

ACCESS TO THE CONSTITUTION

A Neglected Right

We, the People of India, have given ourselves a Constitution so that there is a rule of law to enable good governance and proper conduct of one citizen against another, and the State. The Constitution has been printed by the government in English and all major languages of the Country. The purpose of a written Constitution is that we know about our country's structure and governance, and our rights and duties by reading the text of the Constitution.

It is reasonable to expect that a citizen, desirous of knowing about his or her constitutional rights and duties, more particularly the fundamental rights, would only have to get hold of the text of the Constitution, which, being a complete document, will give a fair understanding of the rights.

In addition to the Constitution, what the Supreme Court says is the law of the land. The Constitution itself is not static, It is dynamic and can be amended by the State to give meaning to it according to the need of the hour. Over 83 amendments have been carried out till now.

Does the Constitution give a comprehensive idea about the rights as expanded by the apex court? Is it a complete document? It is not.

This Briefing Paper examines few key judgments and concludes by advocating why a comprehensive amendment to Articles 19 and 21 of the Constitution is necessary to give proper meaning to the same and empower citizens fully.

Fundamental Rights?

There are several fundamental rights, but the principal ones are:

- Art. 14 - equality before law,
- Art.15 - prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth;
- Art. 16 - equality of opportunity in matters of public employment;
- Art. 17 - abolition of untouchability;
- Art. 19 - protection of certain rights regarding freedoms of speech etc.;
- Art. 21 - protection of life and personal liberty;
- Art. 22 - protection against arrest and detention in certain cases.

Art. 19(1) of the Constitution guarantees to the citizens of India the six fundamental freedoms which are exercisable by them throughout and in all parts of the Union of India. The enumerated freedoms are to:

- (a) freedom of speech and expression,
- (b) assemble peaceably and without arms,
- (c) form associations or unions,

- (d) move freely throughout the territory of India,
- (e) reside and settle in any part of the territory of India,
- [(f) 'the right to property' was dropped by the 44th Constitution Amendment Act, 1978] and
- (g) practice any profession, or to carry on any occupation, trade or business.

Furthermore, in accordance with evolutionary jurisprudence, the Supreme Court of India ruled that "**These rights are not exhaustive of all the rights of a free man who has far more and wider rights**", [A.K. Gopalan vs. State of Madras, AIR 1950, SC 27, 110]. [emphasis added]

Are These Rights Justiciable?

Yes, the fundamental rights are justiciable and the Supreme Court can be approached under Art. 32 for any violation of the rights by the State. Several writs have been filed before the Supreme Court particularly against the violation of the fundamental rights as enumerated in Articles 14, 19, 21, and 22.

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Most of the public interest cases relate to violation of fundamental rights. **“Art. 32 is designed for the enforcement of Fundamental Rights of a citizen by the apex court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen.”** said the Supreme Court in Subhash Kumar vs. State of Bihar case [AIR 1991, SC 420]. [emphasis added]

In addition to Art. 32, Art. 226 of the Constitution empowers a citizen to approach a High Court for violation of the fundamental rights. Though it creates a precedence, it is not the law of the country, unless settled by the Supreme Court.

The Supreme Court, while interpreting some provisions of the Constitution, have often extended the peripheries of the Articles so as to include some rights which are not there explicitly in the Constitution. And according to the Constitution, interpretations by the Supreme Court become binding on all the lower courts and therefore become the law of the land.

Art. 22 read with Art. 21 gives protection against state terrorism or tyranny in detaining a person without due process of law through a *habeas corpus* petition. Art. 19 has been expanded to include the right to know, while Art. 21 has been expanded to include the right to satisfaction of basic needs, the right to a healthy environment and the right to health through various judgements. The mockery of such rights, namely in the form of ignorance and non-enforcement, is another story.

In this paper we are focusing on only two of the Articles in the Part III of the Constitution, i.e. 19 and 21, expansion of which will undoubtedly show how important it is to rewrite some of the provisions of our Constitution.

