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‘Right to Sleep as a Fundamental Right An Analysis vis-à-vis the Ramlila Maidan Case’

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ABSTRACT

For a long time, the Indian judiciary has debated as to which rights should be included within the ambit of fundamental rights, particularly within the scope of Article 21, the right to life. It has already been established by previous judgments that life does not mean merely an animal existence – it should be a quality human life. In this paper, the inclusion of right to sleep within the ambit of right to life has been discussed, with special reference to the 2011 case of Re-Ramlila Maidan Incident Dt. 4/5.06.2011 vs Home Secretary and Ors. In this case, the police force brutally drove away the sleeping followers of Baba Ramdev at 1 a.m., which necessitated the discussion about sleep as a part and parcel of life.

After the incident, the question arose as to whether the state should consider the sleep schedule of people as an important factor while administering justice, and to what extent. The police attempted to defend their actions by a number of legislations, such as, the Criminal Procedure Code and the Constitution of India itself, which imposes reasonable restrictions on the exercise of a person’s fundamental rights. The Supreme Court of India, in this case, embarked to decide upon the balance between the right to sleep of the people and the maintenance of peace by the state, and provided a landmark judgment. This research provides a thorough analysis of the facts and arguments of the case, along with the Court’s rationale behind the judgment. It also comprehensively discusses the various important features of the fundamental rights, with special reference to the right to sleep.

I. BACKGROUND

It was the year 2011, when the Apex Court passed a verdict on the issue of police brutality against the followers of Baba Ramdev, who were sleeping. The incident happened on the night between 4th and 5th June, 2011, and the court took ‘suo motu’ cognizance after the publication of a number of reports in the matter. Baba Ramdev had organised a mass protest on the issue of black money stashed abroad, and the followers, tired after the days tirade, were sleeping on the ground, while such inhumane action happened.

While Delhi Police justified its actions contending that the police had withdrawn the permission

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from Ramdev, as the former had asked for the permission to hold a Yoga Shivar and not a Dharna or a Satyagraha. However, according to the Court, a person cannot be reasonably presumed to be engaged in a criminal or disturbing activity, when asleep. There was no reasonable explanation as to whether a grave and urgent situation arose, requiring such an emergent action at the dark hour of midnight. Therefore, in the absence of any such justification, the Court had no option but to deprecate such action, while it also casted a serious doubt on the existence of the sufficiency of reasons for such action. According to the Court, the incident in Ramlila Maidan was ‘an example of a weird expression of the desire of a tyrannical mind to threaten peaceful life suddenly for no justification’². The Court took a view that considering the definition of sleep, it was clear that the precipitate action was nothing but a clear violation of human rights and a definite violation of procedure for achieving the end of dispersing a crowd.

II. FACTS OF THE CASE

The primary facts of the case can be tabulated as below:

- In 2008, Baba Ramdev first raised the issue of black money publicly.
- On 27th of February, 2011, he, along with others, participated in the anti-corruption rally held at the Ramlila Maidan.
- On 20th April, 2011, the President of Bharat Swabhiman Trust, Delhi, submitted an application to the MCD, proposing to take Ramlila Maidan on rent subject to the general terms and conditions, for holding a yoga training camp between 1st June, 2011, to 20th June, 2011. He had also submitted an application to the Deputy Commissioner of Police (Central District), seeking permission to hold the Yoga Training Camp. The permission was subject to the terms and conditions stated therein.
- In the month of May, repeated protests were made by Baba Ramdev against corruption. He wrote to the Prime Minister and announced that he would go on a hunger strike against the issue of black money. He also sought permission for holding a Dharna at the Jantar Mantar, which was granted with certain conditions. Within his circles, it was well-known that he was planning on an Anshan satyagraha at the Ramlila Maidan.
- In this backdrop, several ministers of the Union Cabinet tried to convince him by explaining the steps taken by the government on the issue of black money, and implored him to refrain from the hunger strike. At the same time, Anna Hazare started his protests.

² Re-Ramlila Maidan Incident Dt. 4/5.06.2011 vs Home Secretary and Ors.

