

ROLE OF JUDICIARY

IN EXPANDING THE

CONSTITUTIONAL VISION*

* *Article by Justice Mukul Mudgal, Delhi High Court.*

Research assistance by Nitin Mishra

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Introduction*

The Constitution of India is not an end but a means to an end, not mere democracy as a political project but a socio-juridical process which opens up through a humanist, radical social order, and the opportunity to unfold the full personhood of every citizen. The nation was committed to a socio economic revolution not only to secure the basic needs of the common man and economic unity of the country but also to bring about a fundamental change in the structure of Indian society in accordance with the egalitarian principles.

The Constitution was framed by its makers keeping in view the situations and conditions prevailing at the time of its making; but being a permanent document, it has been conceived in a manner so as to endure in situations and conditions which might continue to arise in future. The words

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and expressions used in the Constitution, in that sense, have no fixed meaning and must receive interpretation based on the experience of the people in the course of working of the Constitution. ⁱ

Therefore, while interpreting the Constitution one must consider not merely logic and context of the Constitution, but the history of the nation, its customs, and accepted standards of right conduct. All this cumulatively shapes the progress and are the factors which singly or in combination should shape the growth of constitutional law. The social interest served by certainty must then be balanced against the social interest served by equity and fairness or other elements of social welfare. On this aspect, Justice Holmes's words on interpretation of the American Constitutionⁱⁱ are apt and prophetic—

“When we are dealing with words that are also a constituent Act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our

whole experience and not merely in that of what was said a hundred years ago.”

On the same lines are the words of Bose, J., with reference to the Indian Constitution—

“They are not just dull, lifeless words, static and hidebound as in some mummified manuscript, but living flames intended to give life to a great nation and order its being, tongues of dynamic fire potent to mould the future as well as guide the present. The Constitution must, in my judgment, be left elastic enough to meet from time to time the altering conditions of a changing world with its shifting emphasis and differing needs.”

In interpretation of the basic law of the country like a Constitution, the attitude adopted by the Court of Justice of the European Communities in construing the EEC Treaty and Community Legislation should be a guide. The court applies teleological rather than historical methods of interpretation. It seeks to give effect to what it conceives to be the spirit rather than the letter. It views the communities as living and expanding organisms and the interpretation of the provisions of the treaties as changing to meet their growth.

In this process of interpretation, the court is more concerned with weighing the competing values of a free society. In the course of rendering decisions, judges are required to aim at accommodation or balance of society's conflicting interests. The proponents of this principle of interpretation maintain that

“Balance should be struck so as to maximize as many interests as possible, consistent with the political and ethical postulates that form the society's principle that is the collection of commonly held values and traditions that make for a community. In a democratic society, governed by the Constitution, such values would presumably include equal opportunity, fair play, private property, decentralization and local control, democracy and individuality, among others”ⁱⁱⁱ.

This concept of interpretation has been a subject of criticism and disagreement among judges themselves. Justice Douglas of America in the case of *Saia v. New York* 14 (US p. 562) observed—

“Courts must balance the various community interests in passing on the constitutionality of local regulations of the character involved here.”

In a country like India with diverse cultural and geographical attributes, balancing of interests of the various communities becomes significant as a procedure to accommodate the interests of one community may hamper the growth of another community. Practitioners of interest-balancing have repeatedly affirmed that judges' decisions ought to mirror the society's values, thus expanding the constitutional vision in accordance with recent trends of our social, economic and political values.

Constitutional Provisions and Judicial Interpretation

The Constitution is a supreme law governing conduct of government and semi-governmental institutions and their affairs. It regulates inter se relationship of the Government and the people governed. It is not an ordinary statute enacted on a particular topic of legislation. The history of the Indian Constitution would show that apart from elected representatives of the people, in framing it, views of all sections of society and particularly of learned men with experience in political and social life were formally invited and considered. The Constitution is thus, a permanent document to endure for ages. The words and expressions in the Constitution have to be construed by not only understanding the mind of the framers but on the

basis of each generation's experience in relation to current issues and topics. A Constitution as the Indian Constitution, cannot comprehend, at the time of its framing, all issues and problems that might arise in its working in the times ahead. The Constitution, therefore, contains only basic tenets of governance. It contains habits and aspirations of people of that generation, but it is drafted in a way to realize those objectives for future generations.^{iv}

The immortal words of Justice Holmes — “Spirit of law has never been logic but it has been experience” apply with greater force to constitutional law. We have, therefore, to interpret the Constitution with regard to the framers' intentions, but more with the aid of our own experiences on current issues. Precedents are an aid to the construction of the Constitution, but more important for guidance in interpreting a document regulating human affairs are basic “human values” which we have imbibed through our religion, culture, customs, philosophy and way of life. In the absence of any other aid, we have to test the constitutional provisions on the basis of fundamental human values as have developed by our tradition, culture and philosophy.

