



Judiciary's Attempt to Make Political Democracy as Social One

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Abstract

Ambedkar and Nehru who were the founders of Indian Democracy wanted to establish it as a social one. But many believe that Political democracy has outreached our Social democracy. This Article aims to study the golden triangle of 'Liberty, Equality and Fraternity' as mentioned in our Indian Constitution. It also analyses through the landmark case laws where the Fundamental Rights under article 14, 19 and 21 were read together, hence showing the Judiciary's attempt to make Political democracy a Social one.

Keywords: Social, Political, Democracy

Constitutional path for social democracy

Our preamble uses the phrase "**Socialist** Democratic Republic'. But the overpowering political tyranny has been exploiting the Indian society, which majorly consists of the citizens who are deprived of the basic requirements for living. They even struggle to seek education, shelter, clothing, medical facilities etc. The prerequisites for a successful democracy in the words of B.R. Ambedkar are: *"Political democracy cannot last unless there lies at the base of social democracy. What does social democracy mean? It means a way of life which recognizes **liberty, equality and fraternity** as the principles of life."* Hence, trinity of liberty, equality and fraternity are treated as one and forms the principles of a citizen's life. These three principles find its reflection in the Golden Triangle of Right to Equality under article 14, Right to freedom under article 19 and Right to life and personal liberty under article 21 of the Constitution of India, 1950. They are called Golden Triangle because they are meant to be read together and are important to prevent the arbitrariness of the government. After several attempts judiciary has finally been able to analyze and read the three rights together, thereby giving recognition to the concept of 'Social Democracy.' Let us view the attempts made by the judiciary through the lens of following two cases.

*Maneka Gandhi v. Union of India*¹

Maneka Gandhi who was a journalist was asked to surrender her passport by the Regional Passport Office, New Delhi in 'public interest' u/s 10(3)(c) of the Passport Act, 1967; as a result of which she couldn't fly out of the

¹ AIR 1978 SC 597

country. On being asked the grounds, the Ministry of External Affairs declined to give any reasons. Then she filed a writ petition under article 32 challenging the constitutional validity of section 10(3)(c) as being violative of her Fundamental Right to Equality under article 14, because she was not given the opportunity of being heard and the action of the executive was arbitrary in nature. Her Right to exercise Freedom of Speech and Expression and freedom of movement to travel abroad was also restricted leading to the violation of article 19(1). As a consequence, her Right to Life and Personal Liberty under article 21 also stood violated. But as per the respondents, her passport was impounded on the basis of procedure established by law u/s 10(3) (c) hence, was not violative of her Fundamental Rights u/a 14, 19 and 21. She also contended that all the above mentioned fundamental rights must be read in consonance with each other to upkeep the spirit of our Constitution and also the intention of our Constituent Assembly. The Supreme Court in this case disagreed with the government and widened the ambit of article 21 and held that article 21 includes the provisions of article 14 and 19. A law can be termed as unconstitutional only when it infringes article 14 and 19 directly. Thus in this case section 10(3)(c) cannot be termed as unconstitutional, but the procedure that has to be followed under section 10(3)(c) must pass the test of Golden Triangle under articles 14, 19 and 21. The Court also overruled its previous judgment in the case of *A.K. Gopalan*² and finally held that Article 14, 19 and 21 cannot be read in isolation they are not mutually exclusive, but are dependent upon each other. All the procedural violations u/a 21 or any executive actions must be tested for both article 14 and 19. Hence, I agree with the words of the Court that, *“The right to equal protection under law guaranteed by Article 14 also protects liberty, and the exercise of freedoms guaranteed by Article 19 involves the exercise of liberty and by extension, privacy. In other words, everything done in the exercise of liberty requires privacy.”*³

Sunil Batra v. Delhi Administration⁴

Sunil Batra, who was serving life imprisonment in jail for a murder case, wrote a letter to the Supreme Court judge, regarding the brutal assault inflicted by the head warden on his fellow prisoner Prem Chand. A rod was driven into his anus to extract money from him through his visiting relations. His letter was treated as a Public Interest Litigation u/a 32 of the Constitution of India. Amicus curie were appointed, who were authorized to visit prison, interview witnesses etc. The victim was first sent to the jail hospital and later on shifted to the Irwin Hospital. The Supreme Court formulated several issues out of which the relevant issue for our consideration here is about the broad contours of Fundamental right of a detainee sentenced by the Court under article 14, 19 and 21. The Court held that just because a person is sentenced by the Court it does not mean that his Fundamental Right under article 14, 19 and 21 are taken away. The most important right of a prisoner is his physical and mental integrity. Whenever a prisoner is sent into a solitary confinement, visits from friends and relatives are restricted, basic facilities are denied, physical torture is inflicted; each such instances takes away his liberty of life under article 21. Any step taken by the jail authorities must be fair, reasonable and as per the legal procedure. The moment it becomes dependent upon the uncontrolled discretion and becomes unreasonable and arbitrary it causes the violation of Right to Equality under article 14 and Right to freedom under article 19. If the Right of the victim