- On the 4th of June, 2011, Baba Ramdev started his hunger strike with the motto 'bhrashtachar mitao satyagraha'. Despite the assurance given by Acharya Virendra Vikram, the event was converted into an Anshan, and the crowd at the Ramlila Maidan swelled to more than fifty thousand. No yoga training was held for the entire day. Certain negotiations took place between Baba Ramdev and some of the ministers on telephone, but he revived his earlier condition of bringing the black money back.

- At about 11.15 p.m., it is stated that Centre's emissary reached Baba Ramdev at Ramlila Maidan, with a letter assuring to declare black money hoarded abroad as a national asset. The conversation with Baba Ramdev convinced the government that Baba Ramdev will not wind up his protest.

- At about 11.30 p.m., a team of Police, led by the Joint Commissioner of Police, met baba Ramdev and informed him that the permission to hold the camp had been withdrawn and that he would be detained. At about 12.30 a.m., a large number of CRPF, Delhi Police force, and Rapid Action Force personnel, totalling approximately five thousand, reached the Ramlila Maidan. At this time, the protestors were peacefully sleeping. Thereafter, at about 1.10 a.m., the Police reached the platform to take Baba Ramdev out, an action which was resisted by his supporters.

- At 1.25 a.m., Baba Ramdev jumped into the crowd from the stage, and disappeared amongst his supporters. He thereafter climbed on the shoulders of one of his supporters, exhorting women to form a barricade around him. A scuffle between the security forces and the supporters of Baba Ramdev took place, and eight rounds of teargas shells were fired.

- By 2.10 a.m., almost all the supporters had been driven out of the Ramlila Maidan. The Police sent them towards the New Delhi Railway Station. Baba Ramdev, who had disappeared from the dais earlier, was apprehended by the Police near Ranjit Singh Flyover at about 3.40 a.m. At that time, he was dressed in salwar-kameez with a dupatta over his beard. He was taken to the airport guest house. It was planned by the government to fly him in a chopper from Safdarjung airport. However, at about 9.50 a.m., the government shelved this plan and put him in an Indian Air Force helicopter and flew him out of the Indira Gandhi International Airport³.

These events persuaded the High Court to issue a suo moto notice vide its order dated 6th June, 2011. This notice was issued to the Home Secretary, Union of India, the chief Secretary, Delhi Administration, and the Police Commissioner of Delhi to show cause and file their personal affidavits explaining the conduct of the police authorities and the circumstances which led to

³ Re-Ramlila Maidan Incident Dt. 4/5.06.2011 vs Home Secretary And Ors.

the use of such brutal force and atrocities against the large number of people gathered at Ramlila Maidan. A notice was also issued on similar grounds to the Bharat Swabhiman Trust. In order to ensure proper independent assistance to the Court, the Court also appointed an amicus curiae.

III. MISUSE OF POWER UNDER CRPC

Regarding the case, one of the primary issues before the Court was whether the power under section 144 of Criminal Procedure Code has been misused. The police informed the Court that three conditions were imposed on Baba Ramdev for holding his Yoga Camp. These conditions were: permission from the owner of the property must be taken, there must be no obstruction to the free flow of traffic, and sufficient number of volunteers must be deployed at the venue to keep things under control. The trust had also taken prior permission from the Delhi Municipal Corporation to use Ramlila Maidan, and police forces were deployed by the state to ensure the success of the event. The police were working to ensure that the people entering the Maidan were thoroughly checked, and that they were not carrying any arms or ammunitions.

Section 144 directs the circumstances where an order can be issued in urgent cases of nuisance or apprehended danger; but the time when the orders were passed, all the followers were peacefully sleeping. Section 144 clearly mentions that it must be applied in cases where there is imminent threat to security⁴. A peacefully sleeping crowd cannot, logically, be a threat. The state of sleep has been escribed by Homer as “sleep is the twin of death”⁵. If needed, the police could order the followers to vacate the premises the next morning. However, a notice to evacuate, directed to a sleeping crowd at 11.30 p.m., cannot be held as reasonable. There was a huge number of people, and it is of common understanding that displacement of such a crowd will take at least a couple of hours. Moreover, at that hour, finding alternate accommodation for so many people would be extremely difficult. Looking at this a practical and humanitarian point of view, the action of the police seems all the more unreasonable.