Framing a Constitution and working it are two different processes. Founders framed it not only for India as it existed, when it attained freedom

from the British rule, but for the India of the future to guide its people from generation to generation. With all the best intellect, talent and foresight, the framers could not have envisaged all situations and problems that might be faced in future in the working of the Constitution. Ours is a comparatively new democracy with no traditions in constitutional principles of our own, except those which we have inherited from the British. We are, therefore, required to develop our own traditions suited to our social conditions, morals and thinking. In this stupendous and difficult task of working of the Constitution, the higher courts have an important role to play. The Constitution nowhere speaks of the theory of balance of power but in its structure and scheme, the existence and spheres of functioning of the three organs — legislature, executive and judiciary, are clearly perceptible. This balance of power in the three organs has to be maintained for the common good of a citizen or individual. A common citizen or individual is the centre or focal point of our Constitution. It is apparent from the “preamble” of the Constitution which among other objectives assures “the dignity of the individual”. In interpreting the Constitution, this common man, who is at the centre and focus of all activities, described by Churchill as “the little man with a little pencil with a little ballot to vote”, should not be forgotten.^y

The Father of the Nation — Mahatma Gandhi — has given us a talisman or a test to judge our social and individual actions which should also guide the interpreters of the Constitution and those working it. The advice runs thus:

“When you are in doubt, think of the most weak and deprived member of society and consider whether the line of action you propose to take is going to benefit him in any manner and to what extent”.

All the principles of interpretation which lead to the protection and enhancement of the dignity of an individual should be resorted to. Amongst individuals, those who are the weakest and the most deprived, have to be given primacy.

The Supreme Court in several cases has adjudicated upon the constitutional provisions so as to expand the vision envisaged by our constitutional makers to suit to the changing socio-economic and political needs of our country.

I. Preamble

The conscience of our Constitution speaks through its Preamble and the dynamics of its goal is spelt out in Article 38. It is appropriate to set our sights right, and so as to distill the Preamble first which is a solemn resolve by the People of India to constitute a Sovereign, Secular, Socialist Republic and to secure certain cherished human rights to “ all its citizens ”. They are, inter alia, Justice, Social, Economic and Political. Every expression here is a profound commitment and the very name of our Republic, with its luminous adjectives, has a deeper meaning than has been realized amidst the sound and fury of politics or semantic niceties of legalistic. Our first Prime Minister Pandit Jawaharlal Nehru long ago said:

“The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. 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 suffering, so long our work will not be over”

In this context, when the attempt of the interpreter is to understand the “spirit” rather than the “letter” of the Constitution, importance of the preamble of the Indian Constitution deserves to be highlighted. Normally, a preface or a preamble of a statute is not to be read into the contents of the

statute. At best, it can be read as an aid to construction of the contents of the statute. This, however, should not be the approach of the courts so far as the preamble of the Constitution is concerned. The preamble of the Constitution like the preamble of any statute “furnishes the key to open the mind of the makers of the Constitution more so because the Constituent Assembly took great pains in formulating it so that it may reflect the essential features and basic objectives of the Constitution”. Courts have repeatedly taken help of the preamble of the Constitution to understand the provisions contained therein. The majority judgment in cases of Kesavananda^{vi} and Minerva Mills Ltd.^{vii} strongly relied upon the preamble in reaching the conclusion that power of amendment conferred by Article 368 was limited and did not enable Parliament to alter the basic structure or framework of the Constitution.

II. Secularism

The Supreme Court expressed its views on the secular nature of the Constitution for the first time in Sardar Taheruddin Syedna Saheb v. State of Bombay^{viii} wherein Ayyangar, J., explained:

"Articles 25 and 26 embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history. The instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasize the secular nature of the Indian democracy which the founding fathers considered to be the very basis of the Constitution."

