

Common Man and the Constitution of India

Justice (Dr.) Shivaraj V. Patil*

Contd. from previous issue (July-September 2015)

Part IV comprising of the directive principles of State policy is another important part of the Constitution. Though these principles are not enforceable by any court, they are nevertheless fundamental in the governance for realising the goals set in the Constitution. Their implementation is necessary to justify the socio-economic rights provided to the people. Guarantee of socio-economic rights and promise of socio-economic justice are well indicated in the various articles of the Constitution. Austin aptly stated that both “fundamental rights” and “directive principles” constitute “conscience of the Constitution”. For a common man, directive principles are first, then the fundamental rights as he has to exist first to assert and enjoy the fundamental rights. Directive principles have set the goals and indicated the directions which all the three organs namely, executive, legislature and judiciary must meaningfully try to reach and follow. Socio-economic justice provides sustenance to the rule of law. The concept of socio-economic justice embodied in the form of directive principles in Part IV of the Constitution is the most dynamic, flexible and revolutionary concept aimed at removing inequalities among all the citizens. Although

they are not justiciable and cannot be judicially enforced, yet they have their importance in providing guidelines to the Central and State Governments in formulating progressive policies to bring social and economic justice to the common man.

The present is an era of globalisation, privatisation, liberalisation and modernisation. The main focus, theme and goal of all these must lead to humanisation. Humanise the globe so that everywhere the human rights are respected and obeyed touching the lives of the people particularly of all those, the hungry, the excluded, the destitute, the voiceless, the persecuted, the sick, the suffering, the disabled, less fortunate and the unfortunate. Broadly speaking, human rights are those rights which every human being without any discrimination is entitled to enjoy. Basic human rights are recognised in Part III of the Constitution giving guarantee of fundamental rights to even common man.

The Constitution reflects the socio-economic philosophy of a true welfare State. It seeks to entrench social and economic rights of the people, which is evident from justiciable fundamental rights and non-justiciable directive

* The author is a Retired Judge of the Supreme Court of India and former member of the Human Rights Commission of India.
E-mail: patilsvp@gmail.com

principles of State policy.

The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. It shall also strive to minimise inequalities in income amongst individuals and various groups of people. It shall strive towards securing adequate means of livelihood to the citizens, ensure that the operation of economic system does not result in the concentration of wealth, and that there is equal pay for equal work for both men and women. The State shall, within its economic capacity, make provisions for securing right to work, to education and to public assistance in case of unemployment, old age, sickness, and disablement. It shall take steps to secure participation of workers in the management of undertakings and establishments. It shall endeavour to provide early childhood care and education for all children until the age of six years. The State shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. It shall promote with special care the educational and economic interests of the weaker sections of the people. It shall also regard the raising of level of nutrition and standard of living of its people and the improvement of public health as among its primary duties.

The Supreme Court has observed that all persons similarly circumstanced must be treated equally both in the privileges conferred and in the liabilities imposed by the laws. To quote the words of the former Chief Justice of India P.B. Gajendragadkar:

“Wherever social inequality exists or economic injustice is found, a democratic State enters the arena, and with the aid of law, establishes social equality and removes economic injustice.”

According to the former Chief Justice of India, Subba Rao, Article 14 is a necessary corollary to the high concept of the rule of law. Article 14 has provided an implied guarantee of equal access to the courts in order to maintain the sanctity of the doctrine of equal protection. The weakest and the poorest also have access to justice in our country. Necessary provisions are made in law in this regard.

The Supreme Court of India has been consistently and continuously trying to translate letters of the book viz. the Constitution into spirit of living by creative, progressive and meaningful interpretation, paramount consideration being welfare of the people consistent with values embodied in the fundamental rights and the directive principles of State policy.

The democratic institutions should work consistent within community values. The courts should strive to make judgments upholding the community values in conformity with the constitutional provisions so that the public will not lose confidence in the judicial system. Western Australia's Chief Justice David Malcolm said - “The judiciary must keep a weather eye on community values to retain the relevance of the decisions to that community.” The Supreme Court in the country has become a shield to protect and enhance people's rights as well as to encourage a human right culture.

