



Right to life in India: A role of judiciary

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Abstract

Fathers of Indian constitution borrowed the concept of fundamental rights from the U.S. constitution in order to grant certain basic rights to every citizen so that he/she may live a life free from undue interference from the state or any other person. Speaking about the importance of the fundamental rights, Bhagwati, J. (the jurist). In the case of *Maneka Gandhi v. Union of India* remarked as under. these basic rights represent the basic values perfect by the people of this country (India) as the Vedic times and they are meant to defend the dignity of the person and make circumstances in which every person being can build up his behaviour to the fullest scope. These are devised on the guide of guarantees on the important organization of human rights and force negative responsibility on the state not to influence on personal freedom in a variety of dimension. Member of the constituent assembly also thought that the rights of the individuals could be made secure by the negative action of the state i.e. should the state abstain from doing certain things. If they believed that the right to freedom of expression is an indispensable condition for the development of human personality. They also said that this right could become real only if the govt. abstained from imposing any restriction on the right to equality becoming effective if the government did not discriminate between citizens. It is true that unlike our constitution the rights in America are not subject to restriction imposed upon them in the interest of public order, public morality, public health and prevention of people form crime. India is a country with the multiplicity of religions, languages and cultures, and it is essential that the religious, linguistic and cultural minorities in the country should feel assured that they would not be discriminated against and that their rights would be safeguarded. The problem of minorities based on religion confronted by the revolutionaries in France and U.S.A. also and they had solved it by enunciation of the principle of secularism.

Keywords: fundamental rights, judicial review, human dignity, human rights, constitutional remedies etc

Introduction

The build up of our constitution adopted basic rights to safeguard and together with the Directive principles social, economic and political justice for every member of the community. That they have succeeded in this venture is the testimony of ardent observation of the Indian constitution. "In India it appears that the fundamental Rights have both created a new equality and have helped to grant individual liberty. The number of cases on rights brought before high courts and the Supreme Court attest to the value of the rights, and the frequent use of prerogative writ testifies to their popular acceptance as well. The close arguments against the inclusion of written rights in a constitution have not been borne out in India. In fact, the reverse may have been the case". The Janata Government, headed by Morar ji Desai, had taken out an important fundamental right, namely, the right to property, by omitting Arts, 19(1) (f) and 31, by the 44th Amendment Act, 1978 of Course, the provision in Art.31 (1) has, by the same amendment, been transported to a new article-Art, 300A, which is outside, part III of the constitution and has been labeled as 'chapter IV of part XII (which deals, with, 'finance' property, contracts and suits) but that is not a 'fundamental right. While under the congress rule for 30 years, the ambit of the Fundamental Rights embodied in part III of the original constitution had been circumscribed by multiple amendments, bit by bit, the death blow to the fundamental rights came form the Janta Government, until the case of *Golak Nath*. The Supreme Court had been holding that no part of our constitution was unamendable and the parliament may by passing a constriction Amendment Act, in

compliance to the requirements of article 368 amend any provision of the constitution, including the fundamental Rights and Art, 368 itself. According to the earlier view, the courts could act as the guardian of fundamental rights only so long as they were not amended by the parliament of India by the required majority of votes. In fact, some of the amendments of the constitution so far made were selected with a view to superseding judicial pronouncements which had invalidated social or economic legislation on the ground of contravention of fundamnet rights. Thus, the narrow interpretation of clause (2) of Art.19 by the Supreme Court in the case of *Ramesh Thapper v. state of Madras* and *Brij Bhushan v. State of Delhi* was superseded by the constitution (1st Amendment) Act. 1951, while the interpretation given to Art. 31 in the cases of *State of West Bengal v. Gopal Dwarkadas Sholapur spinning Co*, and *State of West Bengal v. Bela Benerjee*, was superseded by the Constitution (4th Amendment) Act. 1955. Prima facie, the expression 'equality before the law" and "equal protection of the law, may seen to be identical, but in fact, they mean different things while equality before law is some what negative concept implying the absence of any special privilege by reason of birth creed, or the like in favour of any individual and the equal subjection of all classes to the ordinary law. Equal protection of the law is a more positive concept, implying the right to equality of treatment in equal circumstances. It is well stated that guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts

and tribunals to require the state to commit the same irregularity or illegality in their favour. Equality before the law, as a student of English constitutional law knows, is the second corollary from Dicey's concept of the rule of law. Equality before law is correlative to the concept of rule of law for all round evaluation of healthy social order. The doctrine of equality before law is a necessary corollary to the concept of the rule of law. It is a declaration of equality of all persons within the territory of India, implying there by the absence of any privilege in favor of any individual. It means that no man is above the law of the land and that every person, whatever be his rank or status, is subject to the ordinary law and amenable to the jurisdiction of the ordinary tribunals. The concept of equality permits rational or discriminating discrimination. Conferment of special benefits or protection or rights to a particular group of citizens for rational reasons is envisaged under Art. 14 and implicit in the concepts of equality or the right to equality. The right to equality under Article 14 of the constitution is available against the state, it cannot be claimed against unaided private minority school.

