



EXPANSIVE INTERPRETATION OF THE TERM 'LIFE' UNDER ARTICLE

21

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ABSTRACT

The article titled expansive interpretation of the term 'life' under article 21 is an attempt made by the author to explain as to what the term 'life' means and how it has been interpreted by the Supreme Court from time to time depending on the changing circumstances. The article first tries to trace the origin of the word 'life' in the writings of Hobbes, Locke and Rousseau and then tries to explain as to how life and liberty are inextricably linked. While writing this article the author has also kept in mind the deliberations in Constituent Assembly pertaining to article 21. The second part of the article deals with the various cases of the Apex Court related to Article 21 and the opinion expressed by judges through their judgements. More than 40 cases have been analysed by the author. As the article was written in the month of June prior to the Supreme Court declaring Right to Privacy as a fundamental right, the author has also examined the scope of privacy to some extent.

It is said that the Creator works in mysterious ways, perhaps in my view he makes things in mysterious ways too. The Earth is place to a variety of forms: both living and non-living. One of the important criteria which sets *homo sapiens* apart from non-living things is the fact that we are conscious of our surroundings and to me,

this is what life is. It is the medium through which we can experience the marvels of this world, and appreciate the creations of the Almighty. The Earth without life would cease to exist. It is only due to life that our species have been able to prevail for more than 4 billion years.

With the growing passage of time, man became civilized; fear of life developed faith in the concept of God and hunger drove us towards hunting all sorts of animals. It was only after a couple of thousands of years that men resorted to agriculture to sustain themselves. As we became more civilized, it led to the conception of society but still in spite of all this, the threat to life loomed large. This led to men surrendering all their rights in a supreme authority who would look after all their interests, this activity formed the basis of the social contract theory which was given by Thomas Hobbes. He was of the view that men surrendered all their rights because people at that point of time were "brute, egoistic and nasty" and needed someone who could take the society towards the path of progress¹. John Locke disagreed with the theory given by his predecessor, Thomas Hobbes, and said all the rights of men at that point of time were protected except that of property, meaning thereby that man's natural rights like that of life, liberty and property remained with them. Rousseau took a completely different view that social contract was not a practical historical fact, but an instrumental hypothetical construction of reason. In fact, according to him there was no such contract among men during that stage. It can be said that Rousseau modified the vision of

¹ Politics by Andrew Heywood: Palgrave Foundations (4th Edition)



sovereignty in terms of democratic sovereignty. In totality, if we do a comparative study of all the three philosophers, we will find that the real objective behind their theory was to protect the concept of life and liberty.

It is believed that the more one tries to guard something, the more one makes it susceptible to attacks. Writing in terms of the Indian context, the very foundation of life and liberty were threatened the day India was first invaded. The concepts of liberty and life were propounded much later in the form of theory but it was under constant threat since Day One. The statement of Ala-ud-din- Khilji saying “ Law is not what the Quran says but what I say” suggests the mindset of the rulers at that point of time. They did not care about the masses, they only cared for themselves. Another instance could be taken from Rome and that was when the whole of Rome was burning, Emperor Nero was busy fiddling with his violin. These instances only show the fact that life and liberty were not given any importance as they are given now.

THE ERA OF THE BRITISH

The concept of rights developed as a direct result of the impact of the western political thought on Indian leaders. Among the western political thinkers Harold J. Laski occupies an important place because he gave the concept of rights which was functional rather than being individualistic. Formal demand for the inclusion of fundamental rights in the constitutional set up for India was first made by nationalist leaders after the Montford-Declaration of 1918 that the progressive realisation of the self-government was the ultimate objective of

His Majesty’s Government. During the nationalist movement in India there had emerged a strong opinion in favour of inclusion of rights in the constitution for three reasons:

- I. To prevent the executive from acting arbitrarily
- II. To achieve the ends of socio-economic justice
- III. To ensure some amount of security and protection to various minority groups in India².

