



**CONTRIBUTION OF INDIAN JUDICIARY TO SOCIAL  
JUSTICE PRINCIPLES UNDERLYING THE UNIVERSAL  
DECLARATION OF HUMAN RIGHTS**

*Gopal Subramaniam\**

**I Introduction**

THE UNIVERSAL Declaration of Human Rights, which comprises a broad range of rights, though not a legally binding document, has inspired more than 60 human rights instruments which together constitute an international standard of human rights. These instruments include the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of which are legally binding treaties. Together with the Universal Declaration, they constitute the International Bill of Rights.

The declaration recognizes that the “inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world” and is linked to the recognition of fundamental rights towards which every human being aspires, namely, the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment, among others. These are inherent rights to be enjoyed by all human beings of the global village — men, women and children, as well as by any group of society, disadvantaged or not — and not ‘gifts’ to be withdrawn, withheld or granted at someone’s whim or will. Mary Robinson, who became the second United Nations High Commissioner for Human Rights in September 1997, expressed this opinion when she declared that “human rights belong to people, human rights are about people on the ground and their rights”<sup>1</sup>.

India is one of the signatories of the UDHR and promotes its principles in conjunction with its obligations under the directive principles of state

---

\* Additional Solicitor General of India.

1. The Declaration, a vision of what the world should be: Universal Declaration of Human Rights, Office of the High Commissioner for Human Rights



policy (DPSP) enumerated in the Indian Constitution. In its path to developing into a welfare state, India has attempted to provide not only the basic fundamental rights, but also make available certain unenumerated fundamental rights to its citizens.

In this context, the weaker sections of society need protection for the true realisation of their right to live with dignity as is guaranteed to them under article 21 of the Constitution. “Social rights” refer to those rights that protect the basic necessities of life or rights that provide for the foundation of an adequate quality of life. Social rights may also be defined as claims against the state to have certain basic social and economic needs of life satisfied. They may also be termed as basic entitlements.<sup>2</sup> The Constitution of India does not merely provide the apparatus for governance, but it is also futuristic in envisioning what social and economic transformation India would undergo.<sup>3</sup>

It is important to remember that the ICESCR, which India has ratified, recognizes the principle of progressive realization of obligations under it and there is a positive obligation on the state to make attempts at the progressive realization of these rights through the best possible use of the maximum of its available resources.<sup>4</sup>

The role of the judiciary and the principles of constitutional interpretation were stated thus in *S.P. Gupta v. Union of India*:<sup>5</sup>

It is a document of social revolution which casts an obligation on every instrumentality including the Judiciary, which is a separate but equal branch of the State, to transform the status quo ante into a new human order in which justice, social, economic and political will inform all institutions of national life and there will be equality of status and opportunity for all. The judiciary has therefore a socio-economic destination and a creative function. It has to use the words of Glanville Austin, “...to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man. It cannot remain content to act merely as an umpire but it must be functionally involved in the goal of socio-economic justice.”

---

2. Jayna Kothari, “Social Rights and the Constitution” (2004) 6 SCC (Jour) 32.

3. *Ibid.*

4. Art. 2.1 of the ICESCR reads as follows:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

5. AIR 1982 SC 149.



While rejecting the narrow and limited role of the judiciary the court observed in the above noted case that a narrow approach would not be proper "...for a society pulsating with urges of gender justice, worker justice, minorities justice, Dalit justice and equal justice between chronic unequals." The process of social justice might be seriously and prejudicially affected if the judges do not follow a creative or activist role.

In this context, the role of the judiciary with respect to certain unenumerated rights such as the right to shelter, right to rehabilitation, right to food, right to livelihood and the right to medical aid is questioned. The judiciary, through its activism, has transgressed into roles reserved for the legislature and executive. The question is till what extent is judicial activism permitted?

## II Doctrinal basis of activism

The Supreme Court has recognized that both DPSP and fundamental rights are complimentary to each other and are equally fundamental in the governance of the country and that different articles in the chapter on fundamental rights and the DPSS in part IV of the Constitution must be read as an integral and incorporeal whole with possible overlapping with the subject matter of what is to be protected by its various provisions.<sup>6</sup> Thus, fundamental rights have to be construed in the light of directive principles.

