

EXPANDING HORIZONS OF FUNDAMENTAL RIGHTS AND COURTS' OBLIGATION

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Founding fathers influenced by Bill of Rights of American Constitution, Declaration of Rights of Man of France, The Irish Constitution of 1935, the post war Constitution of Japan & Burma, the Universal Human Rights' Chapter & Nehru Report of 1928 engrafted fundamental rights in Part III of the Constitution of India and conferred on the judiciary of the country the power to ensure that no fundamental right is allowed to be violated. Article 32 of the Constitution which casts an obligation on the highest Court of the country to ensure protection of fundamental rights itself is a fundamental right. This clearly gives a direction and indication on the responsibilities of not only the Apex Court for the protection of sacred provisions of Part III of the Constitution but it confers a responsibility on the entire judicial system of the country to discharge the obligation cast on the Apex Court and High Courts qua fundamental rights, infact it is the responsibility of all the Courts having jurisdiction in the matter to ensure protection of fundamental rights guaranteed under the Constitution.

To analyse the aforesaid proposition, the various provisions of the Constitution need to be scanned with slightly a different angle than what has been done so far.

Under Article 32 of the Constitution, every citizen of this country has been given a fundamental right to move the Supreme Court for enforcement of rights which are guaranteed under Part III of the Constitution. The highest Court of the Country has simultaneously been conferred powers to issue directions, orders or writs including conventional prerogative writs of habeas corpus,

mandamus, prohibition, quo warranto and certiorari, a terminology borrowed from English Law. This Article is of fundamental importance for maintaining the basic structure of the Constitution. The Article itself contemplates that this Article shall not be suspended except as provided by the Constitution. Vide Article 359 of the Constitution, the right to move the Court cannot be suspended even during proclamation of emergency. In cases where a citizen comes forward for enforcement of right to life and liberty guaranteed by Article 21 and right conferred by Article 20 protecting a citizen from conviction for offences. extending guarantee that a citizen of the country will not be convicted for the same offence twice, nor he will be compelled to be witness against himself and also that for an offence his conviction will be according to the law enforced on the date the offence was committed, and. he will not be liable for higher punishment for the offence if the law is later on changed.

In *Keswanand Bharti's case*,¹ the Apex Court while outlining the basic structure of the Constitution, has held that the right to move the Court which is guaranteed by Article 32 is one of basic structures of the Constitution. In regard to the right to judicial remedies guaranteed by this Article, the question of substantial importance is that when a right is conferred by Constitution on its citizen to enforce his fundamental right through a Court, it automatically carries with countervailing duty on that Court to ensure enforcement of that right. It is to be emphasised that it is not merely the right of the individual to enforce those rights but this also casts a duty on the highest Court of the country to enforce those guaranteed rights. The Court has been held to be protector and guarantor of fundamental rights.

Emphasising the importance of Article 32, Dr. Ambedkar told the Constituent Assembly. "If I were asked to name the particular Article in the Constitution as most important without which this Constitution would be a nullity, I would not refer to any other Article except this one".² In the words of Justice Gajendragadkar. "The fundamental right to move this Court can therefore be appropriately

described as corner-stone of democratic edifice raised by the Constitution".³

The distinguished Chief Justice Patanjali Shastri described this Article "as protector and guarantor of fundamental rights" and further observed "It cannot, consistently with the responsibility laid upon it, refuse to entertain an application seeking protection against infringement of such rights." In discharging the duties assigned to it, "this Court has to play the role of the sentinel on the qui-vive and it must always regard as its solemn duty to protect the said fundamental right zealously and vigilantly".⁴

This is the introduction for canvassing the point as to what are those rights guaranteed by Part III for which the judiciary of the country has been cast with solemn duty to play the role of sentinel on the qui-vive. It opens before us the wide horizons of fundamental rights guaranteed to 900 million people of this country.

The voyage for opening the horizons of fundamental right began right from Communist Leader A.K.Gopalan's case,⁵ in the year 1950 wherein Chief Justice Patanjali Shastri opening gate for wider interpretation to be given to fundamental rights held-

"The insertion of Fundamental Rights in the forefront of the Constitution coupled with an express prohibition against legislative interference with these rights and the provision of constitutional sanction for the; enforcement of such prohibition by means of judicial review...is a clear; emphatic indication that these rights are to be paramount to ordinary State-made laws."

