

COMMON MAN AND THE CONSTITUTION OF INDIA

Justice (Dr.) Shivaraj V. Patil*

The struggle for freedom was not only to demolish the foreign rule but it was also to build an egalitarian society to secure life of quality to the people with right to equality. The prevailing conditions before independence in this country were pathetic and miserable. People suffered with poverty, ignorance and illiteracy, want of food and shelter. Even basic human freedoms were not available. The plight of the women was that of a subjugated inferior being.

These conditions motivated and made the people firm to fight for freedom so that the country could be free from the British rule and people of this country could live life of dignity with peace and happiness. With great courage and supreme sacrifice people of India fought a long and untiring battle finally securing freedom on 15th August, 1947. Political leaders of India in their struggle for freedom faced cruel resistance and harassment whenever and wherever they raised their voice for equality and freedom. Pandit Nehru said:

“The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may

be beyond us, but as long as there are tears and sufferings, so long our work will not be over.”

We can see in these words the great dream of Gandhiji and vision of Pandit Nehru to work for the common man.

It is a matter of common experience that the prevailing conditions in a society and historical background mainly shape the Constitution of a country. At the time when we attained freedom and the Constitution was being drafted the prevailing social, economic and political state of affairs in which the people lived had great impact in framing the Constitution. It took 2 years, 11 months and 17 days to finalise the Draft Constitution. The Constitution in its preamble solemnly declares establishment of a sovereign, socialist, secular and democratic republic, promoting among its citizens, justice - social, economic and political. This promise is established in the fundamental rights and directive principles of State policy enshrined in Part III and Part IV of the Constitution. In other words, the preamble, the fundamental rights and the directive principles are all part of the

* 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

same constitutional scheme and aim at the establishment of a free and a just social order based on the rule of law. They aim at the betterment of the individual as an integral component of the society. Our Founding Fathers did a commendable and remarkable job.

Building an egalitarian society was the pronounced concept of those who fought for freedom. Mahatma Gandhi wanted to wipe out every tear from every eye. In this backdrop, the great framers of the Constitution strongly and rightly felt that necessary provisions must be made in the Constitution to enable the people to receive high priority for basic necessities of life. With this end in view, the Constitution was designed to bring happiness to the largest people. Part IV of the Constitution reflects this high ideal envisaging a society in which opportunities have been given for the pursuit of happiness without any discrimination of caste or sex or religion, etc., and there is equal opportunity to everyone and there is no concentration of power or wealth in the hands of few to the detriment of many. These assurances are to be turned into reality. The Constitution also provides fundamental rights to the people which include basic human rights. It is needless to state, however well thought and well drafted a Constitution is, it by itself will not serve the purpose; ultimately it is the people who work under a Constitution and their way of life, consistent with the spirit of the Constitution, that matters a lot. In this regard, it is useful to quote the words of wisdom and warning of Joseph Story:

“The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without.. .. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE.”

Under the British rule, the fundamental rights and welfare of Indian subjects were not of much concern. During the freedom struggle the inner urge of the people to secure a life of quality coupled with right to equality came to the front. Equality is a fundamental premise of a democracy being an important ingredient of modern system of social values. “Right to equality” is one of the most imperative and important fundamental right in a democratic system. Article 13(2) of the Constitution of India declares that the State shall not make any law either to take away or abridge fundamental rights which include socio-economic rights guaranteed under Part III of the Constitution and if any law is made in contravention to that extent it shall be void. Quality, sustenance and success of democracy depend on political freedom, economic equality and social justice; political freedom shall be at peril and it may become meaningless without economic equality and social justice.

Our Constitution is not only a pragmatic result of the struggle for freedom, but it also reflects the aspirations and hope of the people. It was a pious wish of our founding

fathers to give quality of life to their progeny. Hence, the Constitution cannot, shall not and has not remained a dormant instrument but it is seen as a living document to address the exigencies of contemporary life. The need for enforcing socio-economic rights is well pronounced in our Constitution having regard to ignorance of the masses regarding the rights that they are entitled to under the Constitution and also because of financial inabilities of a large section of them to take legal recourse in case of violations.

The cherished goals of the Indian Constitution are indicated in the preamble, which aspires for justice - social, economic and political; liberty of thought, expression, belief; freedom of worship; equality of status and opportunity and to promote fraternity assuring the dignity of the individual.