On the other hand, section 144 can only be used in cases where there is a need for immediate prevention or speedy remedy. It cannot be used for dangers in the future which are foreseeable, but only in cases of imminent dangers⁶. It is settled law that the order issued under section 144 must prescribe to material facts, because a restriction on a constitutional right has to be used very sparingly and cautiously. In any country, especially a democracy, the balancing of interests must be ensured, and no organ of the state should have unlimited or unguided powers.

⁴ Tandon, *Criminal Procedure Code*.

⁵ Homer, *The Iliad*.

⁶ Tandon, *Criminal Procedure Code*.

This is applicable equally to the public, as well as to the police. Therefore, for invoking section 144, Cr.P.C., three conditions must be satisfied –

- If there is immediate provocation and a need for speedy remedy.
- Police has to explain the material facts in the order passed.
- Only prohibits certain acts.

Immediate provocation or any such situation could not be reasonably established by the police in this case. The police resorted to lathi-charge and tear gas, and their justification was that the assembly would have caused communal tensions in the area. This is completely baseless and not backed by any evidence, especially on the light that it was not the first time that the Ramlila Maidan was used for such a large gathering.

The Apex Court also issued directions to the police that while considering ‘threat perception’ as a ground for revoking permissions or passing an order under section 144, the threat perception must be real and not illusory. The Court said the police should have in place a complete and effective plan for dispersal, before evicting the gathering by such violent use of force⁷. Even though the police planned the accommodation and subsequent course for Baba Ramdev, such a plan did not exist for the others. The followers, including women, were sent to the Delhi Railway Station area at such hour of the night.

Thus, the Hon’ble judges held that the invoking of sec 144 was not called for in this case, and the police has failed to substantiate their reasons with sufficient material. However, they did not label the order as malafide, and only said that the action suffers from arbitrariness. In totality, it was concluded that section 144 was abused by the state machinery, and caused not only grievous hurt but also the death of an innocent lady named Rajbala. Her family was held to be entitled to the ad-hoc compensation of Rs five lacs, while other persons who suffered grievous injuries and were admitted to the hospital were entitled to compensation of Rs fifty thousand each. The persons who suffered simple injuries and were taken to the hospital but discharged after a short while, would also be entitled to a compensation of Rs twenty-five thousand each.

IV. VIOLATION OF FUNDAMENTAL RIGHTS

Articles 19(1)(1) and 19(1)(b) guarantee to all citizens the right to freedom of speech and expression and the right to assemble peacefully without arms. These provisions protect the basic rights of the individuals, and uphold the democratic spirit of the nation. However, these

⁷ Re-Ramlila Maidan Incident Dt. 4/5.06.2011 vs Home Secretary And Ors.

rights are not absolute and the state is empowered by Art 19(2) and 19(3) to impose reasonable restrictions in the interest of the security of the state and public order⁸. The underlying principle is that public order and tranquillity are supreme, and take precedence over individual rights.

Under article 19(1)(a), every citizen of the democracy of India gets the right to express one's own views and opinions in the form of words of mouth, writings, pictures and caricatures, or any other similar form. It includes freedom of press and also expression of one's idea by visible representation by gestures and the like. Article 19(1)(b) also protects the freedom of assembly⁹. This sub clause ensures the freedom of all the citizens to meet with each other in any number, provided the assembly is peaceful and unarmed (which the police force ensured in this case) and is held at a public place. This right is not exclusively an absolute right, but is liable to be subjected to reasonable restriction in the interest of public order. But such restriction must be reasonable, and the government cannot impose a condition to compel or force the members to withdraw their membership from the assembly.