CONSTITUENT ASSEMBLY DEBATES AND THE INCORPORATION OF ARTICLE 21

In the Constituent Assembly, one school represented by such stalwarts like K.M. Munshi, A.K. Ayyar and Thakurdas Bhargava influenced by the 19th century liberalism as manifest in the First Amendment³, to the American Constitution, placed negative liberty above everything else. Opposed to them was another school, represented by members professing far more democratic views, i.e. K.T. Shah, Seth Damodar Swarup and V.P. Tripathi. They declared their faith in the positive concept of liberty, suggesting thereby the incorporation of certain basic socio-economic rights for the common man to be guaranteed by the

² Indian Government and Politics by A.S. Narang (Gitanjali Publishing House)

³ First Amendment: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances* (U.S.A.)



State. The leadership tried to grapple with the problem in its characteristic manner by striking a balance between the two⁴. Meanwhile, Sir Benegal Rau who happened to be India's constitutional advisor visited Washington where he showed to Justice Frankfurter the draft of our life-and-liberty clause, which then read: 'no person shall be deprived of his life or liberty except according to due process of law'. Frankfurter, J was appalled; he told Rau that 'due process' had been one of the major headaches for successive generations of judges of the US Supreme Court. The reason why it proved to be a headache was due to the fact that the Constitution did not define 'due process of law', and the courts, taking advantage of that, had given it such a liberal interpretation according to the facts of each case, as to enable itself to invalidate laws which, may be supposed to offend against the 'spirit of the Constitution'⁵. This was clearly brought out in the observations of FRANKFURTER, J in *Wolf v. Colorado*⁶

"Due process of law conveys neither formal nor fixed nor narrow requirements. It is the compendious expression for all those rights which the courts must enforce because they are basic to our free society... It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. To rely on a tidy formula for the easy determination of what is a fundamental right for the purposes of legal enforcement may satisfy a longing for certainty but ignores the movements of a free society. It belittles the scale of the conception of Due Process. The real clue to the problem

*confronting the judiciary in the application of the Due Process Clause is not to ask where the line is once and for all to be drawn but to recognise that it is for the court to draw it by the gradual and the empiric process of inclusion and exclusion"*⁷ He suggested that India should take as a model the then- recent Constitution of post- war Japan and redraft the clause guaranteeing life and liberty in accordance with this document. On his return home, Rau conveyed to the Constitution Committee the advice of Justice Frankfurter; and pursuant to this advice, the draft of Article 21 was altered to read: 'No person shall be deprived of his life or liberty *except in accordance with procedure established by law*'.

As we can see, the words used in Article 21 like life, liberty and procedure have wide connotations. The framers had done their part by incorporating this provision but it was a challenge for the Indian Judiciary to interpret the words used in this Article in such a way as the framers of the Constitution intended. From time to time, famed lawyers gave their own interpretation and so did the Judges.

TIMELINE OF CASES

Before analysing the cases and the judgements of the Apex Court in detail we should bear this fact in mind that life and liberty are not to be treated as two separate entities. Consider the concept of life as the trunk of a tree and liberty as its branches. Without the trunk, the branches will not

⁴ Refer to footnote no. 2

⁵ The State of the Nation by Fali S. Nariman

⁶ (1949) 338 US 25

⁷ Refer to footnote no. 5



survive, similarly, if the branches are severed off, the trunk would lose its identity.

Life, liberty and security are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilised society. The object of Article 21 of the Constitution of India is to prevent encroachment upon personal liberty in any manner. In every civilised democratic country, liberty is considered to be the most precious human right of every person. In the expansion and interpretation of Article 21 of the Constitution, the Court has gradually increased the importance of Article 21 and covered the variety of rights under the umbrella of this Article. In other words, it may be said that Article 21 has become a *brahmastra* to justify every kind of directive. Individual liberty is a cherished right, one of the most valuable fundamental rights guaranteed by the Constitution to the citizens of this country. Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. A fair and effective administration of justice is the cornerstone of a society and an essential component of public confidence in the institutions of a Government. In other words, there can be no liberty without social restraint. Liberty as a social conception is a right to be assured to all members of a society, the liberty of some must not necessarily involve the oppression of others. If liberty be regarded a social order, the problem of establishment of liberty will be a problem of organising restraint which society controls over the individual.