The fundamental Rights guaranteed by part III are more specific and detailed. They have to be exercised subject to the limitation embodied in that very part itself. So to say, the rights are not absolute or unrestricted. For, absolute right cannot exist in any modern state. An organized society is a pre-condition for Civil liberties and the possession and enjoyment of all rights are subjected to "Such reasonable condition as may be deemed, by the governing authority of the court essential to the safety, health, peace, general order and morals of the community. The question arises about of adjusting the conflicting interests of the Individual and of the society. Though "restrictions have to be placed upon free exercise of individual's rights to safeguard the interests of the society, on the other hand, social control, which exists for public good, has got to be restrained, lest it should be misused to the detriment of individual's rights and liberties". What is, therefore required, is "to strike a balance between" individual's liberty and social control. It is what our constitution attempts to do.

The Fundamental Rights have not been declared immutable, but these are to be reserved in conventionality with the shifting socio-economic situation. For the purpose, the constitution conforms, power on the state, the power to amend the constitution including the fundamental Rights. For the purpose of 1st Amendment, 1951, the constitutional 42nd Amendment 1976, the constitution 44th Amendment, 1978, amended the provision relating to fundamental rights. The fundamental rights, which are secured by the constitution of India, are grouped under the following heads:

1. Right to equality (Articles 14 to 18)
2. Right to liberty (Articles 19 to 22)
3. Right to Education (Article 21-A)
4. Right to choice of Religion (Article 25 to 28.)
5. Right Against exploitation (Articles 23 and 24)
6. Cultural and Education Rights (Articles 29 and 30)
7. Right to Constitution Remedies (Articles 32)

It has recently been ruled that the Fundamental Rights are deeply interconnected each supports and strengthens the work of the others.

Meaning and Basis of Judicial Review

'Judicial Review' is the power of courts to pronounce upon the constitutionality of legislative act which falls within

their normal jurisdiction to enforce and the power to refuse to enforce such laws as they find to be unconstitutional and hence void. "Judicial Review Said Khanna, J. in the fundamental rights case. "has thus become an integral part of our constitution system and power has been vested in the high courts and the supreme court to decide about the constitutional validity of the provision of statutes. If the provision of the statutes are found to be violative of any of the articles of the constitution which is the touchstone for the validity of all laws, the supreme court and the high courts are empowered to strike down the said provision when Montesquieu gave his doctrine of separation of powers, he was obviously moved by his desire to put a curb on absolute and uncontrollable power in any one organ of the government. A legislature, an executive and a judicial power comprehend the whole of what is meant and understood by govt. It is by balancing each of these two powers against the other or that the efforts towards tyranny can alone be checked and restrained.

Judicial Review is thus the interposition of judicial restraint on the legislative as well as the executive organs of the government. The concept has the origin in the theory of limited government and in the theory of two laws, an ordinary and supreme (i.e.) the constitution. From the very assumption that there is a supreme law, which constitutes the mention and source of other legislative authorities in the body polity, it proceeds that any act of the ordinary law making bodies which contravene the provision of the supreme law must be void and there must be some organ which is to possess the power or authority to pronounce such legislative act as void. In the Indian constitution, there is an express provision for judicial review, and in this sense, it is on its own a more solid footing than it is in America. In the state of Madras v. V.G. Row, Patanjali Sastri, C.J., observed, "our constitution contains express provision for judicial review of legislation as to its conformity with the constitution, unlike in America where the supreme Court has assumed extensive power of reviewing legislative act under cover of the widely interpreted 'due process' clause in the fifth and fourteenth Amendments. If then, the courts in this country face up to such important and none to easy task, it is not out of any desire to tell at legislative authority and a crusader's spirit, but in discharge of duty plainly laid upon then by the constitution.

But even in the absence of the provision for judicial review the courts would have been able to invalidate a law which contravened any constitutional provision, for such power of judicial review follows from the very nature of constitutional law. In A.K. Gopalan v. state of Madras, Kania, C.J. pointed out that it was only by way of abundant caution that the framers of our constitution inserted the specific provision in Article 13. He observed: "in India, it is the constitution that is supreme and that a statute law to be valid must be in all conformity with the constitutional requirements and it is for the judiciary to decide whether an enactment is constitutional or not."

Suspension, Amendment or Denial of Fundamental Rights

The rights contained in part III, as stated earlier, are not absolute, in the larger interest of the society, these rights can be curtailed or suspended in the following cases:

- a. Under Article 33, parliament may by law restrict or abrogate any of the fundamental rights in their

- application to the members of the Armed forces or forces charged with maintenance of public order.
- b. Article 34 authorizes parliament to make law to grant immunity in respect of acts done by any person during the operation of martial law in the country.
 - c. While a proclamation of emergency issued under Article 352 (i) is in operation, the rights contained in Article 19 (i) stand automatically suspended. During the operation of such proclamation, the president may, by order suspend the remedy for the enforcement of any of the basic rights apart from those conferred by Articles 20 and 21. Besides, union parliament, in the exercise of its amending constituent power, may amend, abridge or take away the fundamental rights.