Our Constitution provides the following socio-economic rights:

- Right to equality before the law and equal protection of the laws.
- Prohibition of discrimination by State on grounds of religion, race, caste, sex and place of birth. Affirmative action by the State is allowed for the emancipation of women, children, socially and educationally backward classes of citizens, Scheduled Castes and Scheduled Tribes.
- Equality of opportunity in matters of public employment.
- Abolition of “untouchability” and making any enforcement of a disability arising out of untouchability a punishable offence.
- Right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of India, and to practise any profession, or to carry on any occupation, trade, or business subject to reasonable restrictions.
- No person shall be deprived of his life or personal liberty except according to the procedure established by law.
- Exploitation by way of traffic in human beings, beggar and other forms of forced labour are punishable in accordance with law.
- No child below the age of fourteen shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- All persons are equally entitled to freedom of conscience and free profession, practice and propagation of religion, subject to public order, morality and health.
- Right of every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law.

- No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the promotion or maintenance of any particular religion or religious denomination.
- No person is required to attend religious instructions in educational institutions recognised by the State or receiving aid out of State funds. No religious instruction shall be provided in educational institutions wholly maintained out of State funds.
- Any section of the citizens having a distinct language, script or culture of its own has the right to conserve the same.
- All minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. In making any law providing for the compulsory acquisition of any property of such educational institution, the State shall ensure that the amount fixed by or determined under such law is such as would not restrict or abrogate the right guaranteed above.
- Any person can move the High Court or the Supreme Court for the enforcement of the above mentioned rights.

Life as a whole in a democratic society should include equality in all the aspects, social, economic, cultural and political. Pt. Jawahar Lal Nehru said: "Every man and woman must have the opportunity to develop to the best of his or her ability." Jai Prakash Narain's ideas of "total revolution" were nothing but complete

socio-economic transformation of society so that all the Indians could lead a life of equality and brotherhood. Almost all written Constitutions of democratic States guarantee the opportunity to the individual to develop his potentialities to the maximum of his capability. In our Constitution such opportunities are provided even in the form of fundamental rights, which are enforceable by the courts of law.

Article 14 guarantees general right of equality but Article 15 provides the specific application of the general right of equality. This article contains the guarantee to the citizens of India against discrimination. No citizen can be discriminated on the grounds of only religion, race, sex, place of birth or any of them. Article 15 also states that nothing in the said article shall prevent the State from making special provisions for women and children. It also enables for making special provisions for backward classes for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

Without economic equality the success of democratic set-up cannot be assured or sustained. Mere removal of social distinctions of castes, religions and race is not enough. On the basis of economic security abiding peace not only in a particular country but all over the world is possible. For the many-sided development of human personality economic equality is a necessity. The following words of President Roosevelt of the United States, during the

deliberations of framing the United Nations Charter, may be recalled:

“We have come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men. People who are out of a job are the stuff out of which dictators are made. In our day these economic truths have become accepted as self-evident.”

Pt. Nehru the first Prime Minister of our country after independence said, “there could be no real freedom without economic freedom” and that “to call a starving man free is but to mock him”. The concern of the common man principally is in security which includes livelihood and protection of life and liberty. The common man’s appetite of the belly is satisfied when it is full but the appetite of collection of power and wealth is unquenchable. There is a need for reducing the gap between the haves and the have-nots to maintain stability and peace in the society.

Article 16 speaks of equality of opportunity in the matter of appointment and employment. It provides an equality of opportunity and definitely not any right to be appointed to the post for which one applies. This article also empowers the State to make provision for reservation in favour of any backward class of citizens in appointments which, in its opinion is not adequately represented in the services under the State. Discrimination in public employment is

prohibited on the grounds of religion, race, castes, sex, etc., but not on the ground of wealth. The observations of Aristotle may be remembered that, “injustice arises not only when equals are treated unequally, but also when unequals are treated equally”.

Article 17 has abolished untouchability, which is a landmark in the constitutional history of India, not merely because of abolition of untouchability but because it has endeavoured to change an age-old evil social system. From the days of Gautam Buddha right up to Dr. B.R. Ambedkar and Mahatma Gandhi tremendous efforts were made to do away with this social evil.

Under Articles 330 and 332 of the Constitution, seats are reserved for the Scheduled Castes and Scheduled Tribes in the Lok Sabha and State Vidhan Sabhas in proportion of their population.

In a developing country like India a social revolution means all-round development of human personality and availability of socio-economic justice to the citizens.

The preamble of the Constitution not only contains the spirit of the Constitution but also speaks of the desires and sentiments of the people of India for social equality. Social justice requires not only elimination of old social evils but also requires removal of all sorts of inequalities arising out of wealth and opportunity, race, caste, religion and title.

(to be continued)