Therefore, liberty of each citizen is borne out and must be subordinated to the liberty of the greatest number, in other words, common happiness as an end of society, lest lawlessness and anarchy will tamper social weal and harmony and powerful courses or forces would be at work to determine social welfare and order. Thus, the essence of civil liberty and security is to keep alive the freedom of the individual subject to the limitation of social control which could be adjusted according to the needs of the dynamic social evolution⁸.

Ever since Indian constitution became effective, plethora of cases were heard before the Apex Court which involved the interpretation of Article 21. One of the earliest cases pertaining to Article 21 which was heard by the Apex Court was in 1964 and the case was *Kharak Singh vs Union of India*⁹.

In this case, the Apex Court interpreted the terms "life" and "liberty" by incorporating a portion of the statement given by Field, J in the famous case of *Munn v Illinois*¹⁰ (1876) in their judgement and that was:

"By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other

⁸ Harmonising Liberty and Security in Social Order by Devendra Kumar Arora (2015) 7 SCC J-6

⁹ Kharak Singh vs State of Uttar Pradesh: (1964) 1 SCR 232

¹⁰ Munn vs Illinois: 94 U.S. 113 (1876)



organ of the body through which the soul communicates with the outer world”

Pakistan Supreme Court also has taken a similar view in the case *Benazir Bhutto v. President of Pakistan*¹¹. It was held “the right to life guaranteed by Art 9 is a sacred right which cannot be violated, discriminated or abused by any authority”.

In India the Apex Court was also of the view that the fundamental right of life and personal liberty have many attributes and some of them are found in Article 19. If a person’s fundamental right under Article 21 is infringed, the state can rely upon a law to sustain the action; but, that cannot be a complete answer unless the said law satisfies the test laid down in Article 19(2) so far as the attributes covered by Article 19(1) are concerned.

The author is of the opinion that liberty is of no use if the quality of life of an individual is tantamount to an animal. The onus of protecting the interests of individuals is on the State. If the State resorts to actions which are in violation of the fundamental rights, the whole objective of Part III of the Constitution would be defeated.

Next was the case of *Satwant Singh Sawhney v. D. Ramarthnam*¹² which was heard by a bench of 5 judges.

The Apex Court in its judgement cited a paragraph which was taken from the book of American Jurisprudence which defined the extent of “personal liberty” as:

“Personal liberty consists of the right of locomotion to go where and when one pleases only so far as the rights of others may make it necessary for the welfare of all other citizens”

Speaking further regarding the idea of “personal liberty” the Court went on to say that in England, the right to go abroad was recognized as an attribute of personal liberty as in the year 1915 in Article 42 of the Magna Carta. The said Article reads “It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom excepting prisoners and outlaws according to the laws of the land, and of the people of the us and merchants who shall be above”

This Article was omitted in the final version of the Magna Carta and Article 39 only dealt with personal liberty. Article 39 read:

“No free man shall be taken or imprisoned or disregarded or outlawed, or exiled, or any way destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgement of his peers, or by the law of the land.”

The court also quoted Blackstone saying that “Blackstone divided jus personal-um (rights attaching to the person) into two: “personal security” and “personal liberty”. Under the former he included rights to life, limb, body, health and reputation and under the latter, the right to freedom of movement.”

The expression ‘life’ and ‘personal liberty’ in Article 21, it is said, incorporated these

¹¹Benazir Bhutto vs President of Pakistan : PLD 1998 SC 388, 606

¹² Satwant Singh Sawhney vs D. Ramarthnam: (1967) SCR 525



two meanings respectively. There is no doubt that the Court accepted the meaning of 'life' as 'personal security' according to Blackstone's definition.

Next in line was the famous case of *Maneka Gandhi vs Union of India*¹³. (1978) which was heard by a bench of 7 judges.

In this case the court defined the scope of Article 21, 19, and 14 and their interrelationship which is as follows:

“Article 21 occurs in part III of the Constitution which confers certain fundamental rights. Though the Article is couched in negative language, it confers the fundamental right to life and liberty. Fundamental Rights conferred by Part III are not distinct and mutually exclusive. A law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has to stand a test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation. *Ex-hypothesi* it must also be likely to be tested with reference to Article 14. On principle, the concept of reasonableness must, therefore, be projected in the procedure contemplated by Article 21 having regard to the impact of Article 14 on Article 21.”

