

The Expanding Scope of Article 21 of the Indian Constitution: Incorporating Economic Social and Cultural Rights

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Introduction

This paper aims to analyze the evolution of social rights in India through multiple precedents of the Supreme Court. This paper is split into four segments. Firstly, it begins with what constitutes as social rights and what are its various elements. Secondly, it moves onto the basic framework of the Constitution of India. In this segment, the paper discusses the different positions the two branches of human rights hold in the Constitution and the interpretation given by the Supreme Court about the importance of its existence in the Constitution. Thirdly, this paper elaborately deals with Article 21 of the Constitution. Beginning with the definition of the Article, it discusses the struggle faced by several litigators and other common people of the Country in incorporating the right to food, the right to health and the right to education within the ambit of Article 21 of the Constitution. It discusses multiple case laws which was dealt by the Supreme Court that gave birth to these Rights along with the facts of the case and extracts from the judgments of these cases. The last segment concludes with the importance of judicial activism in a country like India and reveals the importance of the Supreme Court in making the society a better place to live for the individuals in India.

What are Social Rights?

The term 'Social Rights' can be defined as the rights that protect the bare minimum necessities which confers upon an individual adequate quality of life. From the perspective of the society in general, it is the right to claim against the state to have certain basic social and economical needs satisfied. These social claims have also been referred to as basic entitlements. A view is adopted

that, people are entitled in the prevailing system of institutional rights, to adequate means of survival.¹

Elements of Social Rights

Social Rights are recognized in many international human rights documents such as the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights. The most commonly recognized social rights are as follows:

- The right to food, guaranteeing freedom from hunger and access to safe and nutritious food.
- The right to adequate clothing and shelter.
- The right to education.
- The right to the highest attainable standards of physical and mental health, including access to care and clean water and air.
- The right to work.

Framework of the Indian Constitution

The old practice of splitting Human Rights into Civil and Political rights on one hand and Economic, Social and Cultural Rights on the other is very evident from the way the Indian Constitution has been designed.

Part III- Fundamental Rights

Articles 12-35 of the Indian Constitution guarantee the citizens of the country certain rights which are regarded as fundamental. Some of the articles even extend to foreign nationals who are within the Indian Jurisdiction. Highest standard of protection is extended to these articles from government encroachment and therefore, no laws which are in contravention to these Articles can be enacted by the legislative wing. Such laws are considered to be *ultra vires* of the Constitution. The most common rights that are enshrined under Part-III of the Indian Constitution are the right to equality, right to free speech and expression, right to freedom of movement and the right to freedom of religion. In conventional human rights terminology, these rights may be termed as civil and political rights. This part of the constitution is the spine on which other Articles function and hence any breach of the rights guaranteed under Part III confers the right on the individual to approach the Supreme Court of India Directly under Article 32 of the Constitution for the enforcement of these rights. In other words, these rights are justiciable in nature and the Supreme Court of India is the protector and guarantor of fundamental rights.²

Part IV- Directive Principles of State Policy

Articles 36-51 of the Indian Constitution enumerates the Directive Principles of state policy. These provisions are considered to be guidelines or principles, that are considered irrefutable in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. The most important provisions of Part IV deal with the

¹ Sen Amartya, DEVELOPMENT AS FREEDOM, New York, Anchor Books, 2000.

² *Ramesh Thappar v. State of Madras*, AIR 1950 SC 124

right to education, the right to livelihood, the right to nutritious food and the right to adequate standard of health and housing. These rights are most commonly known as Economic Social and Cultural rights in conventional human rights terminology. However, in light of Article 37 of the Constitution, which states that “the provisions contained in this part shall not be enforceable by any court”, the rights guaranteed under this part are made non-justiciable in nature. Therefore, the citizens are not given a mechanism to enforce these rights as the concept of violation of these rights is not enshrined in the Constitution.

Judicial Interpretation of Part III and Part IV

It is accepted worldwide that Economic, Social and Cultural rights or in other words, the basic entitlements are equally important as Civil and Political rights. The fact that social rights make budgetary demands or call for government action and not just forbearance does not in itself differentiate them radically from the standpoint of justiciability from constitutionally protected rights.³ It is very evident from the framework that, Fundamental Rights under Part III have an overriding effect over the Directive Principles of State Policy under Part IV. However, the judiciary has played a significant role in the last decade to improve the status of the DPSP.

