

EXPANDING DIMENSIONS OF RIGHT TO LIFE - AN OVERVIEW

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Introduction:

Every human being has the inherent right to life. This right shall be protected by Law. No one shall be arbitrarily deprived of his life. The right to life is a moral principle based on the belief that a being has the right to live and, in particular, should not be killed by another entity including Government. The Government should take appropriate measures to safeguard life by making laws to protect the you and in some circumstances by taking steps to protect you if your life is a risk.

According to the constitution, parliament and the state legislatures in India have the power to make laws within their respective jurisdictions. This power is not absolute in nature. The constitution vests in the judiciary, the power to adjudicate upon the Constitutional validity of all laws. If a law made by the parliament or the state legislatures violates any provision of the constitution, the Supreme Court has the power to declare such a law invalid or ultra vires.

Life and Personal Liberty:

Art. 21 though couched in negative language, confers on every person the fundamental right to life and personal liberty which has become an inexhaustible source of many other rights.² These rights are as such available to foreigners as to citizens.³ These rights have been given paramount position by our courts.⁴

1. Life :

The right to life which the most fundamental of all is also the most difficult to define. Certainly it cannot be confined to a guarantee against the taking away of life, it must have a wider application. With reference to a corresponding provision in the 5th and 14th

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² Bhagwati J. in Maneka Gandhi V. Union of India (1978) 1SCC 248

³ National Human Right Commission V. State of Arunachal Pradesh (1996) 1 SCC 742

⁴ Kchar Singh V. Union of India (1989) 1 SCC 204

amendments of the U.S constitution. Which says that no person shall be deprived of his “life”, liberty or property, without due process of law, in *Munn V. I llinois*⁵ Field J. Spoke of the right to life in the following words:

“By the term “life” as here used something more is meant than 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, or the putting out of the eye, or the destruction of any other organ of the body through which the soul communicates with the outer world”.

2. Liberty:

The expression “liberty” in the 5th and 14th amendments to the U.S constitution is given a very wide meaning. It takes in all the freedoms. The expression is not confined to mere freedom from bodily restraint and “liberty”, under law, but extends to the full range of conduct which the individual is free to pursue. In Article 21 in contrast to the American constitution. “Liberty” is qualified by “personal”. Which leads to an inference that the scope of liberty under our constitution is narrower than in the U.S constitution.

In *State of Maharashtra V Madhukar Narayan Mardikar*,⁶ the Supreme Court held that, even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes.

3. Procedure Established by Law:

The expression “procedure established by law” means procedure laid down by statute or procedure prescribed by the law of the state. Accordingly, first there must be a law justifying interference with the person’s life or personal liberty, and secondly, the law should be a valid law, and thirdly the procedure laid down by the law should have been strictly followed. In the absence of any procedure prescribed by the law sustaining the deprivation of personal liberty. The executive authorities shall violate Article 21 if they interfere with the life or personal liberty of the individual.⁷ In *A.K.Gopalan V State of Madras*,⁸ it was held that the expression “Procedure established by law” means procedure enacted by a law made by the state.

⁵ 94 US 113

⁶ AIR 1991 SC 207

⁷ V.N Shukla’s – Constitution of India, Eleventh Edition, Eastern Book co, Luck now , Pg-199

⁸ AIR 1950 SC 27

The supreme court by a majority, rejected the argument to the “law” in Art 21 is used in the sense of jus and lex i.e. the just law and that it means the principles of natural justice on the analogy of “due process of law “ as interpreted by the American Supreme Court. That in effect amounted to holding that Art 21 was a protection only against the executive and not against the legislature.

4. Due Process of Law:

“Due Process of Law” is basically a substantive due process. Procedural due process means, law and procedure both should be reasonable which basically means principles of natural justice. Due to vagueness and indefiniteness of concept, this phrase has been omitted in India, i.e due process of law

Article 21 – Protection of Life and Personal Liberty:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Though the phraseology of Art 21 starts with negative word but the word “No” has been used in relation to the word deprived. The object of the fundamental right under Art 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. If an act private individual amounts to encroachment upon the personal liberty or deprivation of life of other person, such violation would not fall under the parameters set for the Article 21. In such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21. Article 21 of the constitution of life of a person. The term person does include citizens as well as non- citizens.