In *Kesavananda Bharati v. State of Kerala* the Supreme Court reiterated that secularism was a part of the basic structure of the Constitution. Enumerating the basic features of the Constitution, Sikri, C.J. named "secular character of the Constitution" as one of them. Shelat and Grover, JJ. stated that "secular and federal character of the Constitution" were among the main ingredients of the basic structure enumerated therein. Jaganmohan Reddy, J., stated clearly that "Liberty of thought, expression, belief, faith and worship" could not be amended at any cost as they are part of the basic features of the Constitution.

Though in *Kesavananda* the Court in no uncertain terms laid down that secularism forms part of the basic structure of the Constitution, in *Ahmedabad St. Xaviers College Society v. State of Gujarat*^{ix} it indicated that it was uncertain about its views on the subject. Matthew, J. and Chandrachud, JJ. (as he then was) felt that it was only by implication that

the Constitution envisaged a secular State. They gave a new dimension to the concept in the constitutional context :

"The Constitution has not erected a rigid wall of separation between the Church and the State. It is only in a qualified sense that India can be said to be a secular State. There are provisions in the Constitution which make one hesitate to characterize our State as secular. Secularism in the context of our Constitution means only an attitude of live and let live developing into the attitude of live and help live."

Apparently this view implied a contradiction between the judicially constructed concept of secularism and the concept evident in the text of the Constitution. The judgment also went on to lay down a modern Indian concept of secularism.

In the landmark judgment of *S.R. Bommai v. Union of India*^x the Court in no uncertain terms declared that secularism is part of the basic structure. But the complication arose in formulating a definition. Ahmadi, J., stated that secularism is based on the "principles of accommodation and tolerance". In other words, an espousal of a "soft secularism".

III. Socialism

Expression 'socialist' was intentionally introduced in the Preamble by the Constitution (Forty-second amendment) Act, 1976. The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is along march but during this journey to the fulfilment of goal every State action whenever taken must be directed, and must be so interpreted, as to take the society one step towards the goal.^{xi}

In the case of Samatha v. State of A.P.^{xii}, Justice K. Ramaswami

observed as under:

“Establishment of the egalitarian social order through rule of law is the basic structure of the

Constitution. The Fundamental Rights and the Directive Principles are the means, as two wheels of the chariot, to achieve the above object of democratic socialism. The word “socialist” used in the Preamble must be read from the goals Articles 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate articles seek to establish, i.e., to reduce inequalities in income and status and to provide equality of opportunity and facilities. Social justice enjoins the Court to uphold the Government’s endeavour to remove economic inequalities, to provide decent standard of living to the poor and to protect the interests of the weaker sections of the society so as to assimilate all the sections of the society in a secular integrated socialist Bharat with dignity of person and equality of status to all.”

The Supreme Court while interpreting the concept of Socialism speaking through Gajendragadkar, J. in Workers of Gold Mines case^{xiii} summed up the response of an aware court:

“Social and economic justice have been given a place of pride in our Constitution and one of the directive principles of State policy enshrined in Article 30 requires that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice—social, economic and political—shall inform all the institutions of national life. Besides, Article 43 enunciates another directive

principle by providing that the State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The concept of social and economic justice is a living concept of revolutionary import, it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare State.”

IV. **Article 14-18 – Right to Equality and Gender Justice**

In the revolutionary case of *Vishaka v. State of Rajasthan*^{xiv}, at page 249 Right to equality was expanded to address the grievance faced by the working women in the country:

“Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass

all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in *Minister for Immigration and Ethnic Affairs v. Teoh* has recognized the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.”

The judgment of the Delhi High Court in the case of *Hotel Association of India vs. Union of India* in consonance with the law laid down in *Vishaka's* case envisage the role of the judiciary to expand the constitutional vision in areas of gender justice and equality. The rights of women working in hotels was upheld and they were granted equal status as their male counterparts. The following judgements of the Hon'ble Supreme Court also envisages the role of judiciary in expanding the constitutional vision.

- (i) *Air India v. Nargesh Mirza and Ors.*^{xv} wherein it was held that fixing of a lower retirement age for the air hostess, in comparison with their male counterparts is violative of the principle of equality of employment enshrined in Article 16(1) of the Indian Constitution.

- (ii) *Randhir Singh v. Union of India & ors.*^{xvi}, wherein it was held that 'Equal Pay for Equal Work' is not a mere demagogic slogan but a constitutional goal capable of attainment through constitutional remedies by the enforcement of constitutional rights.