Definition of State (Article 12)

Article 12 defines the term 'State' for the purposes of the fundamental rights. Article 12 provides that unless the context otherwise requires, "the state includes the administration and legislature of India of every of the states and all local or other powers that be within the country of India." Article 12 gives an inclusive and not exhaustive definition of "the state". So defined "the state" includes.

- a. The administration and legislature of India.
- b. The Government and the parliament of all of the states.
- c. All local or other authorities in the territory of India; and all local or other authorities under the control of the Government of India.

In India, in the definition of the term "state" in Article 12, "Judicial is not specifically mentioned. There fore, the judgment of the courts cannot be challenged on the ground that they contravene fundamental rights. But, so far as the right to equal protection contained in Article 14 is concerned, the supreme court in *Budhan Chaudhry v. State of Bihar*, held that any state action whether executive, legislative or judicial, which contravened Article 14 was void. The court however, limited the application of Article 14 to judicial decision, only to cases involving "willful and purposeful discrimination". Fundamental Rights enshrined in our constitution provide for various types of freedom and rights to two citizens of India U.N.O has made a declaration of Human rights which has been adopted by the constitutional right to life and liberty is one of them. It is argued that it is almost impossible to claim that someone has a right to life when denied a right to certain life sustaining material goods. Ordinarily, human life depends on certain material goods like balanced diet good shelter and good environment. It is argued that no one really has a right to life in the absence of such life-sustaining material goods. A right to life with out a right to the basic minimum goods required to sustain the life mocks the original right. As such, fundamental rights contained in chapter III are so best that they have taken care of all aspects of human life to be protected by the state. Two key points are made in the article (i) that a right to life implies a right to the basic sustaining material goods. (ii) No right to life in the absence of right to the basic minimum goods (material and non-material) and (iii) that a right to life is a right to be killed unjustly, not a right not to be killed.

The establishment of socialistic pattern of society has been declared as the ultimate goal of our country and hence the question is as to whether our fundamental rights can enable us to realize this objective. It has been indicated that by the recent amendments, the right to property has been made to

conform to this ideal, but the right to liberty is still hedged by the shameful limitation of preventive detention. The socialist goal does not demand control over the personal and civil liberties of the individual. The one point on which all types of socialists professing to be democratic seem to agree is the maintenance of human dignity. The universal declaration of human rights deals at length with those rights that secure protection to the individuals against arrest and internment. It goes to the extent of incorporating definite procedural safeguards for personal liberty.

But for the realization of the socialist ideal, it is essential that the state should not only abstain from doing certain things, but should also positively guarantee, such conditions which make life liveable. But as pointed out, chapter III of our constitution embodies only those rights which are the outcome of a negative.

The strategy of social action litigation has been evolved to give the common people of this country access to the court so that the adversely affected persons are able to vindicate their rights against the mighty hand of the society. There is no denying the fact that for the first time in India, the demand for justice has been thrown open for the poor, exploited and deprived sections of the community. It has generated a hope and confidence in the poor people believing that 'Law and justice' is meant for the poor and not vice versa. The judges are boldly interpreting the charter of human rights jurisprudence.

The scope of Art. 21 of the constitution have been widened in the light of changing values of India society. A new interpreting Art. 21 have brought about a vital change in the field of Human Rights jurisprudence. All this ultimately enables it to conclude that Indian judiciary has endeavoured hard to uphold spirit of worldwide announcement of human rights, 1948; International agreement of civil and political rights, 1966, and International core nation financial, societal and civilizing rights, 1966 there by achieved a tremendous success in resurrecting the human rights jurisprudence.

The need and justification for the right to life and personal liberty for the Indian people was felt during the colonial rule in India. By assuring these fundamental rights, India joined the comity of democratic nations to provide adequate liberties to the people to freely manage the running of the affairs of the state according to the aspirations of its citizens. The inclusion of a set of fundamental rights, which are necessary for the development of Human personality, the constitution of India had its genre in the forces that operated in the national movement for impendence during the British rule.

India is a constitution guaranteeing to every citizens of India, freedom of expression, right to equality before law, right to personal liberty etc.

It was the concerted effort of the leaders of our freedom movement which led the British cabinet Mission in 1946 to recognize the need for a written guarantee of fundamental rights in the constitution of India. In paragraph 19 and 20 of its statement of May 16, 1946, envisaging a constituent assembly for framing the constitution of India. The economic, social, cultural and political rights come into existence only when an individual is capable of living. These rights under any circus stances can't come into practice by the lapse of rights under any circumstances which is the essence of mankind. Right to life does not mean simply putting body and soul together, it includes the optimum possible decent and good life for the individual

both as a person and as well as a member of the human community.