Justice Y.V. Chandrachud who was a part of the Bench said that the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. He further added that the question whether the procedure prescribed by law which curtails or takes away the personal liberty granted by

Article 21 is reasonable or not, has to be considered not in the abstract or hypothetical considerations like the provisions for a full-dressed hearing as in a court-room trial, but in the context primarily of the purpose which the Act is intended to achieve and of urgent situations which those who are charged with the duty of administration the Act may be called upon to deal with.

Justice Beg gave his own meaning and content of personal liberty in Article 21.

“The fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a “pattern of guarantees on the basic structure of human rights”. It is obvious that Article 21, though couched in negative language, confers the fundamental right to life and personal liberty. So far as the right to personal liberty is concerned, it is ensured by providing that no one shall be deprived of personal liberty except according to procedure prescribed by law.”

If we do a comparative study between *A.K. Gopalan* case and *Maneka Gandhi* case we will find that the question of personal liberty too came up for discussion in the case of *A.K. Gopalan vs State of Madras*¹⁴. in which this term was given a very narrow interpretation but there was no definite pronouncement made on this point since the question before the Court was not so much the interpretation of the words 'personal

¹³ *Maneka Gandhi v Union of India* : (1978) 1 SCC 248

¹⁴ *A.K. Gopalan v The State of Madras*: 1950 AIR 27



liberty’ as the inter-relationship between Article 19 and 21. As far as the word procedure is concerned, according to *Prof. Willis’ book on Constitutional Law*, procedure must include the four essentials namely notice, opportunity to be heard, impartial tribunal and ordinary course of procedure.

The scope of ‘procedure’ was further explained by Justice Krishna Iyer in *M.H. Hoskot vs State of Maharashtra*¹⁵. (1978)

It was observed that procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Thus understood, ‘procedure’ must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilized process... What is fundamental is life and liberty. What is procedural is the manner of its exercise. This quality fairness in the process is emphasised by the strong word ‘established’ which means ‘settled firmly’ not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes ‘established’ procedure. Procedural safeguards are the indispensable essence of liberty. In fact, the history of procedural safeguards and right to hearing has a human right ring.

This statement given by Justice Krishna Iyer only makes us aware of the importance of procedure. It is seen that the downtrodden

are often the victims of injustice as they are unable to protect and defend their rights.

Keeping this thought in mind The American Bar Association has upheld the fundamental premise that counsel should be provided in the criminal proceedings for offences punishable by loss of liberty, except those types of offences for which such punishment is not likely to be imposed. In short, it is the warp and woof of fair procedure in a sophisticated, legalistic system plus lay illiterate indigents aplenty. The Indian socio-legal milieu makes free legal service, at trial and higher levels, an imperative processual piece of criminal justice where deprivation of life or personal liberty hangs in the judicial balance.

The case of *Sunil Batra v. Delhi Administration*¹⁶. (1980) is also of importance as the word ‘life’ was interpreted with respect to the life of prisoners. The Court observed that:

It is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. Fair procedure in dealing with the prisoners calls for another dimension of access to law-provision, within easy reach, of the law which limits liberty to persons who are prevented from moving out of prison gates. In addition to all this, a substantial number of prisoners are under trials who have to face their case in court and are presumably innocent until convicted. By being sent to Tihar Jail [high security prison in Delhi] they are, by contamination,

¹⁵ M.H. Hoskot vs State of Maharashtra (1978) 3 SCC 544

¹⁶ Sunil Batra vs Delhi Administration: (1980) 3 SCC 488



made criminals- a custodial perversity which violates the test of reasonableness in Article 19 and of fairness in Article 21.

The U.S. Supreme Court too in like situations, has spoken firmly and humanistically. Justice Marshall was of the view that a prisoner does not shed his basic constitutional rights at the prison gate, and he fully supported the court's holding that the interest of inmates in freedom from imposition of serious discipline is a 'liberty' entitled to due process.

The Apex Court regarding the condition of prisoners was of the view that prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So it is imperative, as implicit in Article 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure.

*In Board of Trustees of the Port of Bombay v Dilip Kumar*¹⁷, which was heard by a division bench of the Apex Court (1982), the Court held that the expression 'life' in Article 21 does not merely connote animal existence or a continued drudgery through life but has a much wider meaning. Where the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of

the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedure.

