

**Constitutional precepts: social rights and modern challenges****Dipak Misra,***Judge, Supreme Court of India*

-----

**Introduction**

I am delighted to be a participant in this Conference which fundamentally is a celebration of constitutional democracy wedded to humanitarianism and human rights. I heartily congratulate Mr. Zorkin and his colleagues of the Constitutional Court of Russian Federation on this day that marks the completion of 25 years of the Constitutional Court. The Constitutional Court of Russian Federation has stabilized itself by its normative advancements and progressive interpretation which relate to constitutional control, constitutional governance and above all “Rule of Law”.

I have made an endeavour to focus on constitutional precepts: social rights and moral challenges. It is, in general, reflection of ideas prevalent in respect of the countries that are governed by democracy and, in specific, to the India, which has a largest organic written Constitution that meets the needs of the diversified society.

The draft of the Constitution of India had a beginning in international arena. I may initially stress on the human right law. The international human rights law recognizes a distinction between Political and Civil Rights on the one hand and the Economic, Social and Cultural Rights on the other. Article 56 of U.N. Charter constitutes a pledge by all members to achieve these purposes separately and jointly in co-operation

with the United Nations.<sup>1</sup> The economic and social rights embodied in the International Covenant on Economic, Social and Cultural Rights (ICES), are often referred to as ‘second generation’ rights in contrast to the traditional ‘first generation’ rights of the International Covenant on Civil and Political Rights(ICPR).<sup>2</sup>

Socio-economic rights provide protection for the dignity, freedom and well-being of individuals by guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions and other social goods.<sup>3</sup> Constitutionalizing socio-economic rights reflects the need to protect the most fundamental interests of individuals in having resources that are necessary for the exercise of their well-being.<sup>4</sup>

Nobel Laureate Amartya Sen built on the foundation of Economic and Social Rights [ESRs] to develop the “Capabilities Approach” to quality-of-life assessment that has been adopted by the Human Development Report of the United Nations Development Programme (UNDP). The capabilities approach stresses the ability to live a decent life, to be adequately nourished, and to have access to health care and shelter as essential preconditions to the enjoyment of any other rights and freedoms. Nearly all new democracies, and several established ones, have included some form of ESRs in their constitutions, committing their governments, at least formally, to the realization of minimum standards of Social welfare. Most also include a generic protection of “the right to life” or of “human dignity,” either in lieu of, or in addition to, a set of concrete ESRs. As one observer recently put it, “in the space of two decades, social rights have emerged from the shadows and margins of human rights jurisprudence.”<sup>5</sup>

### **Constitution of India and ESRs**

Indian Constitutional scheme for the realization of the socio-economic agenda comprises of both the justiciable Fundamental Rights as well as the non-justiciable Directive Principles. The judicial contribution to the synthesis and the integration of the Fundamental Rights and The Directive Principles in the judicial process of “constitutionising” social and economic rights has been crucial to the realization of the Directive Principles not only as a means to effectuate Fundamental Rights but also as source of law for a welfare state.<sup>6</sup> One delineates the enforceable Fundamental Rights and other the non-enforceable Directive Principles of State Policy (DPSP) as well as the powers and obligations of the State.

India was the first country to point to the importance of Socio-economic rights by incorporating some of them in their Constitution in 1949. They were however not incorporated as enforceable right but were contained in Part IV of their Constitution entitled “Directive Principles of State Policy”. The Supreme Court of India has relied extensively on these principles in the process of an expanded interpretation of the right to give the Constitution some socio-economic content.<sup>7</sup>