A constitutional bench of the Supreme Court consisting of thirteen judges held that “there is no disharmony between the Directive principles and the Fundamental Rights, because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare state.”⁴ Another constitutional bench of the Supreme Court consisting of five judges held that “the provisions of Part III and IV are supplementary and complementary to each other and not exclusionary of each other and that the fundamental rights are but a means to achieve the goal indicated in Part IV.”⁵ It can be stated that these two pronouncements clearly indicate the two halves of Human Rights evolve hand and in hand and one does not require more attention than the other and therefore are equal in nature.

Definition of the Article 21 of the Constitution

Article 21 of the Indian Constitution states as follows:

“No person shall be deprived of his life or personal liberty except according to procedure established by law”

Interpretation of the Expression ‘Life’

Article 21 of the Indian Constitution guarantees to an individual the right to life and liberty. The scope of interpretation of the term ‘life’ is so wide that the Supreme Court of India has made this Article a multi-faceted one. It all initiated when the Supreme Court declared that the term ‘life’ in Article 21 is not merely the physical act of breathing. Further, a Constitutional

bench of seven judges declared that “the expression ‘life’ does not connote merely a physical or animal existence but includes the right to life with human dignity.”⁶ The expression ‘life’ in Article 21 has continuously been interpreted by the Supreme Court to include within its ambit the Economic, Social and Cultural Rights such as the right to food, right to health and the right to education among many other. These rights which were initially classified as non-justiciable under Part IV of the Constitution are now brought within the ambit of a Fundamental Right that are guaranteed to the individuals.

The Right to Food

[¶ 12] The right to food before being protected by the scope of Article 21, had to fight battles with the Supreme Court of India. In 1986, the Supreme Court dealt with the case of *Kishen Pattanayak*⁷, where the prayer for the very first time specifically considered the right to food. The purpose of filing this petition was due to severe poverty that prevailed in the State of Orissa where hundreds of people were dying due to starvation. The scenario was so horrifying and it forced several people to sell their children for a meal. The prayer sought by the petitioner was for a direction to the respective State Government to reduce the suffering in the state by taking immediate steps. However, the Supreme Court due to political reasons, took a very pro-governmental approach. The judgment contained directions to implement irrigation projects in the state to address the starvation problem. It further ensured that essential commodities were sold at a fair price and for further assistance and it appointed a natural calamities committee to look after similar situations in the future. All these approaches were macro level remedies and did not concern with the immediate relief measures sought by the petitioner. Also, the Supreme Court did not recognize the right to food. Therefore, the purpose of filing the petition turned out futile.

It was not a surprise to the nation as the next petition that was filed for the very same cause also came from the State of Orissa. The motive behind this petition was the severe drought in the State of Orissa which resulted in the death of several people caused by starvation. The individuals of the State of Orissa had no access to food grains. What shocked the nation was the fact that the State Government had excess food grains in godowns and these grains were rotting without being distributed. It was suspected that the Central Government backed the actions of the State of Orissa and it was fortified by a statement of the Central Government which maintained that there was no scenario of starvation death in the State of Orissa. This led to a nation-wide campaign for the recognition of right to food. As a result of this campaign, a public interest litigation was filed under Article 32 of the Constitution by the *People’s Union for Civil Liberties*⁸ for the enforcement of the

³ F Michelman, ‘THE CONSTITUTION, SOCIAL RIGHTS AND LIBERAL POLITICAL JUSTIFICATION’ (2003), International Journal of Constitutional Law 13.

⁴ *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*, 1973 4 SCC 225

⁵ *Unnikrishnan J P v. State of A P*, AIR 1993 SC 2178

⁶ *Maneka Gandhi v. Union Of India*, 1978 SCR (2) 621

⁷ *Kishen Pattanayak v. State of Orissa*, 1989 SCR (1) 57

⁸ *People’s Union for Civil Liberties v. Union of India*, Writ Petition (Civil) No 196 of 2001

right to food. The prayer of the petition was in three parts and it is as follows:

- It questioned the conduct of the Government for denying the supply of food grains which was available in excess in government godowns during drought time and prayed for a declaration that the Right to life means that government should grant food grains free of cost from the surplus stock of the State when its rotting.
- It prayed for a declaration that the right to food was covered within the ambit of Article 21 of the Constitution.
- It questioned the failure to meet the obligation of the State of Orissa to uphold the right to life of the individuals.

The above mentioned three-part prayer was a long term measure. However, to address the ongoing scenario, the petition demanded immediate release of food stocks and also demanded an increase in the quantity of food grains per person for the time being. The Supreme Court during the court proceedings was compassionate and really understood the nature of the issue presented before it. It was receptive in nature and favoured the petitioner in every possible way. The Court suo-moto broadened the scope of the petition and included every State and Union Territory within the Union of India and did not limit the enforcement of judgement only to the territory of Orissa. The court stated that it is the prime responsibility of the government to prevent hunger and starvation and directed all the Governments in the Indian Union to keep all public distribution shops with enough supplies to meet the demands of the people.