The seminal decision which has been the pillar of reform both in civil and political liberties and socio economic justice has been the decision in *Maneka Gandhi v. Union of India*.<sup>7</sup> It was held therein that the fundamental rights are not islands but have to be read along with the other rights. Hence reading article 21 with 14 and 19, it was held that "procedure established by law" under article 21 of the Constitution means not just any procedure but a just, fair and reasonable procedure. This decision also stressed on the fact that the words "personal liberty" have to be given the widest possible amplitude.

The emphasis during the expansion of article 21 has been on a wide interpretation of the words "life and liberty". In *Kharak Singh v. State of U.P.*,<sup>8</sup> Subba Rao J quoted Field J in *Munn v. Illinois*,<sup>9</sup> to emphasise the meaning 'life' covered by article 21 as:

---

6. *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress*, AIR 1991 SC 101; *Kesavanada Bharti v. State of Kerala*, (1973) 4 SCC 225.

7. (1978) 1 SCC 248.

8. AIR 1963 SC 1295.

9. (1877) 94 US 113.



Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.

This was followed and extended in *Francis Mullin v. Administrator, Union Territory of Delhi*,<sup>10</sup> where the court defined 'life' as:

The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings...must include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live.

The negative wording of article 21 shows that the right to life is not created but is inherited by birth in every man.<sup>11</sup> It has been held by the Supreme Court that article 21 has not only a negative but even a positive content.<sup>12</sup>

In *People's Union for Civil Liberties v. Union of India*,<sup>13</sup> it was strongly stated that merely because certain rights are implied as they have been read into article 21, would not make them any less fundamental and they also are equally enforceable as express fundamental rights. It was held that "[t]here cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court."

In *Kesavananda Bharati*<sup>14</sup> it was observed that fundamental rights themselves have no fixed content and that the attempt of the court should be to expand the reach and ambit of the fundamental rights. The Constitution is required to be kept young, energetic and alive.<sup>15</sup> It has been held that the Constitution is a living document and its provisions have to be construed with regard to the march of time and the development of law.<sup>16</sup> The

---

10. AIR 1981 SC 746.

11. *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569. This was also recognized in *Maneka Gandhi* that natural rights inhere in man.

12. *Unni Krishnan v. State of A.P.*, (1993) 1 SCC 645; *P. Rathinam v. Union of India*, (1994) 3 SCC 394.

13. (2003) 4 SCC 399.

14. *Supra* note 6.

15. *Supra* note 13.

16. *I.R. Coelho v. State of T.N.*, (2007) 2 SCC 1.



Constitution gives an idea of the society which is sought to be built and also defines the space and the framework of action to realise the vision.<sup>17</sup>

With public interest litigation, the Supreme Court has refashioned its institutional role to readily enforce social rights and even impose positive obligations on the state.<sup>18</sup>

The activist role of the Supreme Court has gone a long way in assuring that the basic needs of the people which are the basic human rights are met. In *Bandhua Mukti Morcha v. Union of India*,<sup>19</sup> it was held that “[I]t is the fundamental right of everyone in this country, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy.”

An important inspiration for social justice can be drawn from the Preamble of the Constitution which states that the people of India have undertaken to secure justice, social, economic and political and the mandate by article 39-A of the Constitution which imposes a duty on the state to ensure that opportunities for securing justice are not denied to any citizen by reasons of any economic or other disabilities.<sup>20</sup>

In *Supreme Court Advocates-on-Record Association v. Union of India*,<sup>21</sup> it was held that the exploration of the new principles are essential in those areas not before explored; the need for which is more so in light of unresolved and unforeseen modern challenges or to have become inapplicable to the new situations or found to be unsound. The court also emphasized that in so formulating new principles:<sup>22</sup>

[T]he court does not create any new right not known to the Constitutional text or history but merely discovers and announces only the existing right so far hidden under the surface on a better understanding of the values of the underlining intent and spirit of the Constitution in the light of a new set of conditions. The resultant corollary would be that the old legal concept and such principles may be swept away by a new concept and under a new set of conditions or a fresh outlook.

---

17. A. Vaidyanathan, “The Pursuit of Social Justice” in Zoya Hasan ed., *India’s Living Constitution* (Delhi: Permanent Black, 2002).

18. *Supra* note 2.

19. (1984) 3 SCC 161.

20. Rajindar Sachar, “Social Action Litigation: Activist and Traditionalist Judges” (1987) 1 SCC (*Jour*) 13.

21. AIR 1994 SC 268.

22. *Ibid.*



In the remaining course of this paper, it is proposed to examine the development by the courts of certain specific socio economic rights such as the right to rehabilitation, right to livelihood and the right to food.

