmalani and Ors. Vs. Union of India (UOI) and Ors.(2011)8SCC1, commonly known as Black Money Case, the Court while balancing right to know / right to information versus right to privacy of persons concerned, held, inter alia, that there is a special relationship between Clause (1) of Article 32 and Sub-clause (a) of Clause (1) of Article 19, which guarantees citizens the freedom of speech and expression. The very genesis, and the normative desirability of such a freedom, lies in historical experiences of the entire humanity: unless accountable, the State would turn tyrannical. A proceeding under Clause (1) of Article 32, and invocation of the powers granted by Clause (2) of Article 32, is a primordial constitutional feature of ensuring such accountability. The very promise, and

existence, of a constitutional democracy rest substantially on such proceedings. Furthermore, withholding of information from the Petitioners therein by the State, thereby constraining their freedom of speech and expression before the Supreme Court, may be premised only on the exceptions carved out, in Clause (2) of Article 19. In the task of upholding of fundamental rights, the State cannot be an adversary. The Court further held that revelation of details of bank accounts of individuals, without establishment of prima facie grounds to accuse them of wrongdoing, would be a violation of their right to privacy. It is only after State has been able to arrive at a prima facie conclusion of wrong doing, based on material evidence, would the rights of others in the nation to be informed, enter the picture. Right to know cannot be extended to being inquisitors of fellow citizens.

The Court in Ram Jethmalani case also discussed basic structure of our Constitution. The Court held that "the basic structure of the Constitution cannot be amended even by the amending power of the legislature. Our Constitution guarantees the right, pursuant to Clause (1) of Article 32, to petition this Court on the ground that the rights guaranteed under Part III of the Constitution have been violated. This provision is a part of the basic structure of the Constitution. Clause (2) of Article 32 empowers this Court to issue "directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by" Part III. This is also a part of the basic structure of the Constitution."

RIGHT TO ONE'S REPUTATION

In Umesh Kumar Vs. State of Andhra Pradesh (2013)10SCC591, the Supreme Court held that "reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, scandal and defamation are injurious to reputation. Reputation has been defined in dictionary as "to have a good name; the credit, honor, or character which is derived from a favourable public opinion or esteem and character by report". Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. International Covenant on Civil and Political Rights 1966 recognises the right to have opinions and the right of freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is "not only a salt of life but the purest treasure and the most precious perfume of life."

Woman's right to make reproductive choice

In Suchita Srivastava and Anr. Vs. Chandigarh Admin. (2009)9SCC1, the Supreme Court held, inter alia, that woman's right to make reproductive choice is also a dimension of "personal liberty" as understood under Article 21 of the Constitution. Reproductive rights include a woman's entitlement to carry pregnancy to its full term, to give birth and to subsequently raise children. The court also held that forcible sterilization or abortion of mentally retarded person (eugenics theory), are anti democratic and violative of Article 14. Here I also recall in this

connection the universal truth of which the English poet Coleridge has said. "A mother is a mother still, the holiest thing alive".

Freedom of choice in Marriage

Recently, in 'Gang Rape ordered by Village Kangaroo Court in W.B., In re' (2014)4SCC786, the Supreme Court has ordered the West Bengal government to pay 500,000 rupees to a tribal woman who was gang-raped in January allegedly on orders of village elders. It was held that the State is duty bound to protect the fundamental rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be freedom of choice of Marriage.

Right to Speedy Trial

The Supreme court in Moti Lal Saraf vs. State of J&K (2006)10SCC560 held that speedy trial is implicit in the spectrum of Article 21 of the Constitution. Speedy trial is one of the facets of the fundamental rights to life and liberty enshrined in Article 21 and the law must ensure "reasonable, just and fair" procedure which has a creative connotation. The purpose of speedy trial is intended to avoid oppression and prevent delay by imposing on the Courts and on the prosecution an obligation to proceed with reasonable dispatch. The right to speedy trial begins, with the actual restraint imposed by arrest and consequent incarceration and continues at all stages. Even in the United States where there has been a constitutional amendment recognizing speedy trial as an extremely valuable right of the accused even the Court has held that no time-limit could be fixed for concluding criminal trial.

Custodial violence / death or illegal detention –

Compensation against State In Sube Singh vs. State of Haryana (2006)3SCC178, the question before the Supreme Court was whether compensation should be awarded to the petitioner therein and his family members as a public law remedy for the violation of their fundamental rights under Article 21 of the Constitution. It was held that, Court may award compensation under Articles 32 and 226 in cases where violation of Article 21 involving custodial death / torture is established or is incontrovertible. Award of such compensation will not affect the right of claim additional compensation by way of civil or criminal action.

CONCLUSION

It shall be appropriate to quote few couplets of famous Indian shayar Iqbal in its English translation, to quote:

"The caravan of life knows no stop, as every moment, existence reveals itself anew. You deem life a mystery, oh life is nothing but an appetite for flight. It had seen many ups and downs. It likes incessant movement much better than the destination. Movement (or travel) is for it the only baggage. For it, travel is real, all else unreal. It exalts in facing and resolving new complications. It reveals in incessant writhing and turmoil. When faced with death, it was much too difficult to contain it. Landing itself in the world of causation, it lay in ambush to conquer death. Infatuated with multiplying itself, it took shape into pairs, and stormed the hills and the planes like armies. Flowers kept on falling from the bough, and yet blossom from the same bough. The uninitiated deem it ephemeral, but the mark of life re-emerges after it is effaced."

The long extracts from the above decisions are not without purpose. They tell how those cases involved questions of public policy and Fundamental Rights of the citizens. They demonstrate how the Hon'ble Supreme Court was every time as much alive to its duties and as much conscious of the stakes as in Kesavnanda Bharti case. The judgments migrate from conclusion to conclusion. This article is a reflection on the wisdom and learning of those who witnessed legal battles on the topic of Fundamental Rights. The record of mighty Fundamental Rights guaranteed and secured by a great Socialist Republican Constitution has an impeccable worth and virtue of its own. By definition, preservation of fundamental rights is essential to the society. The alleged benefits of denying fundamental rights can be illusory; the harms can be arbitrarily severe. Fortunately, in India fundamental rights are very flexible. The flexibility reminds us that the rights protect the society (as a whole), and in the long term they protect national security as opposed to being balanced against it. Therefore, all fundamental rights must be granted to all people in any civilized society.

The voyage which began in 1950 in A.K. Gopalan has reached the destination in theory. All renowned jurists, RTI-activist, Environmentalist, Doctors, journalists, politician, social and political activist have knocked the doors of the Court for redressing cause of general public. This not only shows the faith which the people of this country have in the court. The canvas on which now fundamental rights are spread over does not leave anything untouched which a citizen of this country can conceive of. The horizons on which the canvas is spread over are essence unlimited. Whatever has been guaranteed is made available to all citizens of this country. All this is now a fundamental right of poorest of the poor of this country and he is entitled to get it enforced by a petition under Articles 32 and 226 of the Constitution. However, larger question which is left open is how many of us know these developments in our Fundamental Rights.