Right to life and liberty are provided under the Indian constitution. But these can be ensured only by allowing several other rights and facilities and there is a need for those facilities and there is a need for expansion of right to life, other wise it will be only a hollow right, the concept of a right carries with it an implicit, unstated footnote you may exercise your rights as long as you do not violate the same rights of others within the context and these rights are not and absolute. A right has universal meaning: it applies to all men, not just to a few. There are no such things as "right" for one man, or a group of men, that is not possessed by all. This means there are no special "rights" unique to women or men, blacks or whites, the elderly or the young, homosexual or heterosexuals, the rich or the poor, doctors or the patients or any other group.

Every one is born as an individual and there should not any distinction between the two individuals in the eyes of law. The whole world is one family and so all people are members of global village. It is to be noted that the human rights are indivisible, inter- dependent and inter related having a definite linkage with human development; both share common vision with a common purpose. Human rights are generally defined as those entitled to enjoy by virtue of having minimal rights, which every individual must have against the arbitrary action of the country or other public powers that be by good quality of his being a associate of the human relations.

The Nature has given not only a life to all human being but as well as freedom to act according to their choice and to flourish as a human being. Freedom which is *sine qua non* for the physical, mental, psychological, spiritual development of all human beings without which the human personality would be incomplete. The rationale behind such freedom is not only an individual empowerment but the pathology of it lays the foundation for the collective, universal development of the society at large. State should not deprive any citizens of the right to life and liberty. According to Austin, Fundamental Rights and directive principles had their deep roots in the struggle for independence. And they were included in the constitution with the hope and expectation that one day the tree of true liberty would bloom in India, inspired by the charter of United Nations (1945) and worldwide announcement of Human rights (1948). The visioning fathers of the constitution of India fought to provide the fundamental freedoms social, economic and political to all. It is said that right to life is the most fundamental of all the rights given under the constitution and all other rights have no value without it. It is the basic right of the men.

It means to provide the fullest opportunity to a person to develop his personality in all its manifestations. Therefore, every civil society or political system of the world provides in one way or the other, adequate measures to protect this basic, Inherent and most sacrosanct right of an individual. The duty of the state to protect the right to life of individual has also been recognized by international law and has also been recognized by international community. The preamble to the UN charter lays down that "the peoples of United Nations are determined to reaffirm faith in fundamental human rights, in the dignity and worth of human person. Right to life is natural right given by god. God has given a very healthy brain to human beings, so that they may think

in the right way. A nature has committed to give a good life to the people. It does not create obstacles in the way of man. People need food, cloth, shelter to survive. Nature is the best protector and guide for the people.

In the case of *Kharak Sing v. State of Uttar Pradesh*, CJ/ of the Supreme Court believed that by the term life as it is supposed it not mere creature survival. India being the motherland of one of the oldest civilizations in the world and the birthplace of diverse cultures and religions has a very rich heritage of human rights in deals and valises. Unfortunately, despite such a rich Cultural Heritage but there has been barbaric societal violence against woman, children and so-culled untouchables in our society.

Everybody has the right to life, freedom and safety of person as human rights can only be availed by living beings, one might believe the right to life itself to be in some sense most important, as none of the other rights would have any significance or value without it. There would have been no basic rights worth mentioning if Article 21 had been interpreted in its unique sense. The court in "*Francis coralie v. Union territory of Delhi*" observed that the right to life includes that right to live with human dignity, life such as adequate nutrition, clothing and protection over the head and facilities for writing, reading and freely moving about and mixing with fellow human beings and include the right to basic requirements of life. There are certain very common and very important rights such as Right to liberty property, equality, political rights and right of resistance to the state. The most fundamental rights in the right to life, for without it a man can have no other rights. According to T.H. Green, the right to life and the right to liberty together constitute a single right, *viz.* the right to free life. Life without liberty is useless and conversely, it is the use made of life that gives one the right to life. Justice Iyer has given much importance to right to life. He says, it should not be extinguished merely on the ground that an accused has committed a murder depriving a person of his right to life is nothing else but a murder. If a state deprives a person of his right to life, it also commits a murder. Each person has the right to standard of living effectively for the health and well, including food, clothing, housing, health care and the right to safety in the incident of unemployment, illness, disability, aged period and other source of livelihood in situation away from one's organize.

The term liberty has not been given so wide a meaning under the English constitution and in order to specify the scope of the meaning of liberty the qualifying word "personal" is often used before it. The concept of "right to life" and "personal freedom" are as mature as mankind. Assuring the right to life is undoubtedly the pivotal point in the concept of the protection of human right. Physical survival is a prerequisite for benefiting from various rights and liberties included in the European convention for human rights and other international documents. For this reason, those framing the universal declaration of human rights gave primary emphasis to the protection of human life and made direct reference to everyone's right to life. The Manusmriti and other holy books were known as the sacred texts and the Vedas expanded the very nature of the rights in India. During those times there was rules of law and principle of natural justice. The king also followed the policy of Rajdharma. During the days of the Indus valley civilization, there was synthesis of diverse cultures and religions. Indian sub-continent was long stretched for an

unbroken continuity between the most modern and the most ancient phases of Hindu thought extending over three thousand years.