The Right to Know

Unlike the US Constitution, Art. 19(1)(a) does not expressly mention the liberty of press, i.e. the freedom to print and to publish what one pleases without previous permission. But it is settled law that the right to freedom of speech and expression includes the liberty of the press. [Sakal Papers (P) Ltd. vs. Union of India, AIR 1962, SC 304; Express Newspapers (P) Ltd. vs. Union of India, AIR 1958, SC 578; Brij Bhushan vs. State of Delhi, AIR 1950, SC 129]

The Rajasthan High Court, in the matter of L.K. Koolwal vs. State of Rajasthan [AIR 1988, RAJ 2] which challenged the negligence of the city administration for not ameliorating the unhygienic conditions prevailing in Jaipur city, said: “Citizen has a right to know about the activities of the State. The privilege of secrecy which existed in the old times that the State is not bound to disclose the facts to the citizens or the State

cannot be compelled by the citizens to disclose the facts does not survive now to a great extent. Under Art. 19(1)(a) of the Constitution there exists the right of freedom of speech. Freedom of speech is based on the foundation of the freedom of the right to know.”

Moreover, the Ministry of Environment & Forests of the Government of India itself published a booklet in 1993 advocating the citizens’ right to know based on a public interest litigation involving urban zoning plans in Pune cantonment area. In an appeal concerning the case: Bombay Environmental Action Group and others vs. Pune Cantonment Board, decided by the Bombay High Court, the Supreme Court ruled:

“We would also direct that any person residing within the area of a local authority or any social action group or interest group of pressure group shall be entitled to take inspection of any sanction granted or plan approved by such local authority in construction of buildings along with the related papers and documents if such individual or social action group or interest group or pressure group wishes to take such inspection, except of course in cases where in the interests of security of such inspection cannot be granted.”

In M.C. Mehta vs. Union of India [AIR 1992, SC 382] wherein the noted environmental lawyer sought directions propogating education on environmental pollution to the people through the government controlled mass media, the apex court ruled: **“We are a democratic polity where dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the government.”** [emphasis added]

The Supreme Court in the famous case of S.P. Gupta vs. President of India [AIR 1982, SC 149], popularly known as the Judges case, which established the locus standi of citizens to raise public interest issues before the apex court, held:

“This is the new democratic culture of an open society towards which every liberal democracy is moving and our country is no exception. The concept of an open government is the direct emanation from the right to know which is implicit in the right of free speech and expression guaranteed under Art. 19(1)(a). Therefore, disclosures of information in regard to the functioning of Government must be the rule and secrecy and exception justified only where the strictest requirement of public interest so demands.”

Article 21, The Most Flexible!

Art. 21 is, perhaps, the most flexible of the fundamental rights provisions. The Supreme Court held that right to life included the right to means of livelihood and right to human dignity [SCC 1993, Vol. III, p. 259, 584]. Can a person have the slightest idea about this

extended meaning of right to life if he or she goes through Art. 21 in its present form?

Art. 21 has been expanded in a number of cases to safeguard the rights of specially positioned persons and to include some special rights. The Article has been invoked to protect the rights of prisoners, the rights of inmates of protective homes, right to legal aid, right to speedy trial, right against cruel, inhuman and unusual punishment, right of release and rehabilitation of bonded labour, right to compensation, right to health, and right to healthy environment.

In Francis Coralie vs. Union Territory of Delhi [(1981) 1, SCC 608, AIR 1981, SC 746], it was held “that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Art. 21”.

To Live With Human Dignity

In the same case, the noted activist judge and former Chief Justice of India, P.N. Bhagwati, said: **“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 comingling with fellow human beings.” [emphasis added]

Again relying on Francis Coralie, in Bandhua Mukti Morcha vs. Union of India [(1984) 3, SCC 161, AIR 1984, SC 802], where the question of bondage and rehabilitation of some labourers was involved, Justice Bhagwati held:

“It is the fundamental right of everyone in this country... to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Art. 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Art. 39 and Articles 41 and 42 and at least, therefore, it must include protection of the health and strength of the 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. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

After some controversy on the issue of right to livelihood, Supreme Court has clearly held that **“right to livelihood is included in the right to life because no person can live without the means of living.**

that is, the means of livelihood”. [Olga Tellis vs. Bombay Municipal Corporation, (1985) 3, SCC 545, AIR 1986, SC 180, 193.] [emphasis added]

In 1993, the Supreme Court held in J. P. Unnikrishnan and others vs. State of Andhra Pradesh and others that under Article 21 along with Articles 38, 39(a) and (f), 41 and 45 of the Constitution:

- a) the framers of the Constitution made it obligatory for the state to provide education for its citizens;
- b) the objectives set forth in the Preamble to the Constitution cannot be achieved unless education is provided to the citizens of this country;
- c) Part III and IV (Directive Principles of State Policy) are supplementary to each other. Unless the “right to education” mentioned in Article 41 is made a reality, the fundamental rights in Part III will remain beyond the reach of the illiterate majority; and
- d) Art. 21 has been interpreted by the Court to include the right to live with dignity and all that goes along with it.