Justice Swatanter Kumar began the judgement in this case by comparing the First Amendment of the United States Constitution, which provides for the freedom of speech of press in the American Bill of Rights, with Art 19(1) of the Constitution of India. In the US, the language of the amendment provides for absolute freedom, without any restrictions whatsoever. This is in contrast to the 'balancing of interests' principle followed by the Indian Constitution. The 'balancing of interest' approach is basically derived from Roscoe Pound's theory of social engineering, which says that a social interest may not be balanced against individual interest, but only against another social interest. Article 19(2) empowers the state to impose reasonable restrictions on exercise of the right to freedom of speech and expression in the interest of the factors stated in the said clause. Similarly, Article 19(3) enables the State to make any law imposing reasonable restrictions on the exercise of the right conferred, again in the interest of the factors stated therein. In both these cases, restrictions on the Articles can be enforced only in case of a prevailing social interest. As the State has a duty to protect itself against certain unlawful actions, it may enact laws which would ensure such protection. As observed in the case of *State of West Bengal v. Subodh Gopal Bose*, "the right that springs from Art 19(1) is not absolute and unchecked. There cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraint, the rights and freedoms may become synonymous with anarchy and disorder"¹⁰. This was referred

⁸ Constitution of India.

⁹ Constitution of India.

¹⁰ The State Of West Bengal vs Subodh Gopal Bose And Others.

to by the Hon'ble Judge to bring to light the scope and ambit of the Fundamental Rights guaranteed under Part III, and the power of the state to restrict these rights. The case at hand involved a pertinent issue of balancing of fundamental right to speech and expression and assemble peacefully without arms, with the duty of the state to protect public safety. The restrictions, as provided for in the Constitution of India, must be reasonable.

Thus, with respect to the above case, the act of the intervention of the police led to the suspension of the association of Ramdev and his followers due to governmental interference. The association formed by Ramdev included a lawful purpose that is, exercising the right of freedom of speech as a way of protest against the government. The assembly also did not violate any fundamental duties, and neither did it resort to any kind of violence affecting the public policy or the public peace. For that reason, the government did not have the right to interfere with the formation of the assembly, and also to dissolve the assembly via violence. Moreover, it was not a case of emergency that the authorities acted with violence upon an assembly of innocent people in the middle of the night. By discussing the matter in this way, the Court held that the acts of the police authorities led to interference of fundamental rights, violating Art 19(1)(b) of the Indian Constitution.

V. RIGHT TO LIFE

Sleep is an unconscious state or condition regularly and naturally assumed by man and other living beings, during which the activity of the central nervous system is almost entirely suspended. It is the state of slumber and repose – thus, a necessity, and not a luxury. Sleep is also essential for maintaining optimal health and happiness, as it directly affects the quality of the life of an individual when awake, including his or her mental sharpness, emotional balance, creativity, and vitality. Thus, sleep is a biological and essential ingredient of the basic necessities of life. It is a self-rejuvenating element of our life cycle, and part and parcel of human life. If sleep is disturbed, the mind gets disoriented, and it disrupts the health cycle. Sleep is, therefore, a part both life and inherent liberty which cannot be taken away by any unscrupulous action.

In *Forum, Prevention of Environment and Sound Pollution v. Union of India*, the Supreme Court issued several direction including the ban on using fireworks or fire crackers, except between 6.00 a.m. and 10.00 p.m.¹¹. The use of fire crackers has also banned in the silence zones, the areas less than 100 meters around hospitals, educational institutions, courts, and religious places. In many countries, there are complete night curfews at the airports as the

¹¹ Forum, Prevention Of Env. & Sound Pollution vs Union Of India & Anr.

concept of sound sleep has been associated with sound health – and health is inseparable facet of Article 21 of the Constitution. However, while determining the matter in this case, the crucial issue was not whether such rights existed, but whether the State had a compelling interest in the regulation of a subject which is within the police power of the State. Undoubtedly, reasonable regulation of time, place, and manner of the act of sleeping would not violate any constitutional guarantee, for the reason that a person may not claim that sleeping is his fundamental right, and therefore he has a right to sleep in the premises of the Supreme Court itself.