Further elaborating the interpretation of the word life, the Supreme Court in *State of Maharashtra v. Chandrabhan Tale*¹⁸ subscribed to the arguments of the petitioner that the reduction of the subsistence allowance to Re 1 per month to the civil servant who is prohibited from engaging himself in any other avocation during the period of suspension contravenes even Article 21 on the ground that the only logical and possible result would be the death of the civil servant and the members of his family due to starvation. This statement of the Supreme Court according to the author expands the scope of the word 'life'.

The take of the Apex Court regarding the plight of the weaker sections of the society in *Bandhua Mukti Morcha v. Union of India*¹⁹, which was heard in the year 1983 was that the right to live with human dignity, free from exploitation enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 at the least, therefore, it must include protection of the health and strength of workers, men and women, and the children of tender age against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity,

¹⁷ Board of Trustees of the Port of Bombay vs Dilip Kumar: (1983) 1 SCC 124

¹⁸ State of Maharashtra vs Chandrabhan Tale: (1983) 3 SCC 387

¹⁹ Bandhua Mukti Morcha v Union of India: (1984) 3 SCC 161



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 of the enjoyment of these basic essentials. Where legislation is already enacted by the State providing these basic requirements to persons, particularly belonging to the weaker section of the community and thus investing their right to live with basic human dignity, the State can certainly be obligated to ensure observance of such legislation, for inaction on the part of the State in securing implementation of such legislation would amount to denial of protection under Article 21.

In *Sheela Barse v. State of Maharashtra*²⁰, which was decided in 1987, the Apex Court held that the meaning given to the term 'life' will cover the living conditions prevailing in jails. The court also held that the citizen does not have any right either under Article 19(1) (a) or 21 to enter into the jails for collection of information but in order that the guarantee of the fundamental right under Article 21 may be available to the citizens detained in jails, it becomes necessary to permit citizen's access to information as also interview with prisoners.

According to Justice Sahai in *Kartar Singh v. State of Punjab*²¹, each expression used in Article 21 enhances human dignity and value. It lays foundation for a society where rule of law has primacy and not arbitrary or capricious exercise of power. 'Life' dictionaryally means, "state of functional

activity and continual change peculiar to organised matter, and especially to the portion of it constituting an animal or plant before death; animate existence; being alive". But used in the Constitution it may not be mere existence. Liberty is the most cherished possession of a man. "Truncate liberty in Article 21 and several other freedoms fade out automatically". Liberty is the right of doing an act which the law permits. This article instead of conferring the right, purposely uses negative expression because the Constitution has recognised the existence of the right in every man. It was not guaranteed or created. One inherits it by birth. This absolutism has not been curtailed or eroded. Restriction has been placed on exercise of power by the State by using the negative. It is State which is restrained from interfering with freedom of life and liberty except in accordance with the procedure established by law. Use of the word 'deprive' is of great significance. According to the dictionary it means, "debar from enjoyment; prevent from having normal home life". Since deprivation of right of any person by the State is prohibited except in accordance with procedure established by law, it is to be construed strictly against the State and in favour of the person whose rights are affected. Article 21 is a constitutional command to State to preserve the basic human rights of every person. The word 'except' restricts the right of the State by directing it not to fiddle with this guarantee, unless it enacts a law which must withstand the test of Article 13. Procedure established by law, extends both to the substantive and procedural law. Further mere law is not sufficient. It must be fair and just law. Even in absence of any provision as in American Constitution fair trial has

²⁰ *Sheela Barse vs State of Maharashtra*: (1987) 4 SCC 373

²¹ *Kartar Singh vs State of Punjab*: (1994) 3 SCC 569



been rendered the basic and primary test through which a legislative and executive action must pass. He also added the concept of speedy trial read into Article 21 is an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial is a derivation from a provision of Magna Carta and has also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America which reads, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial..."

The Apex Court took the help of Universal Declaration of Human Rights to explain the ambit of Article 21 in *Consumer Education and Research Centre v. Union of India*²² stating that Article 1 of the Universal Declaration of Human Rights asserts human sensitivity and moral responsibility of every State that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". The Charter of the United Nations thus reinforces the faith in fundamental human rights and in the dignity and worth of human person envisaged in the Directive Principles of State Policy as part of the life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The Court further added that the expression 'life' assured in

Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure.