Now in India, there are three organs of the government. First is legislature which makes laws. Second is executive which implements laws. Third is judiciary which interprets law and gives punishments to the law breakers. The independence of the judiciary has been one of the outstanding features of the Hindu judicial system even during the days of Hindu Monarchy. The administration of justice always remained separate from the executive. It was, as a rule, Independent, both in form and spirit. It was the Hindu judicial system that first realized and recognized the importance of the separation of the judiciary from the executive and gave this fundamental principle of *Ananthapinditi v. Jeta*, reported in the *vinaya patrika*. King was subject to the law, as any other citizen and the "Divine Right" of kings was known to western political science as was known to India. On the whole, the aim of the ancient Indian state may be said to have been less to introduce an improved social order, than to act in conformity with the established moral order. There were human rights during Vedic period and during Greek period. Kautilya, who authored of the celebrated political treatise "Arthashastra" not only affirmed and elaborated the civil and legal rights was first formulated by "Manu" but also added a number of economic rights. He categorically ordained that the king should also provide the orphan, the aged, the infirm, the afflicted and the helpless with maintenance. During the Muslim period the administration was run according to Islamic law, and punishment was tough. Muslim kings were very cruel. There was no justice, no morality and there were no equal rules and rights. Modern period started from British rule in India. People had become more educated and more awakened than before. British Government ruled by force and passed Indian penal code 1860 in order to make the punishment on the culprits' tough. It was a period after world war one and world war Second.

Human rights had become popular at the international level. UNO also formed Human rights organization and declared human rights of the people. During this period, Indians were humiliated and discriminated against by the Britishers. The freedom movement and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and fundamental freedoms. In the Indian cultural history, the British colonial period is called India equivalent to the 'Dark Ages'

In 1925 the Indian National Congress finalized the draft of common wealth of India by adopting a 'declaration of rights'. The Madras session of the congress was held in the year 1927 demanded incorporation of a Declaration of fundamental rights' in any future constitutional framework. A committee under Moti lal Nehru was appointed by the National Congress to study the Fundamental Rights. The Rights emphasized by the Moti lal Nehru Committee Report were.

- a. Personal liberty, inviolability of dwelling place and property,
- b. freedom of conscience of profession and practice of religion,
- c. expression of opinion and the right to assemble peaceably without arms and for associations
- d. free elementary education.
- e. Equality for all before the law.

- f. Right to file Habeas corpus.
- g. Protection from Punishment under ex-post facto laws.
- h. Non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment.
- i. Equality of right in the matter of access to and use of public roads, wells etc.
- j. freedom of combination and association for maintenance and implementation of labor and economic factors.
- k. Right to keep and bear arms.
- l. Equality of rights to man and woman.

There was mention of fundamental rights in the Sapru committee of 1945 and then in the draft of Indian constitution of November 1946, there was a chapter on fundamental rights called Magna Carta of India. According to the famous constitutional expert, Shri D.D. Basu "Taking all these international documents together, we may make the following list of human rights". Right to life, Right to human dignity, right to recognition as a 'person' before the law, Right to equality, equal protection before the law and non-discrimination, Right to personal liberty, right against torture, cruel, in human or degrading treatment of punishment right against slavery, forced or compulsory labour, Right to privacy, Right to fair trial, Right against ex-post facto criminal law, Right against self incrimination. Right of expression, freedom of assembly, freedom of association, freedom of movement and residence, Right to property, Right to family, Right to Child, Right to education, Right to work, Right to effective remedy for the enforcement of the rights and freedoms. Indian Constitution is a written constitution and there is guarantee of fundamental rights in it. These fundamental rights are justifiable in Courts of law. Right to life, includes right to human dignity, liberty, security of the person, Right against unreasonable search and seizure, Right against cruel and unusual treatment or punishment, Right against self-incrimination, Right against ex-post facto criminal law, Right against double jeopardy, equality and equal protection of the laws, freedom of expression, freedom of thought, freedom of the press, freedom of assembly, freedom of association, freedom of residence, freedom of profession, freedom of conscience, freedom of religious belief and observance, freedom of salary, right against forced labour, right to property, right not to be deprived of property save by due process of law, right to compensation for deprivation of property. Articles I of the declaration in general terms proclaims:

Everyone human beings are born free and equivalent in dignity and right. These are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Civil and political rights.

The second covenant relates to the following civil and political rights.

- a. Right to equality and non-discrimination.
- b. Right to life and liberty.
- c. Right against self-incrimination.
- d. Freedom of movement.
- e. Right to assemble peacefully.
- f. Right to property.
- g. Freedom of conscience and religion.
- h. Right against slavery.