The Traditional Approach of the Supreme Court:

It is hard to appreciate fully the extent of development of right to life without an overview of the traditional approach. In A.K Gopalan V. Union of India.⁹ the state had to demonstrate the interference with the individual’s right to life is accorded with the procedure laid down by properly enacted law . It didn’t matter whether the law was just and fair. In

⁹ Ibid

Maneka Gandhi's case. One can find the dramatic change of attitude by the court in interpreting Article 21 in a manner so as to impliedly include 'due process of law' into the contents of Article 21.

Interpretation of Article 21-Post Maneka Gandhi's case:

The decision of Constitutional Bench of Seven Judges [over ruling Gopalan's case] in Maneka Gandhi's case¹⁰ became the starting point, the springboard, for a spectacular evolution of the law relating to judicial intervention in (individual) human rights cases. Thus, the principle laid down by the supreme court in this case is that the procedure established by law for depriving a person of his right to life must be right, just, fair, and reasonable.

The new interpretation of Art.21 in Maneka Gandhi's case has ushered a new era of expansion of the horizons of right to life and personal liberty. The wide dimension given to this right now covers various aspects which the founding father of the constitution might or might not have visualized. The expression "procedure established by law" resembles with the 5th Amendment of the U.S constitution.¹¹ Even though the word "due" is not specifically provided under Art 21 but the Supreme Court in its various judgement interpreted it in a wider and dynamic manner.

Expanding Horizons of Article 21 of Indian Constitution:

Adopting a liberal interpretation the Supreme Court has several rights in Art. 21 to make life more meaningful and worth living, they may be enumerated as under:

1. Right not be subjected to bonded labour and to be rehabilitated after release.

Bandhua Mukti Morcha V. Union of India,¹² the supreme court observed that Art 21 read with the DPSP enshrined in Article 39,41 and 42 as well as the Bonded Labour System (Abolition) Act, 1976 obliges the state to identify, release and suitable rehabilitate the bonded labourers. The bonded labourers also have the right to live with human dignity enshrined in Article 21.

¹⁰ AIR 1978 SC 597

¹¹ 5th constitution Amendment is USA – "No person shall be deprived of his life, liberty or property without due process of law".

¹² AIR 1984 SC 802

2. Right to know.

Reliance Petrochemicals Ltd V. Proprietors Indian Express Newspapers Bombay (p) Ltd.¹³ the supreme court held that right to know in Art 21 as a necessary ingredient of participatory democracy.

3. Rights of Inmates of Protective Homes.

Upendra Baxi v State of U.P¹⁴ Appropriate directions have been given by courts to the inmates of protective and remand homes for women and children for providing suitable human conditions in the homes and for providing appropriate machinery for effective safeguard of their interests.

4. Article 21 includes Right to Education.

Right to education is considered as third eye of man without which no one can lead good, decent and dignified life. Earlier right to education was a part of directive principle of state policy.¹⁵ However as per the changing needs of society Supreme Court in Mohini Jain V State of Karnataka¹⁶ and Unni Krishna V State of A.P¹⁷ rule that right to education is fundamental right because it directly flows from right to life.

Earlier the courts interpreted Right to Education under Art 21 but in the year 2002 by Constitutional Amendment, Art 21 A¹⁸ was inserted in the constitution and right to education was expressly made as a fundamental right.

5. Article 21 includes Right to Privacy.

Justice K S Puttaswamy (Retd) V. Union of India.¹⁹ Has been proven to be a landmark judgement in deciding the issue whether right to privacy is constitutionally protected. The nine judges bench has held that:

¹³ AIR 1989 SC 190, 202-203

¹⁴ AIR 1983 2 SCC 308

¹⁵ Art. 51 A of the Indian Constitution

¹⁶ AIR 1992 SC 1858

¹⁷ AIR 1993 SC 2178

¹⁸ 86th Amendment 2002

¹⁹ AIR 2018 SC 1

- ❖ The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Art 21 and as a part of the freedoms guaranteed by part III of the constitution
- ❖ The decision in MP Sharma case which held that right to privacy is not protected by the constitution was overruled.
- ❖ The decision in Khadak Singh case to the extent that it held that right to privacy is not protected by the constitution was over ruled.
- ❖ Decisions subsequent to Khadak Singh case which had enunciated the position in (i) above lay down the correct position in law.