The right to health to a worker the court said is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependants, should not be at the cost of health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38 should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is moral, legal and constitutional concomitant duty of the employer of the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39 (e), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity.

As held *Kirloskar Brothers Ltd v E.S.I. Corpn*²³, decided in the year 1996, that the

²² Consumer Education and Research Centre vs Union of India: (1995) 3 SCC 42

²³ Kirloskar Brothers Ltd. Vs E.S.I. Corpn: (1996) 2 SCC 682



interpretation of any Act must not only be in consonance with the objects but also the constitutional and fundamental human rights.

This only shows the seriousness of the Court with respect to the right of the workers.

The Apex Court further extended the horizons of the word ‘life’ in *Surjit Singh v. State of Punjab*²⁴ in the year 1996. The bench was of the view that self-preservation of one’s life is the necessary concomitant of the right to life enshrined in Article 21, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in Criminal Law . The court also cited a dialogue between the Divine and Garuda, the bird.# Chapter 16 of the Garuda Purana Verses 17,18,and 20 have been mentioned which are as follows:

17 *Vinaa dehena kasyaapi
canpurushartho na vidyate*
*Tasmaaddeham
rakshetpunyakarmaani saadhayat*

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit

18 *Rakshayetsarvadaatmaanamaatmaa
sarvasya bhaajanam*

One should protect his body which is responsible for everything. He who protects

himself by all efforts, will see many auspicious occasions in life

20 *Sharirarakshanopaayaah kriyante
sarvadaa budhah*

*Necchanti cha punastyaagamapi
kushtaadiroginah*

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body

In *Gian Kaur v. State of Punjab*²⁵ in the same year ie. 1996, the question of law which was in front of the Apex court was that will right to die be within the ambit of right to life under Article 21? The Court observed that “When a man commits suicide he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the “right to life” under Article 21. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can “extinction of life” be read to be included in “protection of life”. Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe Article 21 to include within it the “right to die” as a part of the fundamental right guaranteed therein. “Right to life” is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of “right to life”.

²⁴ Surjit Singh vs State of Punjab: (1996) 2 SCC 336

²⁵ Gian Kaur vs State of Punjab: (1996) 2 SCC 648



To give meaning and content to the word 'life' in Article 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The "right to die", if any, is inherently inconsistent with the "right to life" as is 'death' with 'life'."

The Court in *C.Masilamani Mudaliar v.Idol of Sri Swaminathaswami*²⁶ (1996) with respect to right to 'life' held that:

"Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfilment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development. Women are entitled to enjoy, economic, social, cultural and political rights without discrimination and on a footing of equality."

With the growing passage of time, the court also extended the scope of this article to issues pertaining to environmental issues like pollution, particularly noise pollution. *In Noise Pollution, in re*²⁷ the view of the Apex Court was:

"Right to life enshrined in Article 21 is not mere survival or existence. It guarantees a right of person to life with human dignity.

²⁶C. Masilamani Mudaliar vs Idol of Sri Swaminathaswami: (1996) 8 SCC 525

²⁷Noise Pollution, in re: (2005) 5 SCC 733

Therein, are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance."

Former Chief Justice of India J.S. Verma in one of his lectures²⁸ observed:

"The right to life with dignity is a recognized fundamental right under Art.21 of the Constitution of India and it is a basic human right inherent in human existence which is not the gift of any law. The law merely recognized an inherent right and is not its source. In this connection, it is better to take into consideration the distinction between the human right and civil liberty. In his book²⁹ the learned author has made distinction between the two i.e., human right is derived from natural law and other from positivistic (state made) law. In essence, it amounts to the distinction between a political right and natural right. The learned author further goes on to say thus:

²⁸ Clean Environment: A Human Rights Imperative, Fifth Green Law Lecture at the Centre for Environmental Law on 25-02-2001

²⁹ CIVIL LIBERTIES by EDWIN SHORTS (1998 EDITION)