- i. Right to Privacy.
- j. Right to marry and Right to family.
- k. Right to nationality.
- l. Equal access to public service.
- m. Right to take part in public affairs.
- n. Right to form associations.
- o. Cultural rights.
- p. Right to minorities economic, social, and cultural rights. The first covenant contains the following economic, social and cultural rights.
- q. Right to work.
- r. Right to social security.
- s. Right to equal pay for equal work.
- t. Right to leisure.
- u. Right to protection of motherhood and childhood.
- v. Right to education.
- w. Right to protection of moral and material interest.
- x. Right to strike.
- y. Right to form unions.
- z. Right to marriage and family.
- (aa) Right to maternity benefits
- (bb) Right to minimum standard of living
- (cc) Right to culture life

Raja Narendra Nath and A.T. Paul said that fundamental rights should be included in the draft constitution report which was published in (1945). The sapru committee recommended that the declaration of fundamental rights was absolutely necessary, for not only giving assurances and guarantees to minorities. The Sapru committee envisaged two kinds of rights, namely.

(a) Justifiable rights (b) non justifiable rights. However, the committee did not suggest a list of fundamental rights to be integrated in the future charter. The issue was left to be decided by the constitution making body.

The Indian constitution has classified fundamental rights into two categories (1) fundamental rights which are available to citizens only; (2) Fundamental rights available to all persons residing within the territory of India for the time being and subjected to its jurisdiction. The rights secured are the necessary consequence of the declaration contained in the preamble to the constitution. These rights have been declared as sacrosanct, inalienable. These rights are the bedrock of their political conscience, while the majority considers them as guarantees for their way of life.

The fundamental rights have been revised for many reasons. Political groups have demanded that the right to work, the right to employment, grants in old age, and similar rights be enshrined as constitutional guarantees to address issues of poverty and economic insecurity though there are provisions in Directive Principles of State policy. The right to freedom and personal liberty has number of limiting clauses and has been criticized.

The provision of acts like the Maintenance of Internal Security Act, (MISA) and the National Security Act (NSA) are a means of countering the fundamental rights because the functions of excessive powers may be done with the aim of fighting internal and cross border terrorism and political violence, without safeguards for civil rights. The phrases, "security of state", "Public order" and "Morality" are of wide implications. The freedom to assemble peaceably and with out arms is exercised, but in some cases, these meeting are broken by the police through the use of non state methods.

Article 21 of Indian constitution and different dimensions of right to life. Article 21 can be claimed merely when a human being is deprived of his "life" of "personal" liberty" by the "State" as defined by article 12. It has the procedural requirement, as it is also substantive right of citizen.

The rights secured by Article 21 are obtainable to every person, civilian or non- citizen. foreign person can claim these rights. However, Article 21 applies only to natural person. It has no application to corporate bodies. Liquidation of a society cannot, thus be equated to deprivation of life or personal liberty.

The then chief justice A.N. Ray believed that Article 21 was the only repository right to life and personal liberty. This view was also endorsed by Hon'ble justice chanderachud and he said that it is the right of the human being liberty, nothing other. In this connection justice Bhagwati made observation that the principal of rule of law is enacted in Article 21 and principle conferring a right of personal liberty, independent of and apart form that Article.

In other words, those who are called upon to deprive other persons of their personal liberty will have to observe the form and rules of the law strictly and scrupulously. The word 'laws' has been used here to mean state made or enacted law and not an equivalent of law in the abstract of general sense.

The parliament has power to change the procedure by enacting a law by amending it and when the procedure is so changed it becomes the procedure established by law. Deprivation of above rights is prohibited by the Article 21 'except according to procedure established by law. The Article 21 thus embodies very vital right and it is the responsibility of courts to develop the true importance of the concept of life mentioned in it the right to life built-in the right to livelihood, but the right to livelihood is not treated when part of the legal 'right to life' the easiest method of depriving a individual of his right to life would be to leave without him of his means to live to the point of abrogation. Deprive someone of his right to livelihood and you shall have disadvantaged of his life.

Constitution of India provided that all the citizens should live in a proper environment which should be his free from the danger of disease and all people should live in the clean and green houses because only a healthy body has a healthy mind. These constitutional provisions empowered the centre and state governments to take legislative and administrative measures to protect, preserve and improve the quality of environment. An analytical study of such legislative measures which have direct or on indirect bearing on the environment reflects that most of this legislation should not be violated in India. Everybody has a right to clean water, clean environment, noise free atmosphere, right to livelihood, protection of life etc. If someone who is disadvantaged of his right to livelihood except for according to immediately and fair rule as a set of actions, water, food, medicines,, shelter, clothes and the ability to obtain above requirements. It is an essential requirement for a human being. Deprivation of livelihood would not merely bare the life of its result and meaning but it would make life impossible to live.