The Right to Healthy Environment

In several public interest litigations our High Courts and the apex court have held that Art. 21 implicitly includes the right to wholesome environment.

Attakoya Thangal, a resident of Lakshdweep Islands off the coast of Kerala challenged the drinking water augmentation scheme of the government saying that it will lead to disequilibrium causing saline water to enter into fresh water aquifers and thus violate Art. 21. The Kerala High Court [AIR KLT 580] held that: “The administrative agency cannot be permitted to function in such a manner as to make inroads into the fundamental right under Art. 21. The right to life is much more than the right to animal existence and its attributes are manifold, as life itself. A prioritisation of human needs and the new value system has been recognised in these areas. The right to sweet water, and the right to free air, are attributes of the right to life, for these are the basic elements which sustain life itself.”

Subhash Kumar of Bihar moved a writ petition under Art. 32 before the Supreme Court against the State of Bihar [AIR 1991, SC 420] to prevent the West Bokaro Collieries and the Tata Iron & Steel Co Ltd from discharging slurry/sludge from its washeries at Hatotand, District Hazaribagh, Bihar into the Bokaro river and polluting it. Though the court dismissed the petition with costs against the petitioner for it was a personally motivated writ, it said:

“Right to live is a fundamental right under Art. 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has

right to have recourse to Art. 32 for removing the pollution of water or air which may be detrimental to the quality of life.” [emphasis added]

The Right to Health

In the Bandhua Mukti Morcha case, the Supreme Court had clearly held that Art. 21 read with the Directive Principles of State Polity includes the right to health.

This interpretation was made clear in a case (Consumer Education & Research Centre, Ahmedabad vs. Union of India decided in February, 1995) involving the right of workers in the asbestos industry who unwittingly suffer from an occupational debilitating disease, ‘asbestosis’, when the apex court ruled:

“The right to health and vigour to a worker while in service or post-retirement is a fundamental right under Art. 21 and other related articles of the Constitution. The right to health care is a fundamental right under Art. 21 read with Articles 39(e), 41 and 43 of the Constitution and make the life of workmen meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker which is a minimum requirement to enable a person to live with human dignity.”

Conclusion

Reflection of the true extent of the fundamental rights enshrined in the Constitution, and expanded by the Supreme Court, is essential for not only the lay public but also the intelligentsia, legal practitioners and judiciary.

It has often been reported that under the common law doctrine of *Stare decisis* lower courts have not been able to imbibe the apex court pronouncements in situations where it should have been done, thereby causing injustice to the citizen seeking relief. *Stare decisis* means that courts have to follow the precedents as established by higher courts until they are over-ruled by the Superior Court.

This calls for quick and easy communication of all law-making decisions to every citizen in the country so that they can be understood and followed. The easiest way to keep students, social activists, lawyers and the judiciary well informed of the latest interpretations is to periodically update the text of the Constitution.

Again, updating of the Constitution is important from another standpoint. Constitution is the ‘ground-norm’ for our laws. This means that all laws derive their force from the Constitution. Unless the epoch-making decisions of the Supreme Court are followed by adequate amendments to the Constitution, the general public and students will not have a complete knowledge about the laws and the Constitution of the land.

A periodical review of the Constitution may be arranged, when the judicial interpretations be incorporated in the Constitution, by either rewriting the relevant provisions or by adding paragraphs to them. The ultimate object of such review will be to keep the Constitution always updated and complete. It is time to give a serious thought and to start action, to inform people of what they have given unto themselves, but do not know.

Recommendations	
To government: <ul style="list-style-type: none">• Article 19(1)(a) should be amended to read as: “to freedom of <i>information</i>, speech and expression;”• Article 21 should be amended to read as: “Protection of <i>the right to life and personal liberty</i>. No person shall be deprived of his life or personal liberty except according to procedure established by law. <i>To live with human dignity every person shall have the right to satisfaction of basic needs, the right to healthy environment, the right to education, the right to health, and the right to health care.</i>	To NGOs: <ul style="list-style-type: none">• Make use of the Supreme Court’s interpretation of the right to life and personal liberty through judicious use of public interest litigation, and class action.• Inform and educate people at large about their rights and duties in a democratic, plural society.

Comments on the Draft were received from Justice P.N. Bhagwati and Prof. N.R. Madhava Menon. Both recommended that this needs to be disseminated widely in well designed publications, while Justice Bhagwati did not agree that the Constitution should be amended.

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