### **Minimum Core Principle as applied to Socio-economic Rights in India**

Many of the socio-economic rights have emerged as the content or the minimum core of certain guaranteed rights under the Indian Constitution. The United Nations Committee on Economic and Social Rights was the first international body to articulate the concept of “minimum core”, and has, since 1990 variously equated the minimum core with a presumptive legal entitlement, a non-derogable obligation, and an obligation of strict liability. It essentially implies a strategy, which indicates that the maximum gains are made by minimizing goals and trades rights inflation for rights-ambition, channeling

the attention of advocates towards the severest cases of material deprivation and treating these as violations by states towards their own citizens or even to those outside their territorial reach. India joined the United Nations from the very beginning and when the Universal Declaration of Human Rights (UDHR) was proclaimed, India was a party to this. It can be seen that the Indian Constitution and Indian Judiciary while interpreting the provisions of the Constitution adopts 'the minimum core' principle which has also resulted in a number of emerging socio-economic rights. For instance, it has been spelt out by the Apex Court of India what the "minimum core" of the right to health and food is, consistent with international human rights law, the 'obligations of conduct' and the 'obligations of result' of the Union of India, the States and the Union Territories.

### **Judicial Assessment of Socio-Economic Rights in India**

The Indian Supreme Court through many a judicial pronouncement has paved the path of realization of socio-economic rights and made them justiciable despite the fact that many of those rights still remain as Directive Principles of State Policy. Reference to some of the socio-economic rights incorporated in the Directive Principles of the State Policy in this connection is imperative. Article 47 provides for duty of the State to improve public health. Principles enshrined in Articles 47 and 48 are not pious declarations but for guidance and governance of the State policy in view of Article 37 and it is the duty of the State to apply them in various fact situations. Supreme Court has always recognized Right to health as an integral part of right to life under Article 21 of the Constitution. The Court has held that the right to life means a right to a meaningful life, which is not possible without having right to healthcare.<sup>8</sup> In *Paschim Banga Khet Majdoor Samity and Ors. v. State of West Bengal and Anr.*<sup>9</sup>, the Court not only

declared Right to health as a Fundamental Right and directed the State to pay compensation for the loss suffered but also directed to formulate a blue-print for primary health care with particular reference to the treatment of patients during emergency. Right to shelter or housing is also recognized as a socio-economic right which finds the expression in Article 11 of the ICESCR but finds no place in Part – III or Part – IV of our Constitution. However, this right has been recognized by this Court in several judgments by giving a wider meaning to Article 21 of the Constitution.

In *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.*<sup>10</sup>, the Court was considering the claims of evictees from their slums and pavement dwelling on the plea of deprivation of right to livelihood and right to life. In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Ors.*<sup>11</sup> the Court has opined that the State has the constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful.

Right to work does not oblige the State to provide work for livelihood which has also been not recognized as a fundamental right. However, as a welfare State Mahatma Gandhi National Rural Employment Guarantee Act, 2005 has been enacted and the said legislation guarantees at least 100 days of work in every financial year to every household whose adult members volunteer manual work on payment of minimum wages. Article 41 of the Constitution provides that State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, which right is also reflected in Article 6 of ICESCR. Article 38 of Part-IV

states that the State shall strive to promote the welfare of the people and Article 43 states that State shall endeavour to secure a living wage and a decent standard of life to all workers. The Supreme Court while observing that right to live with human dignity enshrined in Article 21 derives its life and breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Article 39 and Articles 41 and 42, held that it must include protection of the health and strength of workers, men and women and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

In *CESC Limited v. Subhas Chandra Bose*<sup>12</sup>, the Supreme Court signified the importance of socio-economic justice by observing that “Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers, the civil and political rights are “mere cosmetic rights”. Socio-economic and cultural rights are their means and relevant to them to realize the basic aspirations of meaningful right to life.

Right to reputation is treated as a right to life which is a fundamental right under Article 21 of the Constitution. Individual dignity has a constitutional identity. In a democracy the conflicting individual rights have surfaced and it is a challenge for the constitutional courts to balance it with social interest.