- (iii) *D.S. Nakara and Ors. v. Union of India*^{xvii}, wherein it was held that Article 39 (d) enjoins a duty to see that there is equal pay for equal work for both men and women.

- (iv) *Makinnon Mackenzie and Co. Ltd. v. Audrey D'Costa*, wherein the Court adopted the principles incorporated in the Equal Remuneration Convention, 1951 to which India is a party, to hold that the act of paying lower emoluments to the

lady stenographers than their male counterparts was violative of the Equal Remuneration Act, 1976.

V. Article 19 – Right to freedom of speech and expression.

The Supreme court has in numerous cases deduced fundamental features which are not specifically mentioned in Part III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. For example, freedom of information has been held to be implicit in the guarantees of freedom of speech and expression. In India, till recently, there was no legislation securing freedom of information. However, the Supreme Court by a liberal interpretation deduced the right to know and right to access information on the reasoning that the concept of an open Government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19 (1).^{xviii}

VI. Article 21 – Right to Life and liberty and its Liberal Interpretation

The freedom and flexibility in interpreting the Constitution is conspicuously present in decisions of the Supreme Court right after the case of *A.K. Gopalan v. State of Madras*^{xix}. Article 21 of the Constitution provides: “No person shall be deprived of his life or personal liberty except according to procedure established by law” which was originally understood, as interpreted in Gopalan case to provide merely that no one can be deprived of such right by executive action unsupported by law. In decisions of the Supreme Court in *Rustom Cavasjee Cooper v. Union of India*^{xx} and *Maneka Gandhi v. Union of India*^{xxi} the approach in *Gopalan* case was disregarded. By adopting a different approach to Article 21 of the Constitution, which is a very valuable and prestigious right of a citizen, the “procedure established by law” has been construed to mean a “procedure which is just, fair and reasonable” and therefore, valid. Indirectly, thus, contrary to the intention of the framers “due process clause of the American Constitution” was read into Article 21 with the aid of the equality clause in Article 14 of the Constitution. Thus, expanding the scope and ambit of Article 21 to cover in it the rights which are not expressly enumerated, the

Supreme Court has interpreted the word "life" to cover in it "all aspects of life which go to make a man's life meaningful, complete and worth living. It will also cover his tradition, culture, heritage and health. Thus, all the rights enumerated above were so derived from Article 21, mainly by a liberal reading of the directive principles in or with Article 21 and thereby, in effect, the directive principles in Part IV of the Constitution have been rendered enforceable even though Article 37 provides that these principles shall not be enforced by any court .

In earlier decisions of the Supreme Court, reference to the Debates of the Constituent Assembly was made to support a narrow construction of Article 16(3) of the Constitution, but in the later decisions, the Court has held that Debates or even the speech of the Chairman of the Constituent Assembly Dr. B.R. Ambedkar, could not be treated as conclusive or binding on the Court because the framers' intention has to be ascertained on the basis of the purpose of giving a meaning to the provisions in its application to the present situation.

The ratio in *A.K. Gopalan's* case where the Court, by a majority, adopted a restrictive construction and ruled out the play of fundamental rights for anyone under valid detention, was upturned in *R.C. Cooper's* case. In *Maneka Gandhi*, the Court has highlighted this principle in the context of Article 21 itself.

In *Kharak Singh's*^{xxii} case. Subba Rao, J. quoted Field, J. in *Munn v. Illino's* (1877) 94, U.S. 113, to emphasise the quality of life covered by Article 21 :

“Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. A dynamic meaning must attach to life and liberty.”

The Hon'ble Supreme Court in the case of *Sunil Batra v. Delhi Administration*^{xxiii}, laid down the constitutional mandate for the protection of the prisoners in the country.

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“The martyrdom of Gopalan and resurrection by Cooper paved the way for Maneka [1978] 1 S.C.R. 248 where the potent invocation of the rest of Part III, even after one of the rights was validity put out of action, was affirmed in indubitable breadth. So the law is that for a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. The omens are hopeful for imprisoned humans because they can enchantingly invoke Maneka and, in its wake Articles 14, 19 and even 21, to repel the deadening impact of unconscionable incarceratory inflictions based on some lurid legislative text or untested tradition. As the twin cases unfold the facts, we have to test the contentions of law on this broader basis.