However the voyage began with a caution and majority view in Gopalan's case held that the Legislature was competent to lay down any procedure for the deprivation of personal liberty and Court could not Interfere. This view was later reversed in Maneka Gandhi's case wherein the Court held that procedure must be fair and proper.

Later on in 1963, the Apex Court upheld the right of privacy in Kharak Singh's case,⁶ and decried domiciliary visits by Police.

Thereafter several landmark Judgements were delivered construing the provisions of Right of Freedom of Speech and Expression guaranteed by Article 19 (1)(a). In Dr. Ram Manohar Lohla's case,⁷ the Court in the year 1966 was confronted with a question, as to how far the right of speech and expression should not affect a law curtailing this right on the ground of public safety and law and order. The Court drew distinction between public safety, public order and law and order and held:-

“When the liberty of a citizen is put within the reach of authority and scrutiny from Court is barred, the action must comply not only with substantive requirement but also with those forms which alone can indicate that the substance has been complied with.”

In Madhu Limaye's case,⁸ in the year 1969, the Apex Court advanced the cause of personal liberty by construing Article 22 (1) to mean that detenu has right to know at the time of his arrest the exact charge of accusation against him so that he may consult lawyer of his choice for defending himself and an order of remand can not cure the Constitutional infirmity.

In 1973 came Keshwanand Bharti's case⁹ -the epoch making judgment when Constitution Bench reversing Golaknath's case¹⁰ held that though Parliament was competent to amend any part of the Constitution including Fundamental Rights but the Parliament was not competent to alter the basic feature of Constitution.

In 1975, Emergency was clamped in the country, citizens were discriminately arrested, humiliated and even killed at whims of Executive most all the High Courts directed release of the detainees despite suspension Fundamental Rights. The High Courts held that right to life and liberty is not dependant on its conferment by the Constitution. It is Inherent In man. But Apex court in A.D.M. Jabalpur¹¹ held that since right to life and liberty has been suspended, the Courts have no power to Intervene. The glorious exception to majority view was the verdict of Justice Khanna. However, the country was brought back to rails of democracy by 44th

Constitutional amendment which placed the right of life and liberty guaranteed by Article 21 and Article 20 beyond suspension even during Emergency.

Thereafter a new Chapter of Judicial activism began the Court was taken to its form with added enthusiasm.

In 1978 came Maneka Gandhi's¹² historic verdict wherein the Constitution Bench overruled A.K. Gopalan's decision and held that for curtailing fundamental rights, the procedure established by law must be fair and proper. The Apex Court imported the principles of natural justice in Article 21 and thereby equated the words used in our Constitution 'procedure established by law' with American concept of 'due process of law.' Article 21 was given a wider interpretation and the Court held that the right to live should be construed to mean right to live with dignity and in appropriate cases, a citizen can claim right even to go abroad as his fundamental right for purposes of his trade or profession. The Court reversed the view taken in A.K. Gopalan that even fundamental right is a Code in itself. The Constitution Bench in this case held that the entire fundamental rights are to be interpreted in an integrated manner and they cannot be compartmentalised.

In 1979 Justice Bhagwati speaking for the Court in R.D. Shetty¹³ pointed out that the Corporations acting as instrumentality or agency of the Government would obviously be subject to the same limitations in the field of Constitutional or administrative law as the Government itself, though in the eye of law they would be distinct and independent legal entities. In this decision the Court also held that State or instrumentalities of the State are under an obligation to act in accordance with law and even in the matter of distribution of largesse's, they cannot be permitted to act arbitrarily. A person having right or no right can always challenge an arbitrary action of the State or instrumentality of the State.

In 1980 Justice Iyer in Jolly George Verghese¹⁴ held that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is too flagrantly violative of Article 21 unless there is a proof of minimal fairness of his wilful failure to pay in spite of his sufficient means. The Court held that in execution of

money decree, sending a person to civil prison for non-payment of dues despite the fact that he has no money to pay is violative of Article 21 of the Constitution as well as Article 11 of International Covenant on Civil and Political Rights. In this decision, the Supreme Court for the first time equated human rights conceived by International Covenants to be part of Art. 21 i.e., life and liberty guaranteed to the citizens of this country.