### **Legislative efforts to promote Social and Economic Rights**

The Parliament has enacted many legislations for promoting social economic rights since the year 2000. The first such enactment was the NREGA<sup>13</sup> enacted in the year 2005, as a promise for wage employment at a massive scale. In order to alter the basic approach to food safety<sup>14</sup>, a new legislation was enacted in the year 2006. The legislature has also given serious thought for necessity of Maintenance and Welfare of Parents and Senior Citizens<sup>15</sup> and brought out the new legislation on Statute Book in the year 2007. The Drug & Cosmetics Act, 1940<sup>16</sup> was amended in the year 2008 for enhancing the penalties to resolve the problem of spurious and adulterated drugs. In order to ensure the social security and welfare of the Unorganized Sectors Workers Social Security Act, 2008<sup>17</sup> has been enacted. In the year 2009, recognizing the need of importance of free and compulsory education for children between 6 and 14, Right to Education (RTE) Act<sup>18</sup> was brought out on the Statute book. In order to secure heavily subsidized food grains for two-thirds India's population, National Food Security Act<sup>19</sup> was enacted by the Parliament in the year 2013. The new Land Acquisition Act, 2013<sup>20</sup> was enacted in the year 2013 to ensure the protection of equivalent amount of cultivable wasteland for agricultural purposes in lieu of land acquired for ensuring food security. Protection of the Right to Livelihood, Social Security of Street Vendors and reorganisation of Urban Street Vending in the country have been given due attention by the Government of India by enacting the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2013<sup>21</sup>. A special enactment was passed by the Parliament in the year 2013 to deal with the Protection of Women against Sexual Harassment at the Work Place, 2013<sup>22</sup>.

Thus, in last three decades, India where democracy and rule of law prevail have laid immense stress on socio-economic rights and the emphasis has been given by the

legislative wisdom and progressive judicial thinking to fructify the idea of political right having foundation on equality. That, in a way, is the motto of constitutional conscience and realization of constitutional values.

I again congratulate the Constitutional Court of Russian Federation and earnestly wish that the constitutional rule on the foundation of “rule of law” shall remain prevalent as in times to come, the courts through interpretation of the constitutional norms and values will evolve new principles to meet the emerging necessities and challenges. It will not be an over-statement to say that longevity of the constitutional justice shall be eternal.

\*\*\*\*\*

## References

1. *Bhansali, S. R, International Covenants on Civil & Political Rights and Economic, Social and Cultural Rights , Law relating to Human Rights, 2013 p. 117-118*
2. *Macfarlane, L. J. Chapter 7: Economic and Social Rights, Theory and Practice of Human Rights. p. 107.*
3. *Social and Economic Rights, International Institute for Democracy and Electoral Assistance*
4. *Social and Economic Rights, International Institute for Democracy and Electoral Assistance*
5. *Jung, Courtney, Hirschil Ran & Rosevear, Evan, Economic and Social Rights in National Constitutions, American Journal of Comparative Law, 2014 :Vol. 62, p. 1044-1045.*
6. *Chp. Constitutional Provision For Socio-economic Change: Fundamental Rights and Directive Principles of State Policy, National Commission to Review the Working of the Constitution, May. 2001. P. 14-15*
7. *Yacoob, Zak. , Entrenchment and Enforcement of Socio-Economic rights*
8. *Consumer Education and Research Centre and Ors. v. Union of India and Ors. (1995) 3 SCC 42*
9. *(1996) 4 SCC 37*
10. *(1985) 3 SCC 545*
11. *(1997) 11 SCC 121*
12. *(1992) 1 SCC 441*
13. *The Mahatma Gandhi National Rural Employment Guarantee Act (NREGA), 2005*
14. *Food Safety and Standards Act, 2006*
15. *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*
16. *The Drugs & Cosmetics Act, 1940*
17. *Unorganised Sectors Workers' Social Security Act, 2008*
18. *The Right to Children to Free and Compulsory Education Act (RTE)*
19. *The National Food Security Act, 2013*
20. *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*
21. *The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2013*
22. *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*