

JUDICIAL DISCOURSE ON SOCIAL SECURITY VIS-À-VIS FUNDAMENTAL RIGHTS IN INDIA

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Abstract

This paper examines whether social security can be understood or recognized a basic right within India's constitutional framework. This examination, among other things, looks at the conclusion of many pronouncements issued by the Hon'ble Supreme Court of India in which the right to social security has been defined tacitly and expressly as an intrinsic aspect of life under Article 21 of the Indian Constitution.

Keywords: *Social Security, Fundamental Rights, Directive Principles, Right to Life, Employment and unemployment.*

Introduction

Ever since the First World War ended, there has been a growing recognition that global peace can only be achieved via social justice. The majority of contemporary constitutions include declarations of social and economic principles that highlight the state's obligation to work toward social security and to give its inhabitants access to jobs, education, and favorable working conditions, among other things. Programs for social security are frequently cited as the most effective of the welfare states of today. However, its long-term survival is now in question. According to research by the International Social Security Association, although older people's pension income is expected to decline due to globalization, their wealth and capital income will increase, somewhat increasing their overall purchasing power. Our founding fathers leaned heavily on their prior experience in addition to the global experience they had collected when crafting the Directive Principles and the Fundamental Rights. Human rights serve as the foundation for both the Directive principles and the Fundamental Rights. The democratic idea

proper, which upholds equality of rights and popular sovereignty, and the liberal notion of individual rights defending the person have been the primary forces behind the development of modern democratic philosophy. The steady expansion of the concept of equality from the political to the social and economic spheres has introduced the issues of social security and economic planning. The implementation and harmonization of these principles has been and continues to be the primary challenge of democracy.

Vision of Socio-Economic Change:

The Constitution's aspirational Preamble reflects its aim for socioeconomic development. The Preamble represents the goals and aspirations of a resurgent India. The founders of the Constitution aimed to combine the large country, with its enormous diversity of languages and creeds, under a single bond of constitutional justice founded on the great values of liberty, equality, fraternity, and justice. The framers demonstrated an unwavering respect for human dignity, an unwavering

dedication to equality and nondiscrimination, and an ongoing compassion for the poor and vulnerable. They made a brave endeavor to construct the constitutional foundations on the solid belief that all classes of society, adherents of all faiths, and notably the traditionally underprivileged, should all collaborate to fight for unity.

The Preamble, in its noble words, promised social, economic, and political justice; liberty of thought, expression, belief, freedom of faith and worship; equality of status and opportunity; and the promotion of fraternity, ensuring the individual's dignity as well as the nation's unity and integrity. In this context, the following observation from Dr. Bhim Rao Ambedkar is crucial to submit:-²³⁰

"It was, indeed, a way of life, which recognizes liberty, equality and fraternity as the principles of life and which cannot be divorced from each other. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things."

Socio-Economic Agenda:

The Constitution's framework for implementing the socioeconomic agenda includes both justiciable fundamental rights and non-justiciable directive principles. The judicial contribution to the synthesis and integration of Fundamental Rights and Directive Principles in the process of "constitutionalizing" social and economic rights has been critical to the realization of the Directive Principles, not only as a means of implementing Fundamental Rights but also as a source of laws for a welfare state. The Constitution mandates the protection and promotion of liberties, as well as the

provision of a reasonable standard of living for all citizens. It expresses a strong commitment to supporting the well-being of all citizens, regardless of caste, creed, community, or gender.

This chapter attempts to present some of the Supreme Court's most notable rulings on Social Security. In this context, the first observation stems from the Hon'ble Supreme Court of India's decision in *Keshavanada Bharti v. State of Kerala*,²³¹ in which the Apex Court expressly stated that the concept of social security is a constitutional imperative not only in India, but in all modern constitutions worldwide.

"The most modern Constitutions contain declaration of social and economic principles, which emphasise, among other things, the duty of the State to strive for social security and to provide work, education and proper condition for employment for its citizens."