'Prisons are built with stones of Law' (sang William Blake) and so, when human rights are hashed behind bars, constitutional justice impeaches such law. In this sense, courts which sign citizens into prisons have an onerous duty to ensure that, during detention and subject to the Constitution, freedom from torture belongs to the detenu.”

In Unni Krishnan, J.P. v. State of A.P.,^{xxiv} the following rights were held to be covered under Article 21:

1. The right to go abroad. Satwant Singh Sawhney v. D. Ramarathnam A.P.O., New Delhi.
2. The right to privacy. Gobind v. State of M.P.^{xxv} In this case reliance was placed on the American decision in Griswold v. Connecticut.
3. The right against solitary confinement Sunil Batra v. Delhi Administration.^{xxvi}
4. The right against bar fetters. Charles Sobraj v. Supdt. Central Jail.^{xxvii}
5. The right to legal aid. M.H. Hoskot v. State of Maharashtra.^{xxviii}
6. The right to speedy trial. Hussainara Khatoon v. Home Secretary, State of Bihar.^{xxix}
7. The right against handcuffing. Prem Shankar Shukla v. Delhi Administration.^{xxx}
8. The right against delayed execution. T.V. Vatheeswaran v. State of T.N.^{xxxi}
9. The right against custodial violence. Sheela Barse v. State of Maharashtra.^{xxxii}

10. The right against public hanging. *A.G. of India v. Lachma Devi*.^{xxxiii}
11. Doctor's assistance. *Paramanand Katra v. Union of India*.^{xxxiv}
12. Shelter. *Shantistar Builders v. N.K. Totame*.^{xxxv}

It was further observed that if really Article 21, which is the heart of fundamental rights, has received expanded meaning from time to time there is no justification as to why it cannot be interpreted in the light of Article 45 wherein the State is obligated to provide education up to 14 years of age, within the prescribed time-limit.

VII. Articles 25-30 – Constitutional Ideal of Indian Society and Citizenship.

“The provisions contained in the group of Articles 25 to 30 are a protective umbrella against the possible deprivation of fundamental right of religious freedoms of religious and linguistic minorities.”

The Supreme Court has evolved the principle that India is a world in miniature. The group of Articles 25 to 30 of the Constitution, as the historical background of the partition of India shows, was only to give a guarantee of security to the identified minorities and thus to maintain the unity and integrity of the country. It was felt necessary to allay the apprehensions and fears in the minds of Muslims and other religious, cultural and educational rights. The Constitution through all its organs is committed to protect religious, cultural and educational rights of all. Articles 25 to 30 guarantee cultural and religious freedoms to both majority and minority groups. The ideal of a democratic society, which has adopted minority and so-called forward and backward classes. The constitutional ideal, which can be gathered from the group of article in the Constitution under the chapters of fundamental rights and fundamental duties, is to create social conditions where there remains no necessity to shield or protect rights of a minority or majority. The Constitution has accepted one common citizenship for every Indian regardless of his religion, language , culture or faith.^{xxxiii}

VIII. Article 32 – Right to Constitutional Remedies.

Article 32 has made the Supreme Court the sentinel on the qui vive with regard to protection of fundamental rights. This Article is a special constitutional remedy, made in itself a fundamental right, which does not exclude the right of an aggrieved party to approach the High Court, under Article 226, for enforcement of any legal right including any fundamental right.

The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

- a) To ensure that all persons are able to live securely under the rule of law;
- b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- c) To administer the law impartially among persons and between persons and the State.

There are innumerable cases where the Supreme Court has even issued directions despite the fact that the field is covered by some statute or subordinate legislation. Such directions issued are clear pointers to show that when a question involving the greater public interest or public good, including enforcement of fundamental right arises, the Supreme Court bestowed enormous consideration to public interest. Such directions have more often than not been issued where the question involved relates to enforcement of a human right or environmental aspects. Interpretation and application of constitutional and human rights has never been limited by the Supreme Court only to the black letter of law. Expansive meaning of such rights has all along been given by the courts by taking recourse to creative interpretation which led to creation of new rights.^{xxxiv}

However, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore the directive principles of State Policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.^{xxxv}

CONCLUSION

The supremacy of the rule of law symbolized by the Supreme Court and the High Courts in the country has strengthened the sense of justice and the resistance to the arrogance of power. Today it is possible for any man, small or big, to move the court and seek redress. Likewise, wherever and whenever an injury is inflicted the law can be invoked and the writ of the court will run in redressal. Enforcement through judgment of democratic legality, in its egalitarian connotation, is the domain of the judiciary. Articles 13, 21, 32, 226, 227, 133 to 136 and 141, among others, clothe the courts with wide jurisdiction to do justice under the law and to obliterate ultra vires legislation and executive action.