² 1950 AIR 27

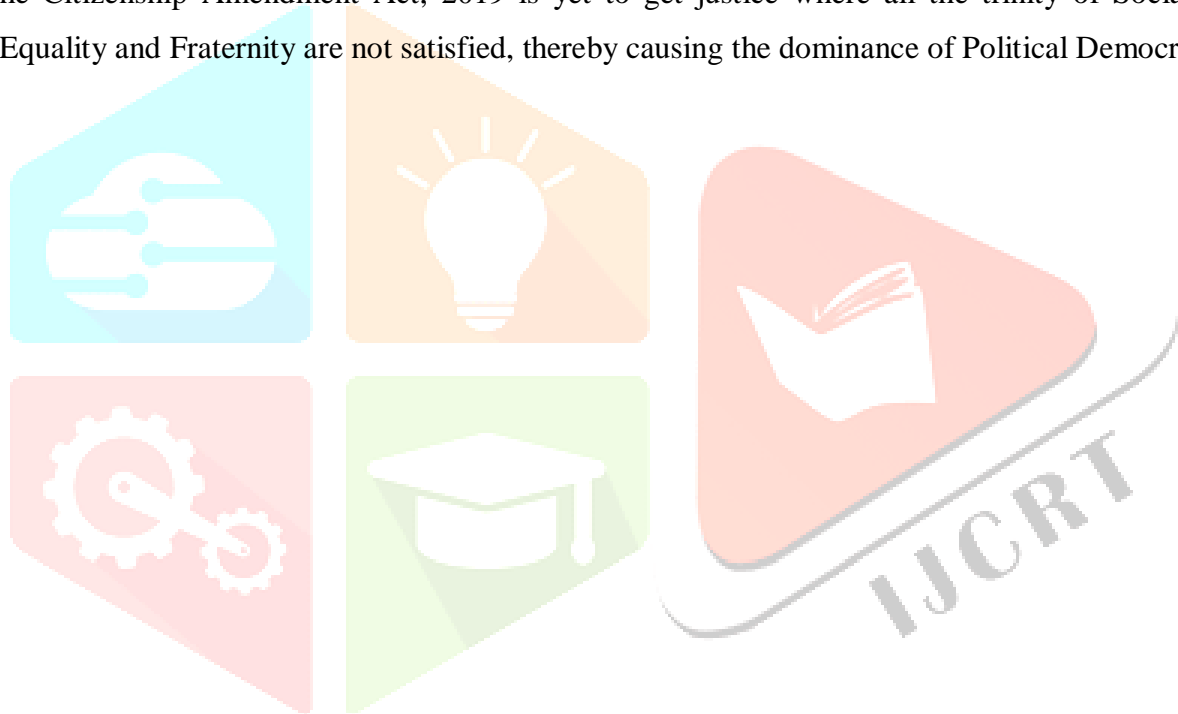
³ Digital Privacy, 19th August, 2017, “Defender of Your Digital Freedom”, Available on: <https://sflc.in/ninejudge-constitution-bench-supreme-court-hears-arguments-right-privacy-updates-day-6> (Accessed on 5th June 2020)

⁴ (1979) 1 SCR 392

such as appeal, fair hearing and remedies are not given under the principles of natural justice then it again leads to the abridgment of Article 21. The Court stated that, *“the full potential of Arts. 21, 19, 14, after Maneka Gandhi has been unfolded by this Court in Batra’s Case. Today, human rights jurisprudence in India has a constitutional status and sweep, thanks to [Art. 21](#) so that this Magna Carta may well toll the knell of human bondage beyond civilised limits.”* Hence, it is very evident to see that the Court interpreted all the three articles of the Golden Triangle in relation to each other.

Conclusion:

After taking very narrow approach in *Kharak Singh*⁵ and in *A.K. Gopalan case*⁶ that all the three articles should be read separately and are independent of each other; it is overwhelming to see that the same Court overruled its judgment in the case of *Maneka Gandhi*, thereby upholding the spirit of our Social Democracy. Recently, in the *Sabrimala case*⁷, *K.S. Puttaswamy case*⁸ the Supreme Court was also seen doing the same. But unfortunately the fate of the Citizenship Amendment Act, 2019 is yet to get justice where all the trinity of Social Democracy: Liberty, Equality and Fraternity are not satisfied, thereby causing the dominance of Political Democracy.



⁵ AIR 1963 SC 1295

⁶ A.I.R. 1950 S.C. 27

⁷ WRIT PETITION (CIVIL) NO. 373/2006

⁸ W.P.(C). No. 494/2012