Even before the decisions of *Keshavananda Bharti*, the Apex Court in *Golak Nath v. State of Punjab* viewed the conceptual framework of social security as a moral obligation of the state expressly enshrined under chapter IV of the Constitution of India in the following words.²³²

"Under the Indian Constitution, the right of a worker to a just wage that is sufficient to secure his family's living, or the right to unemployment relief or unemployment insurance, sick benefits, social security and other just amenities, in short, all those moral rights."

Furthermore, the issue of social security was extensively considered during the formulation of the Indian Constitution. The assembly's notable conclusion can be expressed in the following words:²³³

"Social security means social justice for all and there should be certain minimum adequate standard of living for all. There should not only be public health and public safety,

²³⁰ Chapter III – Fundamental Rights Directive Principles and Fundamental Duties, available at: <https://legallaffairs.gov.in/sites/default/files/chapter%203.pdf>

²³¹ AIR 1973 SC 1461

²³² (1962) 2 S.C.R. 762

²³³ Constituent Assembly Debates, Volume 4 (July 30, 1947)

there should also be minimum education ensured for all.”

Further to submit, According to Article 22 of Universal Declaration of Human Rights, "Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

Concept of Social Security vis-a-vis Fundamental Rights

Social security was established as a basic human right in the ILO's Declaration of Philadelphia(1944) and its Income Security Recommendation,1944 (No. 67). This right is upheld in the Universal Declaration of Human Rights, 1948, and the International Covenant on Economic, Social and Cultural Rights, 1966.

The Indian Constitution does not define social security, but in accordance with the mandate of Article 22 of the Universal Declaration of Human Rights of 1948, the spirit of social security has been incorporated within the framework of Parts III and IV of the Indian Constitution.

However, recently, the Code on Social Security, 2020, attempts to define Social Security as *“the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code”*.

Further the term "social security" finds place in the constitution along with other related matters under Concurrent List of the Seventh Schedule as under:-

List III, Entry I No. 23: Social Security and insurance, employment and unemployment.

List IV Entry No. 24: Welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits

Although the phrase "Social Security" first became widely used in 1935 in the United States, in the landmark law known as the Social Security Act of 1935, which was drafted on the guidance of the ILO, the notion of social security and its evolution is as old as humanity. Furthermore, it has diverse nomenclature depending on the implications and regional use of terminology such as social protection, social aid, and social insurance. In strict sense, Social security and Social protection are interchangeable terms though Social assistance and social insurance are the forms of social security. The "Universal Declaration of Human rights", 1948 along with the International Covenant on Economic, Social and cultural rights, (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), Covenant with the Optional protocols explicitly declare Social Security as one of the most essential rights for human being. The Supreme Court of India has also said unequivocally that directive principles and fundamental rights are not in conflict, but rather are supplemental and complementary to one another. However, the Supreme Court has not followed the rule that unless a right is specifically proclaimed to be a fundamental right, it cannot be recognized as such.

Freedom of press is not expressly mentioned in Part III, yet it has been read into and inferred from the freedom of speech and expression- *Express Newspapers v. Union of India*.²³⁴ More particularly, from Article 21 has sprung up a whole lot of human rights jurisprudence viz., Right to legal aid and speedy trial - *Hussainara Khatoon Case*²³⁵, to *A.R. Antulay Case*²³⁶, the Right to means of livelihood

²³⁴ 1959 SCR 12

²³⁵ 1979(3) SCR 532

²³⁶ 1992(1) SCR 22

- Olga Tellis Case²³⁷, right to dignity and privacy
- Kharak Singh case²³⁸, Right to health - Vincent v. Union of India²³⁹, right to pollution-free environment - M.C. Metha v. Union of India²⁴⁰, and so on.

Over time, the Indian judiciary has established a wide framework for carrying out the objectives of Parts III and IV of the Indian Constitution.