The rights of the citizen, including Fundamental Rights, are now enforceable through the court and even the election of the President or the Prime Minister, the Legislator or the Speaker can be challenged, if valid grounds exist, before the court. Welfare measures and their enforcement are supervised by the court. The handicapped human groups like dalits, religious minorities, workers, women and children, have received special consideration from the Constitution. The interpretation of legislation intended to benefit the weaker sector of society should receive a benign interpolation in the courts today. The State enacts many measures with a view to protect society from exploiters, smugglers and other economic offenders. The police power of the State is also exercised to protect the health and wealth of the nation. The courts try offenders regardless of their position and punish them sternly, if the crimes are grave. On the whole, in the progressive march of the nation the judiciary can and has played a dynamic role. More than all, a sense of security prevails that if wrong is done or Might negates Right there is a forum where relief can be sought and obtained without fear or favor.

Administrative action cannot be arbitrary, thanks to the canons of natural justice the court has invoked. Fair procedure is now obligatory even

in considering a passport or canceling a poll. Kerala v. Thomas, Manek Gandhi case, the Rajasthan Assembly dissolution decision and several similar rulings have made the court the directorate of dynamic justice which defends the weak but holds in leash authority when it exceeds into authoritarianism.

Workers' rights have often found a bastion in the court. Nationalization of essentials of community life has found the court defender of the common good. Exploitative money lenders have been held at bay by the court. Forest Nationalization and land distribution without payment of compensation has secured judicial sanction as a measure of agrarian reform.

The court has protected even prisoners against oppression. In India today there is a limited freedom for prisoners consistent with human dignity, thanks to the rulings of the Supreme Court like the case of Sunil Batra and Sobraj. Likewise, under-trials languishing in jails have awakened to their consciousness of rights with the explosion of releases on the intervention of the Supreme Court as per *Hussainara Khatoon*. Free legal services to the prisoner have been made a part of fair trial by the

Court, as a ruled by it in *Hoskot's* case. On the whole, our meaningful liberty and civilized life have a new status because of the impregnable fortress called the Judicature.

* Books and Cases Referred.

i The Indian Constitution – Cornerstone of a Nation – By Granville Austin.

ii Words & Phrases under the Constitution – By K. P. Chakravarti.

iii The Indian Supreme Court and the Constitution – By Mohammed Imam.

iv Justice Krishna Iyer's Essays on Constitution.

v Constitution of India : Selective Comments by P.M. Bakshi

vi AIR 1971 SC 1461.

vii AIR 1980 SC 1789.

viii AIR 1962SC 853, 871. It is known as 'the Ex-communication case'. The genesis of be traced to earlier decisions like *Nain Sukh Das v. State of U.P.*, AIR 1953 SC 384 held that constitutional mandate against religious discrimination extends to political

ix 1974 (1) SCC 717.

x AIR 1994 SC 1918.

xi D.S. Nakara v. Union of India (1983) 1 SCC 305.

xii (1997) 8 SCC 191.

xiii AIR 1958 SC 923

xiv 1997 (6) SCC 241.

xv AIR 1981 SC 1829.

xvi AIR 1982 SC 879.

xvii 1983 SC 130.

xviii M. Nagaraj v. Union of India (2006) 8 SCC 212.

xix AIR 1950 SC 27.

xx AIR 1970 SC 564.

xxi AIR 1978 SC 597.

xxii AIR 1963 SC 1295.

^{xxviii} AIR 1978 SC 1548

^{xxix} AIR 1979 SC 1369

^{xxx} AIR 1980 SC 1535

^{xxxi} (1983) 2 SCC 68

^{xxxii} (1983) 2 SCC 96

^{xxxiii} 1989 Supp (1) 721

^{xxxiv} 1989 (4) SCC 264

^{xxxv} 1990 (1) SCC 520

^{xxxvi} Bal Patil v. Union of India (2005) 6 SCC 690.

^{xxxvii} Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group (2006) 3 SCC 434.

^{xxxviii} Kerala Education Bill, 1957, Re. (AIR 1958 SC 956)