### **Right to rehabilitation**

The right to rehabilitation in multiple circumstances has been held as being a part of article 21. A progressive development is the involvement of civil society non-governmental organisations (NGO's) in the rehabilitation process, which has been given recognition by the courts.<sup>23</sup> In addition, the court utilises the services of the National Human Rights Commission (NHRC) to monitor the implementation of the courts directions and other statutory provisions.

Article 23 prohibits bonded labour. It has been held that when bonded labour is identified and freed, it is an incumbent duty upon the state to rehabilitate them. The right under article 23 would be of no use in the absence of rehabilitation, for being faced with hunger and starvation in the alternative would also be a violation of the dignity of the individual.<sup>24</sup> For example, the bonded labour may be rehabilitated on a land basis or on a non-land but skilled craft basis depending on factors such as the choice of the bonded labourer and their experience.

The rehabilitation aspect comes to the fore in cases where people are displaced as a consequence of development, such as the construction of dams and power projects. The national policy, packages and guidelines for resettlement and rehabilitation accepts the principle that right to rehabilitation is a fundamental right under article 21 of the Constitution and that rehabilitation is mandatory and must go on side by side with the project. In *Karjan Jalasay Yojana Assargrasth Sahkar & Sangarsh Samiti v. State of Gujarat*<sup>25</sup> it was held that when land was acquired for the construction of a dam, it was the duty of the state to provide alternative land to the tribals and other people belonging to the weaker sections, and in case there was also a place of dwelling on the land, an alternative dwelling place was also directed to be provided. In *N.D. Jayal v. Union of India*,<sup>26</sup> while making observations on the above decision, it was recognised that mere monetary compensation would be insufficient, as for such groups, monetary compensation in place of land would not provide a sustainable source of dignified living. Similarly, in the last mentioned decision, while

---

23. *PUCIL v. State of Tamil Nadu*, (2004) 12 SCC 381.

24. *Neeraja Chaudhary v. State of M.P.*, (1984) 3 SCC 243.

25. 1986 Supp SCC 350.

26. (2004) 9 SCC 362.



dealing with the ousted of the Tehri Dam Project the court held thus:<sup>27</sup>

When such social conflicts arise between poor and more needy on one side and rich or affluent or less needy on the other, foremost attention has to be paid to the former group which is both financially and politically weak. Such a less advantaged group is expected to be given prior attention by a welfare state like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the Preamble, Fundamental Rights, Fundamental Duties and Directive Principles, to take care of such deprived sections of people who are likely to lose their home and source of livelihood...The construction of a dam cannot be allowed to proceed and he completed leaving the oustees high and dry.

Under article 21, those displaced also have a right to lead a decent life and earn a livelihood at the resettlement locations. The court held that “rehabilitation is not only about providing food, clothes or shelter. It is also about extending support to re-build livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn a livelihood in the rehabilitated locations...The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted.”

In *Narmada Bachao Andolan v. Union of India*,<sup>28</sup> it was laid down by the courts that the land which is to be allotted in the resettlement areas should be at least equal in quality if not better than the land from which they were displaced. It is also implicit in the said decision that any plan for the rehabilitation of the displaced people would have to be done after detailed enquiry and application of mind.

To deal with the social evil of immoral trafficking and its adverse consequences, in *Prajwala v. Union of India*,<sup>29</sup> the Supreme Court issued directions concerning the rescue and rehabilitation of such workers and monitoring of the protective homes in which such rescued individuals would be housed.

In *Kranti v. Union of India*,<sup>30</sup> the Supreme Court concerned with the plight of the tsunami victims, ordered for rainwater harvesting and for measures to clean out existing water sources. Directions were issued to

---

27. *Ibid.*

28. (2000) 10 SCC 664.

29. (2005) 12 SCC 136.

30. (2007) 6 SCC 744.



speed up the process of replacement of boats. It was further recommended that more doctors be appointed for the area and that where agricultural land lay submerged, for those individuals it was suggested that a job may be provided to one member of the family.

An important point to be mentioned is that the Supreme Court through its orders is involved in a continuous monitoring process so as to ensure that there are no violations of its directions.