6. Article 21 includes Right to Health and Medical Care.

Art. 21 as well as DPSP²⁰ obligate state to preserve the life of person. In a landmark decision of Parmanand Katara V. Union of India²¹ the supreme court held that in medico legal cases preservation of life is of Paramount importance therefore it is the primary duty of doctor to give immediate aid to the victims either he is a criminal or innocent person and not wait for the completion of legal formalities.

7. Article 21 includes Right to Livelihood.

Right to livelihood is borne out of the right to life as no person can live without the means of living that is livelihood The Supreme Court in olga Tellis V. Bombay Municipal Corporation²² held that, the concept of “right to life and personal liberty” guaranteed under Art 21 of the constitution includes the “right to live with dignity” which in turn includes right to livelihood.

8. Rights of Prisoners.

State of A.P V Challa Ram Krishna Reddy²³ Supreme Court held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. Therefore, any imposition of a major punishment within the prison system is conditional upon the observance of the procedural safeguards enshrined in Art 21, even though he is not

²⁰ Art. 46 and 47 of Indian Constitution

²¹ AIR 1989 SC 2039

²² (1985) 3 SCC 5

²³ AIR 2000 SC 2083

in a position to enjoy the full panoply of fundamental rights due to the very nature of the regime to which he is lawfully committed.

9. Article 21 includes Right to Free Legal Aid.

In *M. H. Hoskot V. State of Maharashtra*²⁴ the Supreme Court has invoked Art. 39 A and held that state under Article 21 should provide free legal aid to a prisoner who is indigent and or otherwise disabled from securing legal assistance where the ends of justice call for such service.

10. Article 21 guarantees Freedom from Police Atrocities.

The Supreme Court has shown its great concern in cases of maltreatment of prisoners. As for as mode of punishment is concerned in *Perm Shankar V. Delhi Administration*²⁵ the Supreme Court held that hand cuffing is a prima facie is inhuman in nature therefore it must be that last refuge as there are other ways for ensuring security.

11. Right to life under Article 21 does not include Right to Die.

Human life is Precious one. The Supreme Court has shown radical change in its view. In *P.Rathinam's case*²⁶ and held that "right to life" does not include "right to die" and the "extinction of life " is not included in "protection of life" thus provision penalizing attempt to commit suicide is not violate to Art.21 of the constitution.

12. Delay in executing death sentence is a violation of Art. 21.

In *Vatheeswaran V. State of Tamil Nadu*²⁷ the Supreme Court evolved another principle that prolonged delay (2 days) in executing death sentence would be unjust, unfair and unreasonable and therefore violate of Art.21 of the constitution. In such a case, the accused has a right to get the death sentence commuted to life imprisonment.

13. Article 21 includes Right to Speedy Trial.

²⁴ AIR 1978 SC 1548

²⁵ AIR 1980 SC 1535

²⁶ AIR 1981 SC 1844

²⁷ AIR 1983 SC 261

The Supreme court held in Hussainara Khatoon (I) V. Home Secretary, State of Bihar²⁸ That speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Art-21 of the constitution and any accused who is denied this right of speedy trial is entitled to approach supreme court under Art. 32 for the purpose of enforcing such right and the supreme court in discharge of its constitutional obligation has the power to give necessary directions to the state.

14. Article 21 includes Right to Claim Compensation.

The supreme court of India has also shown its dynamic and activist role in compensatory jurisprudence. Recently in Chairman, Railway Board V. Chandrima Das²⁹ the employees of the Railway Board had gang raped a Bangladeshi women for which the central government was directed to award compensation under Art 21 of the constitution.

CONCLUSION:

- Article 21 is a live provision in the constitution of India which constantly evolves like an organism and inherits the traits of dynamism that caters the needs of the society. The Ambit of right to life and personal liberty keeps on expanding and will evolve further in future through various judicial pronouncements and legislative enactment. It is serves as an under-stream that touches every fundamental right in part III of the Indian constitution.
- As stated above in several cases, the Supreme Court of India played a significant role while interpreting Article 21 of the constitution. In this way the Supreme Court has expanded the liabilities, duties and responsibilities of the state and its authorities through its interpretative and activist judicial process. It is Quite possible that in course of time, the court may possible by able to imply some more rights for the people in interpreting Article 21 of the constitution because the concept of dignified life guaranteed by Article 21 seems to be inexhaustible in range and scope.

²⁸ (1980) 1 SCC 81

²⁹ AIR 2000 SC 998