Sunil Batra,¹⁵ a prisoner in Tihar Jail, Delhi complained that a jail warder had pierced a baton into anus of another prisoner serving life term in the same jail for extracting money from the victim through his visiting relations by a letter to the Supreme Court. In response, the Court initiated proceedings in the nature of habeas corpus. Justice Krishna Iyer and Justice Chinnappa Reddy speaking for the Court held that even prisoners and convicts should be treated in the prison which would be commensurate with their sentence and safety and the guarantees contemplated by Articles 14, 19 and 21. The Court laid down guidelines in respect of the Constitutional and administrative aspects of the prison justice and made provision for regular Inspections by lawyers nominate by District Magistrates, Sessions Judges, High Courts and Supreme Court, who shall be given all facilities for interviews visits and confidential communication with prisoners etc. The Court held that Human Rights Jurisprudence in India has a Constitutional status and sweep by virtue of Art. 21 so that this magnacart may well toll knell of human bondage beyond civilised limits. The Supreme Court will be functional futility as a Constitutional instrumentality if its guns do not go into action until a wrong is righted. The Court is not a distant abstraction only potent in the book but an activist institution, which is cynosure of public hope. The Court can issue writs to meet the new challenges. (Emphasis added)

In Prem Shankar Shukla¹⁶ again Justice Krishna Iyer and Justice Chinnappa Reddy condemned hand-cuffing of undertrials and held that it is necessarily implicit in Articles 14 and 19 that when there is no compulsive need to fetter a person's limb, it is sadistic, capricious, despotic' and demoralising to I humble .a man by manacling him. In

this decision, the Court also held that handcuffing of undertrial prisoners by escorts while taking them from jail to Court (and back is to be done only in exceptional and extraordinary circumstances for reasons to be recorded which should be got approved by the Magistrate. Handcuffing otherwise of undertrials was held to be violative of Art, 21 of the Constitution.

In 1982 People's Union for Democratic Rights¹⁷ came forward with a public interest petition for the redress of bonded labours. The Court gave an active interpretation to Art. 23 of the Constitution and held that it is not merely a 'begar' which is prohibited by Art. 23 but forced labour also comes in the category of begar and is violative of Art. 23 of the Constitution. It was held that whenever any fundamental right which is enforceable against a private individual such as a fundamental right enacted in Art, 17 or 23 or 24 is being violated, it is the Constitutional obligation of the State to take necessary steps interdicting such violations and ensure observance of fundamental rights by private individual who is transgressing the same. Any person aggrieved or any other person can always come forward to espouse the cause compelling the Government for enforcement of such rights against the individuals who are violating the guarantees contemplated by Articles 17, 23 and 24 of the Constitution.

In 1983 upholding Coking Coal Mines (Nationalisation) Act, 1972, the Court held that for implementing Article 39(b), it is necessary that the industry as a whole should be nationalised. The expression 'material resources of the community', used in Article 39(b) necessarily includes transformation of wealth from private ownership into public ownership by Nationalisation, hence earth expression 'material resources of the community', is not confined to natural resources. It means and includes all resources natural and man made, public and private. The Court construing the provisions of Articles 14, 31-C and 39 of the Constitution held that the scheme of the Constitution is not for laissez-faire route but for a socialist approach i.e., distribution of wealth for the benefit of the community at large. (Sanjeev Coke Manufacturing Company¹⁸).

In 1984 Neerja Chowdhry,¹⁹ a journalist addressed a letter to a Judge the Supreme Court complaining about 135 bonded labourers, who had been released from bondage in pursuance of an order of the Supreme Court and had been brought back to their respective villages in Madhya Pradesh with a prom of rehabilitation by the Chief Minister of the State but had not been rehabilitated even after six months since their release, as a result they were living almost the verge of starvation. The Supreme Court directed that the plain requirement of Articles 21 and 23 is that bonded labourers must be identified and released and on release they must be suitably rehabilitated.

In 1986 Olga Tellis,²⁰ a social activist, brought a petition on behalf of Pavement and Slum Dwellers of Bombay City. They constituted half of the population of Bombay City and were living either on foot-path or in slums for their survival. The Apex Court held that Article 21 includes right of livelihood and so if the deprivation of livelihood is not effected by a reasonable procedure established by law, the same would be violative of Article 21 of the Constitution. The word 'life' used in Article 21 of the Constitution, was meant to include right of livelihood also.