### **Right to livelihood**

“The right to work I have assumed was the most precious liberty that man possesses. Man has indeed, as much right to work as he has to live, to be free and to own property. To work means to eat and it also means to live.”<sup>31</sup>

In *Olga Tellis v. Bombay Municipal Corporation*,<sup>32</sup> the question was regarding the validity of state actions in eviction of pavement and slum dwellers in Bombay. The question was whether evicting a pavement or slum dweller is a violation of the right to life under article 21 of the Constitution. Though a right to live on the pavement was not claimed, it was argued that the eviction would deprive them of their livelihood thus violating their rights under the Constitution. It was contended that the right to life and the right to work are interdependent and that the economic compulsions under which these persons are forced to live in slums or on pavements, impart to their occupation the character of a fundamental right.

The court emphasised the wide meaning of the right to life and held that the right to work and livelihood constituted an integral part of the right to life, since without working one cannot expect to live. The court recognised that one of the reasons for the massive influx of people from rural areas to the urban is the lack of opportunities to work in the rural areas. It was recognised that their livelihood was the only thing which sustained them and their families. An important point stated by the court in this case pertains to the appreciation of the proof requirement in such cases. It was held that in such a case where half the city's population was at stake “It would be unrealistic on our part to reject the petitions on the ground that the petitioners have not adduced evidence to show that they will be rendered jobless if they are evicted from the slums and pavements. Commonsense, which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants.” It was found on studies by experts that the slum and pavement dwellers take up residence

---

31. *Baksey v. Board of Regents*, (1954) 347 MD 442.

32. AIR 1986 SC 180.





close to their place of work, for otherwise the time and cost of transportation would be beyond their means.

Observing further, the court held that the right under article 21 does not place an absolute restriction but requires the following of the procedure established by law which must be a just, fair and reasonable procedure.<sup>33</sup> The law in question was the Bombay Municipal Corporation Act. Though holding the law as reasonable, and allowing the eviction of dwellers from pavements, the validity of the authority's acts in displacing the slum dwellers was underlined by the states assurances that the dwellers would be relocated at suitable sites, not very far from their present location.

The court stated the place of the right to livelihood in the right to life is as follows:<sup>34</sup>

An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.

In *Delhi Development Horticulture Employees' Union v. Delhi Administration*,<sup>35</sup> though it was held that there was no doubt that broadly interpreted, the right to life would include the right to livelihood and, therefore, right to work, the court while referring to the *Olga Tellis* case, stated thus:

This was, however, in the context of Article 21 which seeks to protect persons against the deprivation of their life except according to procedure established by law. This country has so far not found it feasible to incorporate the right to livelihood as a Fundamental Right in the Constitution. This is because the country has so far

---

33. See *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

34. *Ibid.*

35. (1992) 4 SCC 99.



not attained the capacity to guarantee it, and not because it considers it any the less fundamental to life.

Though *prima facie* there appears to be a conflict, on a careful reading it appears that though the court recognised the right to livelihood as being a part of article 21, it qualified this by saying that a direction could not be passed to the state to give employment to everyone, underlined by the very fact that the resources are limited. Thus, the positive obligation of the state to provide employment to the people is limited by the resources of the state. Similarly, in *Indian Drugs & Pharmaceuticals Ltd. v. Workmen*<sup>36</sup> it was recognised that the right to livelihood under article 21 could not be extended so far as to require that everyone be provided with a job. Article 41, the directive principle of state policy states that the state shall seek to secure the right to work to its citizens and even the directive principle lays down that this duty of the state would be within the limits of its economic capacity and development.

An important aspect as stated by this court in the *Delhi Development Horticulture Employees' Union* was that there was a need to create classes among the poor also, such as those below poverty line and others. It was also stressed that where a scheme is for a limited purpose such as providing income to those below the poverty line, and that too for a period when they had no income whatsoever, the court could not expand the scheme and direct regularisation with the obligation on the state to provide full employment for the whole year. The court warned that such an approach may do more harm by benefiting a select few over a mass of others and also by compelling the state to wind up the existing schemes for want of resources.

In *DTC v. DTC Mazdoor Congress*,<sup>37</sup> a regulation giving the power to the employer to terminate the services of a permanent and confirmed employee without giving notice and without assigning reasons was held to be a violation of the right to livelihood under article 21. Thus the procedure to deprive a person of his life, with its extended meaning to include the unenumerated right to livelihood, must be fair, just and reasonable. It was held thus:

The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work

---

36. (2007) 1 SCC 408.