Social Security Vis-a-Vis Fundamental Rights: Judicial Approaches

The Indian Constitution was conceptualized and drafted in the middle of the twentieth century, when the concept of a social welfare state was prevalent. As a result, the Constitution is infused with a contemporary perspective on the state's goals and functions. It embodies a different concept of government and openly says that India will be established as a social welfare state, i.e., a state that provides social services to its citizens and promotes their overall welfare. The Preamble's formulations and statements of social objectives clearly demonstrate the impact of modern political philosophy, which considers the state as an organ to protect the good and welfare of the people. In the formulations and declarations of the social objectives contained in the Preamble, one can clearly discern the impact of the modern political philosophy, which regards the state as an organ to secure the good and welfare of the people.²⁴¹ The Directive Principles of State Policy, which outline the Indian Constitutional system's economic, social, and political goals, reinforce the concept of a welfare state. These directives give people certain non-justiciable rights and require the government to attain and maximize social welfare and basic social ideals such as education, employment, and health. The Constitution is thus an instrument to achieve the goal of economic democracy along with

political and social democracy. This aspect was also emphasized by Dr. Ambedkar in his concluding speech in the Constituent Assembly: "Political democracy cannot last unless there lies at the base of it, social democracy".

The Constitution of India, through the various articles of Fundamental Rights and Directive Principles of State Policy, has provided for 'social security' both directly and through implied provisions. The Supreme Court has interpreted the expression 'life', rather liberally and broadly. Over time, the Court has been giving an expansive interpretation to 'life'. The Court has often quoted the following observation of Field, J., in *Munn v. Illinois*,²⁴² "by the term 'life' as here used something more is meant to- 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..."

Similarly in *Francis Coralie v. Delhi*²⁴³ Bhagwati, J., has observed, "we think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings". Thus, the inhibition against deprivation of 'life' would extend to all those faculties by which life is enjoyed. The Apex Court's mature language captures the essence of social security. The judiciary's mission is to realize the dream of social justice outlined in the preamble of the Indian Constitution. Because the Supreme Court noted, the concept of social security consists of various elements necessary for the orderly growth and development of each citizen's individuality. "Social Justice is an integral part of Justice in the generic sense. Justice is the genus of which Social Justice is one of its species. Social Justice is a dynamic

²³⁷ 1985 Suppl.(2) SCR 51

²³⁸ 1964(1) SCR 332

²³⁹ 1987(2) SCR 468

²⁴⁰ 1988(1) SCR 279

²⁴¹ M.P.Jain, Indian Constitutional Law 16 (5th Ed., Nagpur: Wadhwa & Company) (2003).

²⁴² 94 U.S.113 (1877)

²⁴³ AIR 1981 SC 746

device to mitigate the sufferings of the poor, weak, Dalits, tribal, and deprived sections of the society and so elevate them to the level of the equality to live a life with dignity of person."²⁴⁴

The aim of Social Security is to attain substantial degree of social, economic and political equality which is the legitimate expectation and constitutional. The main preambular objective of Indian Constitution is to secure to all its citizens justice – social, economic and political. The basis and origin of this concept was the 'objective resolution' moved by Nehru in the Constituent Assembly. The founding father's vision was to build up the nation on the strong foundation of socio-economic justice which was denied to the millions of people in India. The concept of Social Security is envisaged by the framers of Indian Constitution in the Directive Principles of State Policy. The true nature, significance, role and objective underlying the Directive Principles regarding Social Security have not been rightly appreciated by courts initially.²⁴⁵ But later in the case of Mohd. Hanif Qureshi v. State of Bihar,²⁴⁶ the Supreme Court observed, "*A harmonious interpretation must be placed up on the Constitution, and so interpreted it means that the state should certainly implement the directive principles, but it must do so in such a way as not to take away or abridge fundamental rights.*" In 1973, While recognizing the significance of directive principles in the Constitution, the Supreme Court by majority upheld the validity of the 25th Amendment. Mathew, J., went to the extent of observing that in building a just social order, the fundamental rights could be subordinated to Directive Principles because only if men existed then there could be fundamental rights.²⁴⁷

Further, in the case of Kasturilal v. State of Jammu & Kashmir,²⁴⁸ the Supreme Court found that the yardstick for determining

reasonableness and public purpose is to be found in the law for implementing directive principles. The Court emphasized that an executive action or a law enacted for giving effect to directive principles in furtherance of constitutional goal of social and economic justice, would be prima facie reasonable and in public interest.