However, if a person is deprived of such a rights according to process recognized by law which much be fair, just and sensible and which in the larger attention of people, the appeal of deprivation of right to livelihood. Under Article 21 is unsustainable in, *chameli Sing v. state of Uttar Pradesh*

(XXVI). it was held by the Hon'ble supreme court that when the land of a land owner was acquired by state in accordance with the procedure laid down in the relevant law of acquisition the right to livelihood of such landlord even while unfavourably affected his right to living is not violated, acquires land in exercise of its power of well-known area for a public. Similarly, there should be right to proper clothing, shelter, food and housing. Road, footpath and public lanes should not be misused; penalty of death should be avoided to the maximum possible extent. People should live respectable life with dignity, reputation with development. Right to information should be available to all. There should be social security and protection to the family. Health and medical assistant should be provided free of cost by the government nobody should have the right to commit suicide. Hanging should be banned. According to Justice P.N. Bhagwati: "Death penalty is barbaric and inhuman in its act, mental and physical upon the condemned man and is positively cruel. It psychologically affects on the prisoner in the death row is disastrous.

So far as personal liberties are concerned, all citizens should have right to liberty and privacy, there should not be telephone tapping of any body, people should get treatment for dreadful diseases and doctor' should tell the truth to the patient. There should be medical test for diagnosis. There should be right to privacy of women's right to make reproductive choices of children as family wants to have on the pattern of western countries, India has also allowed adult boys and girls to live in relationship with out marrying each other. India is a free democratic and secular country and therefore any, person who has attained majority, has the right to live freely with anyone. The Allahabad high court in *Jyoti v. State of U.P.* ruled that a person, he or she, who has attained stationed 18 Years of age, being major according to section 3 of the Indian Majority Act, 1875, was deemed to under stand his/her welfare, he/ she liked and live with anybody.

Similarly every convicted should have right to speedy trial, right to bail and right against hand-cuffing and solitary confinement. Citizens should have right to travel abroad or contribute an Article to a book. All these rights are covered under Article 21 of the Indian Constitution.

The Right to life and constitutional remedies in India says that Right to life has many dimensions such as right against exploitation and citizens should leave honourable life. It can be held that 'equality by law' is of English origin and the second expression have been taken from the American constitution. Both these expressions aim at establishing what is called "of equal status" in the preamble of the constitution, "equal protection of the law" is a more positive concept implying equality if treatment is equal. Articles 14 of constitution say that there must be "equality before law". It has following types:

1. Equality Before law or equal protection of laws (Articles 14)
2. Prohibition of Discrimination Against Citizens (Articles 15)
3. Equality of opportunity in public employment (Articles 16)
4. Abolition of "untouchability" (Article 17)
5. Abolition of titles (Articles 18)

The principle of equality before law thus means thus means no that the same law should not apply to everyone but that a law should deal alike with all in one class that there should

be an equality of treatment under equal circumstances. It means "that equals should not be treated equals and unlike should not be treated unlike. Likes should be treated unlike". There should not be any discrimination among the citizens on the basis of religion, race, caste, sex, place of Birth, etc. under article 51. All should be provided equal opportunity before law. Adherence to the rule of equality in public employment is a feature of our constitution and the rule of law is its core, the court cannot deviate itself from making an order in consistent with Articles 14 and 16 of the constitution.

The unsociability has been prohibited under the constitution. Abolition of titles was also ordered protective discrimination. Following types of fundamental freedoms have been allowed under Article 19.

1. Freedom of speech and expression;
2. Freedom to bring together quietly and without arms.
3. Freedom to variety associations or unions or cooperative societies.
4. Freedom to shift freely during the territory of India.
5. Freedom to live in and settle in any part of the territory of India; and
6. Freedom to preparation any occupation or to carry any career, trade or business.

The constitution also allows the employees to have their unions, 'associations, make commercial advertisement, Choose medium of instructions, freedom of press and right to listen, perform in Dramas and debates, freedom of information under certain guidelines. There is statutory body of election commission to conduct elections, right to fly the national flag etc.

There is freedom of assembly under article 19 for general purpose; there is freedom of movement, freedom residence, profession, occupation under article 19. There is protection of in respect of conviction for offences under article 20. The protection contained an article 20 is available to all persons, citizens or non citizens. The term person in article 20 includes a corporation which is accused, prosecuted convicted or punished for an offence. There is right against exploitation under article 23, compulsory service for public purpose, safeguards against arbitrary arrest and detention, employment of children. The purpose of all these rights and freedom is to ensure that there is no excess to any citizen and all should live a healthy life. Article 21 of the Constitution is called heart of all fundamental rights. Framers of the Indian Constitution have ensured that there should not be violation of fundamental rights. To improve upon the situation, they have incorporated a set of justiciable rights in the constitution of independent India. Right to life and personal liberty is the most important justifiable fundamental right incorporated under article 21 of our constitution. To any civilized society, there can be no attributes more important than the life and personal liberty of its member that is evident from the Paramount position given by the course of article 21 of the Constitution. The right to life guaranteed by article 21 of the Constitution of India is not only a fundamental right. Even if right to life is a essential human right, every one the right to life is necessary fundamental of all the other rights, while word „life“ has not been definite in the constitution and so we must to turn to Judiciary for its inter interpretation.