In Surendra²¹ Singh's case, the Apex Court directed that daily wagers employed by the Central Public Works Department must be given the same pay as the regular employees. The principle of equal pay for equal work enshrined under Article 39 of the Constitution was enforced by a judicial verdict and it was directed that all daily rated employees will be paid same salary and allowances as are paid to the regular and permanent employees of their rank. Similarly in Dhirendra Chamoli,²² the casual labourers employed in Nehru Yuvak Kendra were held to be entitled for the same pay scale as regular class IV employees, who perform the same task in the Union Government. In this decision the principle of equal pay for equal work enshrined in Article 39 was held to be a part of Art. 14 of the Constitution of India and it was held that the equality before law and equal protection of the laws impliedly incorporates the principle of equal for equal work.

In *Suk Das Vs. Union Territory of Arunachal Pradesh*,²³ the Apex Court held that failure to provide legal aid to an indigent accused vitiates the trial even where the legal aid was not demanded by the accused. Unless legal aid was refused by the accused, the trial was liable to be set aside.

In *Bhim Singh's* case,²⁴ the Court awarded exemplary compensation against the State for illegal detention of Bhim Singh, who was a political leader of Jammu and Kashmir State and an Advocate of the Supreme Court.

In 1987, *Sheela Barse*'²⁵ the petitioner complained about state of affairs in an Observation Home for children. There had been delay in restoring the children to their parents despite orders of the Court. The Court directed restoration of these children. The Court held that since India was party to International Covenant on Civil and Political Rights of 1976, a child must be provided with the protections as are required by Article 24 of the aforesaid Covenant. The Court expanded the construction of Article 21 and held that permission to interview the prisoners should be granted for ensuring the rights guaranteed to the prisoners. The Court also held that Article 10 of the Covenant on Economic, Social and Equal Rights, lays down that the children must be protected from economic and social exploitation from employment in harmful occupation below prescribed age. All these rights were held to be guaranteed to the children of this country also. This was not merely a reference to an International Convention but it was held to be of the binding nature of its obligations.

In *Catering Cleaners of Southern Railways*,²⁵ at the instance of two workers working for cleaning and catering establishment and pantry cars in Southern Railway, who were working as contract labourers engaged at the rate of daily wages of Rs.2/- and 2.50. the Court directed for abolition of contract labour system. It brought back the smiles on the faces of most ordinary and exploited contract labourers. This was a lilliputian voyage to the highest Court and the Apex Court was discharging its obligation of guarantee provided by

Art. 32 of the Constitution of India for protecting the rights of 900 million people of this country.

In this very year, in case of *Mackinnon Mackenzie & Company*,²⁷ lady stenographers of a private company were being paid lower emoluments than their male counterparts. The Supreme Court held it to be a violation of constitutional principles of equal pay for equal work. Again relying on the Convention concerning equal remuneration for man and woman workers for work of equal value adopted in the Conference of International Organisation, to which India was a party and applying the extensive meaning of Article 21, the Court held it to be discriminatory and directed the State to ensure that the right of equal pay for equal work is made available to the lady stenographers of the aforesaid Company.

In 1988 came forward M.C. Mehta,²⁸ an advocate of the Supreme Court and environmental activist, who moved a petition in the Supreme Court for a direction of keeping the holy river Ganga clean and stopping all factories which are discharging their polluted water in the river. The Supreme Court accepted the challenge, issued notice to all concerned for stopping the pollution in Ganga, river, the directions were given even for closing factories which were discharging their polluted water in the river. The Court has pursued the matter and programme has been initiated under the direction of the Court for cleaning river Ganga which has resulted in Government's starting the Ganga Action Plan for keeping river Ganga as pollution free. The Court is even monitoring this obligation.

In 1989 Kishan Patnaik,²⁹ a social political activist, wrote a letter bringing it to the notice of the Apex Court that the people of Kala Handi district in the State of Orissa were dying of starvation and were being compelled to sell their children for earning their means. The letter was mentioned before the then Chief Justice Bhagwati by the author of this Article. The Court after knowing the contents of this letter directed issuing of a Commission for reporting the correct position regarding starvation deaths being caused in the district of Kala Handi. The State Government came forward with a Scheme for

ensuring that the residents of district Kala Handi are provided employment and are able to earn their wages for maintaining themselves so that they may not be driven to starvation. A Scheme was formulated by the Court which constituted a Committee independent persons to ensure that no citizen of district Kala Handi is allowed to die only for poverty and starvation.