Most importantly, the Supreme Court of India in this case recognized the right to food and stated that “*what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them.*” The court included the right to food within the ambit of the expression ‘life’ in Article 21 of the Constitution. It not only meant right to be free from starvation but also meant access to food and the right to be free from malnutrition. Soon after the Supreme Court coined the right to food as a Fundamental Right, it introduced eight different food schemes for the poor. Out of these, the most important measure was the implementation of the mid-day meals. It mandated every government assisted primary school to serve the students therein with mid-day meals containing a minimum of three hundred calories and twelve grams of protein per day. As a result of the mid-day meals scheme, the number of students in each school gradually increased and thereby resulting in the increase in literacy rate of each State in the Indian Union. A three judge bench of the Supreme Court has shown it in practice to refer to the Universal Declaration

of Human Rights and the International Covenant on Economic Social and Cultural Rights to read into Article 21 of the Constitution, the right to food. It further held in this case that “*in any organised society, the right to live as human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth.*”⁹ In another three bench Judgment, the Supreme Court pronounced that “*the right to life is guaranteed in any civilised society and it would take within its sweep the right to food.*”¹⁰ Judge made laws hold great importance in a country like India and it is the freedom and independence guaranteed to the Judiciary through the Constitution that has paved a path for the right to food to be recognized as a Fundamental Right.

The Right to Health

The right to health like the previous right discussed, has evolved through a series of litigations before the Supreme Court of India. This right is enumerated in a lot of Articles belonging to the Directive Principles of State Policy. Article 47 of the Constitution mandates the state to consider raising the standard of living of its people and the improvement of public health as among its primary duties. Traits of right to health can also be found in Article 38 which aims at promoting the welfare of the people, Article 39(e) which mandates the state to protect the health of workers and protect men and women and children against abuse, Article 48A coins the duty of the State to protect the environment which has a direct connection to the health of an individual. However, the individuals were not conferred with the power to question the government if it fails to enforce these mandates. The Supreme Court dealt with a case which addressed the occupational health hazard faced by workmen in the asbestos industry. For the first time in the Constitutional history of India, the Court declared that “*the right to health is an integral fact of a meaningful Right to life.*”¹¹ It further held that that right to health and medical care is a Fundamental Right as it makes the life of workmen meaningful and purposeful by guaranteeing a life to live with dignity. In this case, the Court arrived at its conclusion by reading Article 21 of the Constitution together with the Directive Principles guaranteed in Articles 39(e), 41 and 43 of the Constitution. Lack of resources is a major threat for the enforcement of this right especially in a country like India. The Supreme Court however intervened and clarified the position regarding this threat while dealing with a case¹². It rejected the argument that social rights are non-enforceable due to shortage of resources and further relied on one of its previous judgment¹³ and held that Article 21 of the Constitution casts an obligation on the state to take every measure to preserve life. It elaborated on the duties of the state to ensure whether medical facilities are adequate to meet the demand from the patients. In the words of Justice Agarwal, “*a state could not avoid the constitutional obligation on account of*

⁹ *Chameli Singh v. State of Uttar Pradesh*, (1996) 2 SCC 549, Para 4

¹⁰ *Shantistar Builders v. Narayan Khimala Totame*, AIR 1990 SC 630

¹¹ *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42

¹² *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37

¹³ *Parmanand Kandra v. Union of India*, (1989) 4 SCC 286

financial constraints.” After this right finding its place as a Fundamental Right, the Court in a plethora of cases reiterated this right to be a part of right to life under Article 21 of the Constitution. It held that the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions was covered by the expression right to life under Article 21.¹⁴ To bring out the importance of the strong bond between Part III and Part IV of the Constitution, the Supreme Court in a classic public interest litigation judgement established that “Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and therefore, it must include the protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner.”¹⁵ Labour rights protection is very prominent in India and Supreme Court through one of its judgments stated that “Opportunities to reach at least minimum standard of health should be provided to workmen. The health and strength of the worker is an important facet of right to life. Denial thereof denudes the workmen the finer facets of life and violates Article 21.”¹⁶ From the environmental perspective, the Court held that right to life means clean surrounding which leads to a healthy body and mind.¹⁷

The multiple dimensions of the right to health is still expanding and the Indian Judiciary through its own strong decisions strives to improve the state of health of the people within the Union.