In pursuance of these directive principles, the legislature enacted a series of statutes like

the Zamindari Abolition Act and various other State Acts for the purpose of land reforms. Concentration of land ownership was thus broken and land distributed to landless poor by way of land ceiling legislations. The apathy of workers was addressed through beneficial legislations.

Secularism is one of the well-cherished values of Indian Constitution having the background of great tradition, culture and heritage. Under the scheme of Constitution, everyone is permitted to profess, practise and propagate his views so long as his conduct does not interfere with the equal liberty of others.

Our Constitution is consistent with a cardinal principle of a democratic country in which the State does not discriminate its citizens on the basis of their religion. In other words, religion is an individual affair in this country.

The Supreme Court reiterated that secularism is a part of the basic structure of the Constitution, which cannot be disturbed. The concept of secularism that it is one facet of the right to equality, has given a new thrust and a new dimension to secularism in India.

Our country became a republic on 26th January, 1950 with a written Constitution. A great jurist late Mr N.A. Palkhivala pointed out, .

“we commenced with one priceless advantage, namely, 5000 years of civilization behind us, a civilization in the words of Ralph Waldo Emerson reached ‘summit of human thoughts’.”

He said there are twelve great “living

religions” in the world and all the twelve religions flourish in India. It is because the very ethos of India is tolerance. India has an unrivalled tradition of religious freedom and tolerance in the belief that truth can never be the monopoly of anyone particular sect or creed. “Let noble thoughts come to us from every side”, these are the famous words of Rig Veda.

It is wrong to think that if a person is a devout Hindu or a devout Muslim, he is not secular. Swami Vivekananda and Mahatma Gandhi were great Hindus, yet their entire life and teachings represent the essence of secularism. No true religion teaches to hate the other. Different religious communities are all part of one nation in strength and glory. Compassion, humanism and tolerance by and large were part of the social, cultural and intellectual ethos in ancient India.

Gandhiji’s deep concern for secularism in letter and spirit is evidenced in these words:

“All those who are born in this country and claim her as their motherland, whether they be Hindu, Parsi, Christian, Jain or Sikh, are equally her children and are, therefore, brothers, united together with a bond stronger than that of blood.”

With different faiths, languages, traditions, etc. the secular outlook in thoughts and secular approach in all actions are the necessary imperatives today.

Dr. Radhakrishnan said: “Any religion which divides man from man or supports privileges, exploitation, wars, cannot commend itself to us today.”

By whatever name they are called, all

religions demand the practice of love and compassion. Quintessences of all religions are truth, peace, love, righteousness and non-violence.

It is sad and bad that in spite of rich heritage from time immemorial, influence of great religious leaders and express provisions found in the Constitution, still some people have not come out of narrow brackets as they are seeing rituals and not the true spirit or essence of religion.

We should gratefully acknowledge and respect Bankim Chandra Chatterjee's "Vande mataram", Gurudev Tagore's "Jana gana mana" and Iqbal's "Sare jahan se achcha Hindustan hamara", which remind us of the spirit of secularism, unity and national intergration.

"A religion without compassion is like a flower without perfume." If every one understands the true spirit of religion, there will be respect for other religions and compassion for sufferings of the people, which can certainly plant smiles on all human faces, making secularism meaningful.

Basically the spirit of secularism should find deep and firm place in the hearts of people. Too much dependence upon the courts of law and the letter of the Constitution may not help in building and sustaining the edifice of secular polity. It is plain if the spirit of secularism vanishes, no law, no Constitution and no court would be able to do much. If the spirit of secularism is alive in the hearts of the people, in their outlook, in their every day living, in the society, in the state of harmony and mutual tolerance, there is not much to be done either by courts or by law or by Constitution.

"Love all, serve all, help ever hurt never" is a universal and soothing message of Bhagwan Sri Sathya Sai Baba. Let us do our bit and best to build bridges between man and man on the foundation of love, brotherhood and compassion, but not walls of hatred and distrust. People belonging to different faiths may live happily and harmoniously wedded with the spirit of secularism, patriotism and brotherhood on the lap of great mother - the motherland.

For the protection of the fundamental rights, the Constitution itself has vested the judiciary of India with wide powers to declare and strike down such law, which contravene the fundamental rights, as unconstitutional. The Indian judiciary enjoys a unique position under the Constitution. It is an independent organ of the Government having the power of judicial review of both legislative and executive acts.