In 1990, Gaurav Jain,³⁰ filed a Public Interest Litigation petition praying for providing a separate school and hostel facility for children of prostitutes. The Court extending the guarantee provided by Article 32 of the Constitution and expanding the meaning of Art. 21 directed these children to be separated from their mothers and be allowed to mingle with others and become part of the Society and accommodation in hostels and other reformatory homes should be adequately made available for this purpose. A Committee was constituted for examining the problems and submitting its report to the Court.

In 1991, in Subhash Kumar's case,³¹ the Court held that the right to live includes rights to enjoyment of pollution free water.

In 1992 came famous verdict of Indra Sawhney,³² which upheld the reservation on the basis of Mandal Commission's Report. The remarkable thing which is to be pointed out is that on the issue when Government took a decision to implement the Mandal Commission's Report, the protest was such large and loud that the Government which decided to enforce the Report was dislodged from power. But when the Apex Court upheld the said decision, there was no voice raised. This shows, what implicit faith the people of this country have in the Court and in the judiciary. In the same year in Mohini Jain's case,³³ the Apex Court held that the right to life guaranteed by Article 21 of the Constitution also includes a right to receive education.

In 1993, George Fernandes,³⁴ the Socialist leader sent a letter to the Court bringing to its notice a news item wherein the allegation was that Tibetan girls were molested and arrested in view of the visit

of Chinese Premier. The Court took suo moto action and got investigated the complaint.

In this very year on the petition of A.S. Sodhi,³⁵ an advocate of the Supreme Court complaining of deaths caused by police of innocent persons alleged to be Sikh Terrorist in Pilibhit encounter, the Court constituted a Commission of Inquiry and directed payment of As. 50,000/- each as an interim measure.

In the same year in Unnikrishnan J.P.³⁶ the Court struck down the system of capitation fee in the private Medical and Engineering Colleges and held that education cannot be equated with trade or business in this country. Modifying Mohini Jain's decision (supra), the Court held that every child upto 14 years of age has got a fundamental right of education. This was again on the basis of interpretation given to Article 21 of the Constitution. This decision will be dealt with in a different connotation at a later stage.

In Rathinam's case,³⁷ in the year 1994 again interpreting Article 21 of the Constitution, the Court, held that any law which is based on cruelty is not in consonance with Art. 21 of the Constitution and held that Section 309 of the Indian Penal Code holding a person punishable for attempting to commit suicide is violative of Article 21 of the Constitution.

In Joginder Kurnar's case,³⁸ the Court laid down the minimum guidelines regarding protection available to a person at the time of the arrest and held that these guidelines were to be treated as part of Article 21 of the Constitution of India. The guidelines are as under:-

“1. An arrested person being held in custody is entitled, if he so requests, to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained-

2. The police Officer shall inform the arrested person when he is brought

to the police station, of this right.)

3. An entry shall be required to be made In the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.”

In 1995 in the case of Smt. Shakuntala Devi,³⁹ the Apex Court exercising jurisdiction under Articles 142, 32 and 21 of the Constitution in a petition filed by the widow of a deceased employee of Delhi Electric Supply Undertaking, directed payment of Rs. one lakh as ex gratia compensation as one time decision. She did not have to undergo the procedure prescribed for claiming compensation under the Industrial Disputes Act. The Court came direct to her rescue though it was held that it will not be treated as precedent.

In a petition by Consumer Education & Research Centre and others,⁴⁰ Justice K.Ramaswamy speaking for the Court interpreting Article 21 of the Constitution, held that the right to life with human dignity encompasses within its fold, some of finer facets of human civilization which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In this petition, the plight of the workmen working in Asbestos Industry was brought to the notice of the Court. The Court held that the right to life and health, medical aid and to protect the health and vigour to a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39 (e), 41, 43, 48A and fundamental human right to make the life of workmen meaningful and purposeful with dignity of persons. The Factories were directed to compulsorily ensure health coverage of every worker, review of exposer to permissible limits and so on.

In P.G. Gupta,⁴¹ interpreting Articles 19(1)(C) and 21, the Court held that it is Imperative of State to provide permanent housing accommodation to the poor within their economic means to enable them to pay In easy instalments. In this decision, the Court relied on an earlier decision of 1990 in Shantistar Builders's case,⁴² wherein

the right to life was interpreted to mean to bring within its sweep the right to decent environment and a reasonable accommodation to live in.