The Right to Education

The Constitution of India came into force in the year 1950. Just like any other international document on Economic Social and Cultural rights, the Directive Principles in the Indian Constitution also aimed at progressive realization of these rights. However, the right to education held a very unique position in Part IV. Article 45 mandates the State to provide, within ten years of the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. This is the only Article in Part IV to have a time limit attached to fulfilling the Constitutional mandate. The makers of the Indian Constitution believed education to be an important tool for the development of the Country and reflected their thoughts through Article 45. Also, the traits of the right to education can be found in the wordings of Article 41 which states that the State shall within the limits of its economic capacity and development make effective provision for securing the right to education. On the contrary, there exists a prolonged disappointment in the Union of India as a result of the State's failure in fulfilling the object of Article 45 even after 67 years of the commencement of the Constitution. According to a survey report taken in the year 1991, 90 million children in the age groups of 6-

14 did not go to school. Ironically, the percentage of children working as child labourers were higher than the percentage of children who went to school. Similar to the above discussed two rights, the right to education was also a result of a huge struggle through litigations with active participations from activists, advocates, educationists, jurists and NGO's.

It was the Capitation Fees Case¹⁸ that revolutionized the status of the right to education. This case dealt with the authorities of professional colleges charging capitation fees for admissions. The two judge bench held that the charging of capitation fees constituted an illegal act. Further, it threw light on the importance of education in the country and held that “the right to education flows directly from the right to life” and “the right to life and dignity of an individual cannot be assured unless it is accompanied by the right to education.” This Court also expressed that the “Constitutional freedoms cannot be fully appreciated and enjoyed unless a citizen is educated and conscious of his individualistic dignity.” This case was another step towards coining the interdependence of Part III and Part IV of the Constitution where the Court held that “the Directive Principles which are fundamental in the governance of the country cannot be isolated from the Fundamental Rights guaranteed under Part III. These principles have to be read into the Fundamental rights. Both are supplementary to each other and without making the right to education under Article 41 of the Constitution a reality, the Fundamental Rights under Part III shall remain out of reach of a large majority which is illiterate.” The Court in this case also considered the Universal Declaration of Human Rights in arriving at its decision to welcome the right to education in the Article 21 family.

A judgement that was more commanding and which made the position of the right to Education stronger was pronounced by a Constitutional bench of five judges in a case¹⁹ before it. The Court did not just stop with articulating that the right to education flows from Article 21 of the Constitution. It took the aid of the right to education as laid down in the Universal Declaration and Article 13 of the International Covenant on Economic Social and Cultural Rights and for the first time declared the right to education as a ‘social’ right. The Court expressed its commanding nature and reminded the state to fulfil the mandate under Article 45 which it should have done a long time ago. The Court also held that the limitations on economic capacity would not stand as an obstacle in carving out a Fundamental Right to primary education from Article 21. The view of this Court was further upheld by a Constitutional bench of eleven judges while dealing with a case²⁰ on minority rights. In light of several Supreme Court judgements, the Central Government proposed the 83rd Amendment to the Indian Constitution to make the right to primary education for children until the age of 14 years a Fundamental Right.

¹⁴ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675

¹⁵ *Bandhua Mukti Morcha v. Union of India*, 1984 SCR (2) 67

¹⁶ *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42

¹⁷ *Milk Men Colony Vikas Samiti v. State of Rajasthan*, (2007) 2 SCC 413

¹⁸ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858

¹⁹ *Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645

²⁰ *TMA Pai Foundation v. Union of India*, AIR 1996 SC 2652

The amendment was passed in 2002 and this mandate was inserted as Article 21A of the Constitution of India.

Conclusion

Social Rights guarantee the elements for human survival. In a country like India which is still a developing nation, non-justiciable social rights through its Constitution is not going to benefit the society. There was a huge gap between theory and practice in India. The judiciary wing was completely independent from the other wings of the government. This gap was filled by liberal interpretations of the Supreme Court in multiple cases before it. This concept of judge-made law is most commonly regarded as judicial activism. It encourages the judiciary to intervene and fill the lacunas by the law makers and the Supreme Court has used this power to benefit the society in every way possible. The interpretation to the expression 'life' in Article 21 of the Constitution by the Supreme Court reveals the inclination of the Country to keep the individuals under its roof in the best condition possible and to equip them with every element to lead a life with dignity. The Indian approach has clearly established that the two branches of Human Rights cannot survive without the other and has also further established how social rights are to be implemented through multiple methods.