While dealing with the violation of human rights by police officials, the Supreme Court in *Prithipal Singh and Ors. V. State of Punjab and Anr.* held that: “The right to life has rightly been characterized as ‘supreme’ and ‘basic’: it includes both so-called negative and positive obligations for the State”¹². The negative obligation includes an overall prohibition on arbitrary deprivation of life. Thus, it is evident that right to sleep has always been treated as a fundamental right like the right to breathe, to eat, to drink, to blink, etc. In this case, the bench of Chauhan B S J. and Kumar Swatanter J. was unanimous that the police had erred gravely by clamping prohibitory orders under section 144 of Criminal Procedure Code on the night of June 4, when the gathering at Ramdev’s yoga camp was nothing but peacefully sleeping people. In the opinion of B.S. Chauhan J., when police disturbed the crowd in night at 1:00 a.m., their right to sleep was violated. He held that right to sleep forms an essential part of Article 21, which guarantees personal liberty and life to all¹³. Sleep is an essential part of living a peaceful life, hence it is a fundamental right.

As recognized in international law, the state has an obligation to respect, protect and fulfil the rights of its citizens. For the exercise of this right, state must ensure resources like places where one can sleep peacefully if he or she has no shelter. If any state authority disturbs a person at night without any good cause, then such actions can be dealt by the judiciary. In the *Bharat Bandh* Instance of 1987, similar violation of article 21 of the Indian Constitution was observed. The Government of the then Prime Minister Rajiv Gandhi issued an order that all the Government and Public sector Employees should remain in their offices overnight on the day of the *Bandh*. This instance was held to be a total restrain of the people’s life and liberty, as they had to stay without food and water.

¹² Prithipal Singh Etc vs State Of Punjab & Anr. Etc.

¹³ Re-Ramlila Maidan Incident Dt. 4/5.06.2011 vs Home Secretary And Ors.

VI. FINAL JUDGEMENT

The Supreme Court provided a landmark judgment in this case. The bench of Supreme Court bench comprising of Chauhan B.S. J. and Kumar Swatanter J. has rightly illustrated the judgment as follows:

- The Supreme Court had taken suo motu cognizance of brutality of police action against the sleeping followers of Ramdev.
- Both Ramdev and the Delhi Police were responsible for the midnight crackdown at Ramlila Maidan, and criminal prosecution should be directed towards both the police personnel and Ramdev's supporters who had behaved violently during the incident.
- The police force was observed to misuse their power by assaulting sleeping victims with their violent attack on them in middle of the night, thereafter violating their fundamental rights.
- The Court awarded a compensation of Rs five lakh for the family members of Rajbala, who had died in the incident. The bench also awarded a compensation of Rs fifty thousand for those who suffered very severe injuries and Rs twenty-five thousand for those with minor injuries.

The judgment also identified the violation of 'Freedom of Speech and Expression' as per Art 19(a) and the 'Right to assemble peacefully and without arms' as per Art 19(b) of the Indian constitution. The Supreme Court concluded the decision by including 'Right to Sleep' as a fundamental right under the ambit of Article 21, 'Right to Life and Personal Liberty'^{14 15}.

VII. CONCLUSIVE NOTES

However, this judgment attracted its fair share of criticisms. S.H. Kapadia, former Chief Justice of India, made an apparent reference to the judgment in a remark against Ramdev's supporters. He stated "No, we have included right to sleep, where are we going? It is not a criticism. Is it capable of being enforced? When you expand the right, the judge must explore the enforceability. Questions which judges must ask are if it is capable of being enforced. Judges must apply enforceability test. Today, if a judge proposes a policy matter, government says we are not going to follow. Are you going by way of contempt or implement it?" He also said that "Judges should not govern the country. We need to go by strict principle. Whenever you lay down a law, it should not interfere with governance. We are not accountable to people." Kapadia said judges should go strictly by the constitutional principles which have clearly

¹⁴ Constitution of India.

¹⁵ Re-Ramlila Maidan Incident Dt. 4/5.06.2011 vs Home Secretary And Ors.

demarcated the separation of power among the judiciary, the legislature and the executive¹⁶.

The judgment might have its defects, but it can be concluded that the suo moto action taken up by the Hon'ble Supreme Court was laudable in the light of common interest. This reiterates the fact that the Indian Judiciary is serious about upholding the fundamental rights of people, even when the government of India had failed to protect the most important rights. This landmark judgment provided a detailed view of the approach of the judiciary towards the safety of the citizens of India, which is hugely inspiring for the common people.

¹⁶ Balla, "Right to Sleep –The Apex Court's Lullaby for the People!"