In India the judiciary has been making endeavour and embarking on innovative methods to make the constitutional guarantee of socio-economic rights meaningful for the common man keeping in mind the socio-economic philosophy of a true welfare State, which is enshrined in the Constitution.

Perhaps the greatest contribution of the judiciary in India is to bring in a harmonious fusion between the fundamental rights on one hand and the directive principles on the other.

In *Kesavananda Bharati v. State of Kerala*¹ the Supreme Court observed that "in building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles" (SCC p. 879, para 1707).

1 (1973) 4 SCC 225

In *State of Kerala v. N.M. Thomas*², the Court held that both fundamental rights and directive principles were complementary, “neither part being superior to the other”.

Earlier directive principles were considered as “pious wishes” but in the course of time, these directive principles assumed deeper dimensions and greater significance as is evident from the various decisions of the Supreme Court. Fundamental rights and directive principles are complementary and supplementary to each other and there is no conflict between them. Merely because directive principles are non-enforceable, their status is not inferior. If the “State” enacts any law contrary to the directive principles, the courts can declare such action, be of executive or legislature, as unconstitutional being violative of directive principles for a simple reason that no law or executive action can be contrary to the Constitution.

In the recent years, active judiciary dealing with the public interest litigations has provided impetus to the importance of directive principles. Legislations dealing with agrarian reforms aiming at socio-economic justice have been upheld by the judiciary. Adequate means of livelihood, ensuring minimum wage, protection of bonded labour from exploitation, their rehabilitation, equal pay for equal work and right to humane conditions of work have drawn the special attention of the judiciary. Interpreting Article 21 of the Constitution in the case of *Unni Krishnan*³, right to education is elevated to the status of fundamental right. This leads to realisation of the hope contained in Article 45 of the Constitution ensuring socio-economic justice to children. Having regard to the judgment of the Supreme Court

in *Indra Sawhney*⁴, identification of socially and economically backward classes is to be done by excluding the “creamy layers” among them. The Constitution (Forty-second Amendment) Act of 1976 added provisions regarding environmental protection in the chapters dealing with directive principles and fundamental duties. The judiciary has treated right to live in healthy environment as implicit in the fundamental right to life.

Public interest litigation (PIL), as developed in recent years, marked a significant deviation from traditional or normal judicial proceedings. At the time the country got freedom procedure followed in courts was drawn from the Anglo-Saxon system of jurisprudence. But for this development, may be, the guarantees of fundamental rights and the assurances embodied in directive principles would not have been meaningful or effective to the large majority of illiterate and indigent citizens under the adversarial proceedings. Several distressing factors and sufferings of the people led to the development of PIL. In the beginning the approach of the Supreme Court in interpreting the role of judiciary was merely as determining the coming before it in accordance with the procedural rules, as is evident from the following passage:

“In India the position of the judiciary is somewhere in between the courts in England and the United States But our Constitution, unlike the American Constitution, does not recognise the absolute supremacy of the court over the legislative authority in all respects, for outside the restricted field of constitutional limitations our Parliament and the State

2 (1976) 2 SCC 310

3 *Unni Krishnan v. State of A.P.*, (1993) 1 SCC 645

4 *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217

Legislatures are supreme in their respective legislative fields and in that wider field there is no scope for the court in India to play the role of the Supreme Court of the United States.”⁵

About 17 years thereafter, there was change in the perception when *Golak Nath case*⁶ was decided by the Supreme Court. In the said case the Supreme Court held that the fundamental rights could not be derogated from even by an amendment to the Constitution. Six years later in *Kesavananda Bharati* case, the Supreme Court evolved a unique and far-reaching doctrine, probably the first of its kind in the world, under which Parliament cannot amend the Constitution by violating or altering its “basic structure”. The power of judicial review is identified as part of such “basic structure”. It means the legislature cannot deprive power of judicial review even by a constitutional amendment. Earlier the Court took a restricted view in interpreting Article 21 of the Constitution looking to its wordings that taking away a person’s liberty could not be challenged on the ground of violation of fundamental rights so long as there was some statute made by the legislature provided for it. In a significant judgment the Supreme Court in *Maneka Gandhi v. Union of India*⁷ held that the doctrine of substantive due process has been integral to the fundamental rights flowing from Articles 14, 19 and 21 of the Constitution. At several stages rights and liberties of citizens, including common man, are protected. In PIL the parties and their lawyers are expected to participate in resolving the public problems unlike in