The meaning and the content of the word „personal liberty“ under article 21 went for discussion before Supreme Court

in *A.K Gopalan v. State of Madras* and the supreme court chose the narrower interpretation of the word "Personal Liberty" and confined it to the protection of freedom for the person against unlawful retention. The decision of the Supreme Court in this case was based on the definition of Liberty given by Dicey. The majority of judges laid Emphasis upon the word „personal“ in the expression personal liberty and the Crux of this view were to be found in the judgment of justice Shastri. It was observed by the Shastri J. that whatever may be the "Generally Accepted Connotation" of the expression „personal liberty“ it is under article 21 in a sense which includes the freedoms dealt within the article 19.

Findings

In my concern, various judgments of Supreme Court of India regarding the expansion of fundamental rights in Article 21 and its large impact of role of judiciary in expanding its dimension.

- a. There are so many provisions of the Indian Constitution to interpret the Article 21 and this is good play role of various judgements in judicial review of expansion of right to life
- b. Fundamental rights provide all basic rights to the citizens of India without which life of the common people could have been useless and meaningless.
- c. Right to life and public Liberty is the very basis of fundamental rights and question of the other rights could not have arise on.
- d. There is a need to expand the right to life and liberty because human beings can lead a meaningful life if other human needs are fulfilled. There should be provision for good food, pure water, good clothing, shelter, and pollution free life to all.
- e. Human beings are made of flesh and blood and need health facilities, medicines, pure environment, free from dust, smoke, voice etc.
- f. Purpose of fundamental rights is to ensure that every citizen is able to enjoy religion get education adopt any profession, live his own life, without any distinction of caste, Creed, sex, color, authenticity language etc.
- g. Purpose of fundamental right is also to observe to there is no breach of the basic rights of anybody otherwise state; Centre Government can snatch fundamental rights of any person.
- h. Fundamental rights are justiciable and the victim can knock the door of the court for fundamental rights if anybody's rights are breached or withdrawn or anybody is deprived of his fundamental rights.
- i. There is a difference between fundamental rights and Directive principles in as much as Directive principles are not justiciable and one cannot go to the court for getting his Directive principles restored to him. These are of advisory nature and it is for the centre and State Governments to implement them in the interest of welfare of people and to fulfill the dream of Mahatma Gandhi.
- j. In India all three organs of the government such as legislature, executive, judiciary are working independently and whenever there is attack on the fundamental rights of a person Judiciary comes to its rescue to restore the same.

Suggestions

Much have been said and discuss about right to life in the presiding paragraphs of the present thesis but there are certainly some genuine suggestion to be made in a respect of the present study.

1. NGO should very good play role to protect the right to life.
2. Indian judiciary is indulging extreme activism in various important national matters to show that it is the most important organs where as it should give its words edicts according to the aspiration of the people and also in the spirit of other two organs of the government.
3. It is said that justice delayed is justice denied. Lacks of petition and civil suits are pending before the apex court and high courts in India. Keeping in a view the urgency with which these should be settled, these courts need to decide the cases with in a time frame.
4. Government should appoint more judges so that judges are not over burdened with the cases.
5. Indian Constitution has defined the powers and scope of all the there organs and each should not over step there jurisdiction to enter in the area of other organs.

Conclusion

The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the State. The right to life is a moral principle based on the belief that a human being has the right to live and, in particular, should not be killed by another human being. The concept of a right to life arises in debates on issues of capital punishment, war, abortion, euthanasia, justifiable homicide and, by extension, public health care. Right to life and personal liberty is most precious, sacrosanct inalienable and fundamental of all the fundamental rights of citizens. It is one of the most essential basic human rights in a democratic state. It is the backbone of human right movement both at national and international level. The Human Rights are a direct progenitor of doctrine of natural law Today, the right to life and personal liberty does not mean mere physical existence or being medically alive, but it includes right to essential means and facilities which make life worth living with comfort and dignity. An atmosphere where a person can grow physically as well mentally without fear and restrictions. Right to life and personal liberty does not means mere animal existence, but a healthy life with dignity and honour those limits and faculties by which life is enjoyed. The provision equally protects the The right to life guaranteed by Article 21 of the Constitution of India is not merely a fundamental right, it is a basic human right. Justice H.R. Khanna rightly observed that sanctity of life and liberty was not something new when the Constitution was drafted. It represented a facet of higher value which mankind began to cherish in its evolution from a state of truth and claw to a civilized existence. Likewise, the principle that no one shall be deprived of his life arbitrarily within the territory of law was not the gift of the Constitution. It was a necessary coronary of the concept relating the sanctity of life and liberty; existed and was in force before the coming into force of the constitution. Judiciary is playing crucial role to interpret various rights, through different provisions as a result of cases filed by the

people in the supreme court of India or High Courts of states or through writs. Judiciary is the guardian of fundamental rights of the people. It is pertinent to mention here that the right to life and liberty stands very much crucial for all the citizens of India and it enables the people to lead a happy, prosperous and respectful, honorable and quality life without any fear or fervor to anybody. This research paper is very important and can open flood gates for future generations of researchers to further brain storm on the issue.

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