In *Murlidhar Dayandeo Kesekar*,⁴³ the Apex Court held that economic empowerment is a basic human right and a fundamental right to live, and equality of status and dignity to the poor, weaker sections, Dalits and Tribes. Economic empowerment to the poor, Dalits and Tribes is an integral Constitutional scheme of socio-economic democracy and a way of life of political democracy.

The voyage which began in 1950 in *A.K. Gopalan* has reached the destination in theory. All renowned politicians, journalists, social and political activists have knocked the door of the Court for redressing the cause of general public and public interest litigation became a part of our system for the redress of grievances of those who cannot speak for themselves. This not only shows the faith which the people of this country have in the Court but establishes that even political and social activists, felt that only Court can be a proper forum for redressing the grievances as the Executive has failed to perform its duties. But even all this will remain an illusion, unless what has been said above is implemented and dream of Mahatma Gandhi comes true that tears from the eyes of last man of this country are wiped off, only then destination will be achieved.

The canvas on which now fundamental rights are spread over does not leave anything untouched which a citizen of this country can conceive of. The horizons on which this canvas is spread over are in essence unlimited. Whatever has been guaranteed is made available to the 900 million people of the country, nothing more is required to be achieved. Whatever one can conceive of to live with dignity has been guaranteed under Art. 21 and other fundamental rights read with directive principles and human rights based on International Covenants to which India is a party. All this is now a fundamental right of the poorest of the poor of this country and he is entitled to get it enforced by a petition under Article 32 of the Constitution of India. However, the larger question is whether 90% of

900 Million people of this country know what their rights are and how to achieve them? Have the State or the Executive been addressing themselves to fulfil the dreams which the Courts have guaranteed to them?

Another important question is, whether only Apex Court which has been conferred with powers under Art. 32 of the Constitution of India or with powers of declaration of law under Article 141 of the Constitution of India can alone fulfil the aspirations of these 900 million people of this country? These are questions at large with which all of us who are in this judicial system are confronted with Justice K. Ramaswamy in his Article (published in 1995 January-March Part 0' Judicial Training & Research Institute. U.P. Lucknow Journal) has said that not only The Apex Court but "the subordinate courts also have greater role to play in this area. The declaratory reliefs by judicial process would enable common man to secure justice from lower court at cheaper cost. Expeditious adjudication would inculcate faith of the people in the efficacy of law."

Responsibility of fulfilling these cherished values of life does not rest only on the Apex Court but on all Courts including High Courts and subordinate Courts which have jurisdiction to grant declaratory relief. How the Court manages to discharge this obligation is a question confronting all of us. The Apex Court cannot be absolved of its responsibility by only declaring the law. Simultaneously it is its obligation to get it enforced. Let all of us think how this obligation is discharged. Some modus operandi must be worked out for achieving the object which the Constitution of this great country has envisaged and on which the authoritative seal of the Apex Court has been fixed.

Before this Article is concluded, another debate which is relevant to the point is that the Apex Court having guaranteed to every child education upto the age of 14 years read with Article 14, which contemplates the concept of equality is it not the requirement of Law that like common Civil Code for enforcement of which the Apex Court has issued notice to the Union of India to inform as to

when the Union of India is going to implement the directive principle of having a Common Civil Code throughout the country the Court may Issue another directive to the Union of India and all States to ensure a common schooling system to all the children upto the age of 14 years on the basis of their locality so that the right to get education is coupled with right of equality i.e., all children should get equal education. The socialist thinker and philosopher Dr. Ram Manohar Lohia conceived of this revolutionary idea that all children of a particular locality should read in a common school, he may be the son of Prime Minister or son of a sweeper. This will not only bring revolution in the entire approach of the country but it will solve a very ticklish problem of the country i.e., 'Reservation'. The reservation has been guaranteed only for socially and educationally backward classes. If all children are educated In common schools. The problem of educationally backwardness will stand solved within a reasonable time and the controversy debating the Nation on reservation may be solved. These issues call for a dabate and the purpose of the Article will be achieved if the Issues are debated and solutions are brought forward on the points raised in this Article. ,

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¹ V .D. Mahajan-Constitutional Law in India (Seventh Edition), page 73.

² Ibid page 310.