adversarial litigations. In this jurisdiction courts have made significant pronouncements relating to very wide range of matters such as prisons and prisoners, the police, the children, child labour, bonded labour, urban space, environment, consumer issues, education, politics and elections, public accountability, human rights, etc. In *Hussainara Khatoon (I) v. Home Secy., State of Bihar*⁸ when the attention of the court was drawn to grave and pathetic situation of undertrials in Bihar detained pending trial for a period more than the period for which they could be sentenced for the offences charged with, the Supreme Court not only proceeded to make the right to speedy trial but also directed by general order for release of all the undertrials who were already detained beyond such maximum period. In another landmark judgment in *D.K. Basu v. State of W.B.*⁹ acting on the letter by the Chairman of the Legal Aid Services, West Bengal, relating to repeated instances of custodial deaths in West Bengal, the Supreme Court laid down the procedure to be followed on the arrest of a person observing thus: (SCC p. 433, para 28)

“Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means No society can permit it.”

The victims of crime also received attention of the Court in *Delhi Domestic Working*

5 See *A.K. Gopalan v. State of Madras*, 1950 SCR 88 at pp. 286-87.

6 *Golak Nath v. State of Punjab*, (1967) 2 SCR 762

7 (1978) 1 SCC 248

8 (1980) 1 SCC 81

9 (1997) 1 SCC 416

*Women's Forum v. Union of India*¹⁰ and recognising the trauma of the rape victims, indicated the norms for providing legal assistance to such victims at various stages. In that case concerned with the rape of innocent tribal girls by army jawans in a moving train, the Supreme Court ordered an ex gratia payment of Rs 10,000 to each of the victims. By and large people have acknowledged significant and far-reaching judgments in cases like the Bhagalpur blindings, Bihar undertrials case and the mentally ill in jail. In these cases, while giving reliefs to desperately needed, there has been exposure to executive failings. PIL also has helped in the development of legal principles such as the "polluter-pays" principle, the "precautionary" principle and the principle of "award of compensation for constitutional wrongs". Thus, the judiciary has played a useful and significant role in safeguarding the interests of lives and liberties of the people, particularly, the common man consistent with the scheme and aim of the Constitution.

Lord Templeman, a Lord of Appeal in Ordinary in the House of Lords, has expressed thus:

"The Supreme Court has proved to be a steady and consistent upholder of the intentions of the Constituent Assembly expressing the ideals and beliefs of Jawaharlal Nehru and the other founders of independent India. The Court has been tireless in upholding fundamental rights which are the hallmark of a civilised society and in interpreting and enforcing those provisions of the Constitution which preserve a democratic society.

In 1947 India was torn apart and now the Republic of India is faced with the enmity of Pakistan, the malice of China, and the hostility of other countries where democracy and the rule of law has had no place. Federations throughout the world have been or are being broken up by groups and individuals preaching violence and exploiting ignorance. India with the burden of an expanding population, has inherited problems of poverty and illiteracy. The work of the Government of India for the improvement of economic and social standards and for the preservation of a democratic society deserves recognition and support by other democratic countries. The work of the Supreme Court of India in protecting the people of India from oppression and in upholding the rule of law demands respect and admiration."

Right to live is not confined to merely right to exist but it includes right to live with dignity and grace. Several rights included in the directive principles being non-justiciable in the beginning consequent upon interpretation of Article 21 have been elevated to be facets of right to life. Right to a healthy environment, right to speedy trial and free legal aid, right to free education up to 14 years of age, right to privacy, right to live with human dignity and many more have been declared as fundamental rights by purposeful and meaningful interpretation of Article 21 of the Constitution by the Supreme Court and the High Courts. The liberal approach and expanded scope in relation to public interest litigation (PIL) cases has enabled the public-spirited activists and NGOs to take up the cause of underprivileged and also of the

10 (1995) 1 SCC 14

common public. This is clear from the cases ranging from bonded labour to environmental pollution. Having regard to the misuse or abuse of this jurisdiction by some persons or organisations for considerations other than public interest, the courts have cautioned to deal with the matters appropriately in exercise of discretion in giving necessary directions. Many a times, issues are raised in the name of PIL to embarrass political opponents or to terrorise rival business houses or to earn media attention. In other words, the public interest litigation should not be encouraged where one seeks to serve a political interest or personal interest or publicity. The Supreme Court in *Janata Dal v. B.S. Chowdhury*¹¹ observed thus: (SCC p. 349, para 110).