In the case of Minerva Mills v. Union of India,²⁴⁹ according to Justice Bhagwati, the directive principles enjoyed a very high place in the constitutional scheme and it was only in the framework of the socio-economic structure envisaged in the directive principles that the fundamental rights were intended to operate, for it was only then they could become meaningful and significant for the millions of poor and deprived people who did not have even the bare necessities of life and who were living below poverty line. Therefore, the goals set out in Part IV had to be achieved without the abrogation of the means provided for by Part III. Justice Bhagwati while upholding the amendment (Article 31-C) emphasized the State should take positive action for creating socio-economic conditions in which 'there will be an egalitarian social order with social and economic justice to all', and 'this is the philosophy of distributive justice embodied in the directive principles'. The above analysis shows that the goals set out in directive principles are to be achieved without abrogating the fundamental rights. The courts have used the directive principles not so much to restrict fundamental rights but to expand their scope and content. In enforcing and resolving the issues of labours and social security, the judiciary has followed the same approach.

The Supreme Court's decision in Chandra Bhavan Boarding v. State of Mysore²⁵⁰ is a befitting example. The question in this case was whether fixing the minimum wages of different classes of employees in residential

²⁴⁴ Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645

²⁴⁵ State of Madras v. Champakam Dorajan, AIR 1951 SC 226

²⁴⁶ AIR 1958 SC 731

²⁴⁷ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 479

²⁴⁸ AIR 1980 SC 1992

²⁴⁹ AIR 1980 SC 1789

²⁵⁰ AIR 1970 SC 2042

hotels and eating houses in State of Mysore would be arbitrary and violative of Article 14 of the Constitution. Section 5 (1) of the Minimum Wages Act, 1948 was challenged as unconstitutional on the ground that it conferred arbitrary power i.e., without any guidance to fix minimum rates of wages. It was also challenged that the Act interfered with the fundamental right to carry on any trade or business. While upholding the validity of the Act, the Court explained the objectives of the Act and the significance of the directives contained in Article 43 of the Constitution in the following words:

"Its (the Act's) object is to prevent sweated labour as well as exploitation of unorganized labour. It proceeds on the basis that it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same. The mandate of Article 43 of the Constitution is that the State should endeavour to secure by suitable legislation or economic organisation 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 fixing of minimum wages is just the first step in that direction"

In National Textile Workers Union v. P.R. Ramakrishnan,²⁵¹ the Supreme Court pointed out the significant position of workers in Indian society and reiterated the profound concern to the workers by the socioeconomic order envisaged in the Preamble and the Directive Principles of the Constitution. Though the Companies Act does not provide any right to the workers to intervene in the winding up proceedings it was decided that such a right of the workers had to be spelt out from the Preamble and Articles 38, 39, 42, 43 and 43A of the Constitution. The directive in Article 43A, i.e., the provision for securing the worker's participation in management, were accordingly

read into fundamental right of the shareholders to carry on or not to carry on their trade or business guaranteed under Article 19(1) (g). The Court speaking through Bhagwati, J., concluded:

"The constitutional mandate is therefore clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it, because in a socialist pattern of society, the enterprise which is a centre of economic power should be controlled not only by economic power but also by capital and labour".

The decision in The Workmen v. Reptakose Brett and Co. Ltd Reptakos and Co.²⁵² by Supreme Court held that the children's education, medical requirement, minimum recreation, provision for old age, marriage etc., should further constitute 25% of the minimum wage and used as a guide in fixation of minimum wages.

Retd. Chief Justice K.G. Balakrishnan aptly highlighted the objectives of the Unorganised Sector Workers' Social Security Act, 2008 in the following words:

"Needless to say, the millions of unorganised workers are in dire need of a stable and reliable social security regime. The Unorganised Workers' Social Security Act contemplates the delivery of benefits to unorganised workers in instances of sickness, disability, maternity, unemployment, old age and the death of a family's bread winner. The Act has defined 'Unorganised workers' in a wide and liberal manner so as to include those who are casually employed and receive daily or monthly wages as well as 'home-based workers' and even farmers who work on small land-holdings. Hence, the legislative intent is to expand the social safety net as widely as possible".