³ Prem Chand Garg vs Excise Commissioner, U.P., A.I.R. 1963 S.C. 996. (Paragraph 2)

⁴ State of Madras vs. V. G. Rao, A.I.R.1952 S.C.196.

⁵ A. K.Gopalan vs. State of Madras, A.I.R. 1950 S.C. 27.

⁶ Kharak Singh vs. State of U.P., A.I.R. 1963 S.C. 1295.

⁷ Or. Ram Manohar Lohia vs. State of Bihar, A.I.R. 1966 S.C. 740.

⁸ In re: Madhu Limaye, A.I.R. 1969 S.C. 1014

⁹ Kesvanand Bharti vs. State of Kerala, (1973) 4 S.C.C.225.

¹⁰ Golak Nath vs. State of Punjab, A.I.R. 1967 S.C. '1643.

¹¹ A.D.M. Jabalpurvs. Shiva Kant Shukla, (1976)2 S.C.C. 521

¹² Maneka Gandhi vs. Union of India, (1978)1 S.C.C. 248.

¹³ R. D. Shetty vs. International Airport Authority of India. (1979) 3 S.C.C. 489.

¹⁴ Jolly George Verghese vs. Bank of Cochin, (1980)2 S.C.C. 360.

¹⁵ Sunil Batra vs. Delhi Administration, (1980)3 S.C.C. 488.

¹⁶ Prem Shanker Shukla vs. Delhi Administration, (1980)3 S.C.C. 526.

¹⁷ People's Union for Democratic Rights vs. Union of India, (1982)3 S.C.C.235.

¹⁸ Sanjeev Koke Manufacturing Company vs. Bharat Coking Coal Company, (1983)1 S.C.C. 147.

¹⁹ Neerja Chowdhry vs. State of H.P., (1984)3 S.C.C. 243.

²⁰ Olga Tellis vs. Bombay Municipal Corporation, (1985)3 S.C.C. 545

²¹Surendra Singh vs. Engineer in Chief C.P.W.D., A.I.R. 1986 S.C.584.

²² Dhirendra Chandra vs. State of U.P., (1986)1 S.C.C. 637.

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- 23 Suk Das vs. Union Territory of Afunachal Pradesh, (1986)2 S.C.C.401.
- 24 Bhim Singh vs. State of Jammu & Kashmir, A.I.R. 1986 S.C. 49.
- 25 Sheela Barse vs. State of Maharashtra, (1987)4 S.C.C. 273.
- 25 Catering Cleaners of Southern Railway vs. Union of India, (1987) 1S.C.C. 700.
- 27 Mackinon Machenzie & Company, (1987) 2 S.C.C. 469.
- 28 M. C. Mehta vs. Union of India, A.I.R. 1988 S.C. 1115.
- 29 Krishan Patnaik vs. State of Orissa, A.I.R. 1989 S.C. 677.
- 30 Gaurav Jain vs. Union of India, A.I.R. 1990 S.C. 292.
- 31 Subhash Kumar vs. State of Bihar, A.I.R. 1991 S.C. 420.
- 32 Indra Sawhney vs. Union of India, A.I.R. 1993 S.C. 477.
- 33 Mohini Jain vs. State of Karnatak, A.I.R. 1992 S.C. 1858.
- 34 George Fernandez vs. Union of India, 1993 Supp. (1) S.C.C. 418.
- 35 R.S.Sodhi vs. State of U.P., 1994 Supp. (1) S.C.C. 142.
- 36 Unnikrishnan. J. P. vs. State of A. P., A.I.R. 1993 S.C. 2178.
- 37 Rathinan P. vs. State of Gujarat, A.I.R. 1994 S.C. 1844.
- 38 Joginder Kumar vs. State of U.P., A.I.R. 1994 S.C. 1349.
- 39 Smt. Shakuntala De vi vs. Delhi Electric Supply Undertaking and others, JT 1995 (1) S.C. 547.
- 40 Consumer Education & Research Centre and others vs. Union of India and others, JT 1995 (1) S.C. 637.
- 41 Shri P. G. Gupta vs. State of Gujarat and others, JT 1995 (2) S.C. 373.
- 42 Shantistar Builders vs. Narayan Khlmalal Totame, JT 1990 (1 S.C.106.
- 43 Murlidhar Dayandeo Kesekar vs. Vishwanath Pandu Bar, another, JT 1995 (3) S.C. 563.