37. AIR 1991 SC 101.



becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

In *Captain M. Paul Anthony v. Bharat Gold Mines*,<sup>38</sup> the right to payment of subsistence allowance during suspension was held as being a part of article 21 of the Constitution as being a basic right.

### Right to food

The Supreme Court has in a number of cases recognised that the right to life includes the right to food, clothing and shelter.<sup>39</sup> It also flows from article 39(b), (e) and (f) and article 41 and 47 of the Constitution.

In the series of orders under the petition *CERC v. Union of India*<sup>40</sup> the Supreme Court has emphasised that the right to food is an essential element of article 21 of the Constitution of India and what is of utmost importance is that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation and destitute children. The Supreme Court identified that there was a surplus of food grain which was going unutilised and the distribution of the same among the poor and the destitute was scarce. The problem was that though there were several schemes framed by the government, they were not being implemented properly. Over a period of 6 years the Supreme Court has passed a number of directions to ensure compliance and implementation of the schemes. The Supreme Court has declared these schemes as entitlements of the poor. The court has also directed the state governments to ensure that public distribution shops are kept open with regular supplies.

It is also within the power of the court to direct the government to apply its mind and frame appropriate schemes, though the exact nature of the scheme would be a matter of policy for the government to decide. It was observed in the order dated 2.5.2003 that article 21 protects the right of every individual to live with dignity and the court asked: “*Would the very existence of life of those families which are below the poverty line not come under danger for want of appropriate schemes and implementation thereof.*”

A matter of concern as outlined by the court was that there was a surplus beyond the buffer required for food security and a substantial amount of funds were being spent in holding such amounts. It was thus observed

---

38. (1999) 3 SCC 679.

39. *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.

40. Writ Petition (Civil) No. 196 of 2001 available in Colin Gonsalves (ed.), *Right to Food* (New Delhi: Human Rights Law Network, 2005).



that if the stocks are brought down to lower levels it would also release a substantial amount of funds.

Another important order was the order dated 28.11.2001 by which the court directed the state governments to implement the mid day meal schemes by providing every child in every government and government assisted primary school with a prepared mid-day meal with a minimum content of nutritional content each day for a minimum of 200 days. The Supreme Court also directed the central government to prepare kitchen sheds.

The midday meal scheme is not merely about providing nutrition to the school children but, in a survey conducted it has been found that it has resulted in a sharp increase in the enrolment of girls and a reduction in gender bias in enrolment in schools. Daily attendance of children in the schools has also increased and this was attributed to the midday meals.<sup>41</sup>

### III Conclusion

The above discussion would clearly reflect the wide and ever expanding horizons, through judicial interpretation, of fundamental rights. There has been some concern however, about the legitimacy and accountability of such overt judicial activism in the late nineties, but the court however, continues to justify its interventions by asserting that it is temporarily filling the void created by the lack of strong executive and legislative branches.<sup>42</sup> The justification for an activist and creative interpretation of the Constitution is that such an approach reiterates the character of the Constitution as a social document.<sup>43</sup> An activist judiciary has enabled large progress in ensuring basic rights to a significant section of the population. The power to do the same exists in the judiciary under articles 32, 141, 142 and 226 of the Constitution.

However, a caveat must be added. Neither is the judiciary possessed with the requisite experience for dealing with wide ranging policy matters, nor does it possess an effective enforcement mechanism for the wide ranging orders passed by it. There is also the danger of treading the fine line between the different branches. An activist judiciary must also consider that directions passed by it may result in the imposition of a burden which the exchequer may not be able to bear. Therefore, while an activist court exercising the power of judicial review helps build constitutional

---

41. R. Khera: "Midday Meals in Rajasthan" (*The Hindu*, Bangalore, 13-11-2002) cited from Jayna Kothari, *supra* note 2.

42. *Ibid.*

43. T.K. Tope, "Supreme Court of India and Social Jurisprudence" (1988) 1 SCC (*Jour*) 8.



foundations, certain inherent limitation in the exercise of its power must be kept in mind.

There also still remains a lot to be achieved in the field of human rights especially at the grass root level. At this juncture, on the occasion of the sixtieth anniversary of the UDHR, all signatory states should come together to face the challenge of human rights violation. Every nation needs to contribute to the prevention of incidents such as ethnic hatred, acts of genocide, xenophobic attitudes, discrimination in the name of race, religion, sex, caste and creed and other such manifestations of human rights violations. States as well as individuals must take the responsibility to effectively implement the principles of the UDHR.