“[T]he busybodies, meddling interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts”

As long as the legislature and the executive fail to perform or act arbitrarily or unreasonably towards the millions of needy people, PIL would be a legitimate source of the common man in securing justice.

The mere existence of a piece of beneficial legislation is of no use to the society unless the law is interpreted and enforced meaningfully so that its benefit reaches the right quarters in

time.

The Constitution of India is acknowledged as one of the best Constitutions of the world as the great vision and rich experience of great men and women of this country with patriotism, selfless service, sacrifice and concern for the people of this country are behind the making of it. Our Constitution is dynamic with the provision available for amendment to meet the changes, challenges and needs of the society from time to time. Of course, the basic structure of the Constitution cannot be amended. A good Constitution in a democratic set-up is important but much more important is the system it contemplates and the manner in which the system works. Further, realising the hopes and aspirations of the people as embodied in the Constitution largely and effectively depends upon the people in charge of governance which in turn depends on the character, the ability, the vision, the commitment and the concern of the people, who occupy various positions in governance of the country including the constitutional functionaries. It may be stated that the chair being the same occupant makes all the difference. Gandhiji said:

“There is no human institution which is without dangers. The greater the institution, the greater the chances of abuse. Democracy is a great institution and, therefore, it is liable to be greatly abused. The remedy, therefore, is not avoidance of democracy, but reduction of possibility of abuse to a minimum.”

Churchill’s words “the little man with a little pencil with little ballot vote” should not be forgotten. All rules of interpretation

11 (1992) 4 SCC 305

leading to the protection and enhancement of the dignity of individual should be preferred to other interpretations leading to contrary position.

The Constituent Assembly adopted the principle of adult franchise despite the ignorance and illiteracy of the large masses of the Indian people with great faith in the common man in the hope that the introduction of democratic government on the basis of adult suffrage will promote the well-being, the standard of life, the comfort and the decent living of the common man.

There are excellent provisions in the Constitution to provide life of quality and dignity to every citizen and to make life of common man happy and peaceful but in reality even after half-century of adopting the Constitution, we have not been able to reach the goal set in the Constitution fully to meet the hopes and aspirations of the people. India has definitely made progress in the frontier areas of science and technology, education, manufacturing, trade and commerce so much so that the country has emerged as a strong nation capable of standing on its own strength. In food production, the country is self-sufficient but in relation to common man, many promises remain unfulfilled. Large number of people yet remain below the line of poverty. Many do not have even basic needs required to live appropriately. We cannot claim that we have succeeded substantially if not completely in relieving common people from ignorance, illiteracy, disease and poverty. Having strong political will and dedicated executive with true concern and commitment to improve the living standard of common men in the country so as to make them true partners in

the democratic set-up, is imperative and urgent need of the hour. The number of persons with sterling character, sense of service and sacrifice, love for motherland and concern for the fellow-beings has been gradually reduced in comparison to people who participated in the freedom struggle. It is unfortunate that the three elements, namely, caste, corruption and crime have become cancerous to the health of the country. We are facing many problems. There are good people in all walks of life and there are large number of people who are good but their voices must be louder. Today there is a need for more and more people of competency with character and concern to participate in the governance of the country. The same Constitution can be worked well depending on the character of the people. If good men do not come forward in public life, bad men jump to occupy the vacant chairs, which shall not be in the interest of the society rather it would be disastrous. So long the people with competency, character and real concern for the common man do not come forward and occupy various positions provided under the Constitution to discharge respective functions in the interest of the people of the country, the plight of the common man may not improve much. The country has made progress in all fields. If only caste consideration, corruption and crime are eliminated from public life, the progress and all round development in the country within the available resources would be much more within a short period and the quality of the life of common man would be much better. In this process, largest good to the largest people can be done so that all, and more so, a common man in the country can feel himself happy and a proud citizen.