Right to life covers within its ambit the right to social security and protection of family. The Hon'ble Supreme Court in Calcutta

²⁵¹ AIR 1983 SC 75

²⁵² AIR 1992 SC 504

Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose²⁵³ held that right to social and economic justice is a fundamental right under Article 21.

In Regional Director, ESI Corporation v. Francis De Costa²⁵⁴, the Hon'ble Supreme court held that security against sickness and disablement was a fundamental right under Art. 21 read with Sec. 39(e) of the Constitution of India.

The Hon'ble Supreme Court in Life Insurance Corporation of India v. Consumer Education and Research Centre²⁵⁵ observed that social security has been assured under Article 41 and Article 47 and it imposes a positive duty on the State to raise the standard of living and to improve public health. Judiciary based its decisions on the principles of social justice and attempted to create a value system which takes care of interests and rights of a large number of people who are poor, ignorant or in a socially and economically disadvantageous position.

Justice P.N.Bhagwati in case of People's Union for Democratic Rights and Others v. Union of India²⁵⁶ asserted that time has come when the courts must become the courts for poor and struggling masses of the country. They must shed their character as upholders of the established order and status quo. The spirit was maintained by Supreme Court in its subsequent case of Sanjit Roy v. State of Rajasthan²⁵⁷.

In Paschim Banga Khet Mazdoor Samity v. State of West Bengal²⁵⁸ the Hon'ble Supreme Court of India had examined in detail the question as to whether the non-availability of facilities for treatment of the serious injuries sustained by Hakim Sheikh in the various Government hospitals in Calcutta has resulted in denial of his fundamental right guaranteed under Article 21 of the Constitution. Articles 21

impose an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Hon'ble Court in very clear and loud terms have pronounced that medical facilities are basic essential requirement for human life and accordingly this is fundamental right within the meaning of right to life.

The appropriate life insurance policy within the paying capacity and means of the insured to pay premia is one of the social security measures envisaged under the Constitution to make right to life meaningful, worth living and right to livelihood a means for sustenance.

It is thus very much clear from the above pronouncements of the Supreme Court of India that Social Security is Fundamental right within the meaning of right to life under Article 21 as interpreted in several decisions of Life under the Article 21 has got wide amplitude of meanings as enshrined under Universal Declaration of Human Rights and its different connotations as per the socio economic requirements of the country.

Conclusion:

Social Security in India as a normative sense is part of social justice within larger perspective of social policy framework though it is one of the fundamental right in the individual capacity. Though Social security is part of directive principle in the constitution it is integrally linked with the life and as such it becomes the fundamental right as declared by the Supreme Court in various pronouncements. The natural implications of the fact that social security should be understood and formally declared as one of the fundamental right will ensure its enforceability within the meaning of Articles 32 and 226 of the Constitution by the Supreme Court of India and the High Courts. Anybody deprived of his or her right to social security will be able to take the shelters of the highest courts of law. The Social Security is very vast and encompassing subject touching almost entire gamut of contingencies of human

²⁵³ AIR 1992 SC 573

²⁵⁴ AIR 1997 SC 432

²⁵⁵ AIR 1995 SC 1811

²⁵⁶ AIR 1982 SC 1473

²⁵⁷ AIR 1983 SC 328

²⁵⁸ AIR 1996 SC 2426

life. For such a vast subject the limitation of economic capacity and developments of state will always be greatest hurdle. The full accomplishment of all the goals and benefits of social security to the entire citizen will always be a dream for any welfare state. However providing a bare minimum to the citizen is now not only a question of constitutional obligations of state but the enforceable human right in the country. Undoubtedly over a period of time, the Indian Judiciary has played a remarkable role in ensuring sustainable protection to the weaker section of the society, particular labour class and women workers by giving broad interpretation to the legal provisions and construing the same in the light of constitutional values enshrined under the provisions of the fundamental rights and directive principles of the State Policy.

The preamble to the Constitution of India inert alia provides for social and economic justice, the Court time and again through various decisions on labour legislation again emphasized upon the need of social security laws and its realization at the grass root level. The Court has also linked the idea of social security with the justiciable nature of fundamental right and suggests the meaning of life under Article 21 includes everything that makes the life of a person worth living.