Human rights are those that have derived from natural law which have evolved out of natural rights; rights inherent to people by virtue of their being human and being of a moral and rational nature and having a common capacity to reason. This comprises a core base of basic guarantees, including the right to life; freedom from slavery, servitude, and forced labour; the right to free movement (mobility); and, the right to food and shelter”

Regarding police atrocities, the view of the Apex Court in *Prithipal Singh v. State of Punjab*³⁰ was:

“ In view of the provisions of Article 21 of the Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise. The wrongdoer is accountable and the State is responsible if a person in custody of the police is deprived of his life except in accordance with the procedure established by law. However, when the matter comes to the court, it has to balance the protection of fundamental rights of an individual and duties of the police. It cannot be gainsaid that freedom of an individual must yield to the security of the State. The Latin maxim *salus populi est suprema lex*- the safety of the people is the supreme law; and *salus reipublicae suprema lex*- the safety of the State is the supreme law, coexist.”

In the famous case of *Ramlila Maidan Incident, In re*³¹ the court held that even

³⁰ Prithipal Singh vs State of Punjab: (2012) 1 SCC 10

³¹ Ram Lila Maidan Incident, In re: (2012) 5 SCC 4

right to sleep is an important facet of Article 21. The reasoning given by Justice Chauhan was:

“A person who is sleeping, is half dead. His mental faculties are in an inactive state. Sleep is an unconscious state or condition regularly and naturally assumed by man and other living beings during which the activity of the nervous system is almost or entirely suspended. It is the state of slumber and repose. It is a necessity and not a luxury. It is essential for optimal health and happiness as it directly affects the quality of life of an individual when awake inducing his mental sharpness, emotional balance, creativity and vitality.”

An Irish proverb goes on to say that the beginning of health is sleep. The state of sleep has been described as Homer in the famous epic *Iliad* as “ sleep is the twin of death”. A person, therefore, cannot be presumed to be engaged in a criminal activity or an activity to disturb peace of mind when asleep. Aristotle, the great Greek philosopher has said that all men are alike when asleep. To presume that a person was scheming to disrupt public peace while asleep would be unjust and would be entering into the dreams of that person.” The finding of the case of *Wolf v. Colorado*³² was also quoted saying that the citizens/persons have a right to leisure, to sleep, not to hear and to remain silent. The knock at the door, whether by day or by night, as a prelude to a search without authority of law amounts to be a police incursion into privacy and violation of fundamental right of a citizen.”

³² Wolf vs Colorado: 93 L Ed 1782: 338 US 25 (1949)



He further added Right to privacy has been held to be a fundamental right of the citizen being an integral part of Article 21 of the Constitution of India by this Court. It is in view of this fact, that in many countries there are complete night curfews (at the airport i.e. banning of landing and taking off between the night hours), for the reason that the concept of sound sleep has been associated with sound health which is an inseparable facet of Article 21 of the Constitution.

The Court concluded that an individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third-degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in espionage are subjected to treatments depriving them of normal sleep.

*The case of Kishore Samrite v. State of U.P.*³³ decided on 18-10-2012 also sheds some light on the view of the court regarding the term ‘person’ According to the Court, “ The term “person” includes not only the physical body and members but also every bodily sense and personal

attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. Reputation is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property. Although, character and reputation are often used synonymously, but these terms are distinguishable. Character is what a man is and reputation is what he is supposed to be in what people say he is”.

The case of *National Legal Services Authority v. Union of India*³⁴ was a landmark case in recognising the rights of trans genders. The Apex Court held that:

“Right to dignity is also very much a part of Right to life and accrues to all persons. The recognition of one’s gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one’s sense of being well as an integral part of person’s identity. Legal recognition of gender identity is, therefore, part of the right to dignity and freedom guaranteed under our Constitution.”

Article 21 and Right to Privacy

According to WESTIN’S PRIVACY AND FREEDOM, 1970 Edition, privacy is defined as:

³³ Kishore Samrite vs State of U.P.: (2013) 2 SCC 398

³⁴ National Legal Service Authority vs Union of India: (2014) 5 SCC 438



“The claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others.... Privacy is the voluntary and temporary withdrawal of a person from the general society through physical or psychological means..”

Article 11 of the American Convention on Human Rights provide for right to privacy³⁵. It read:

1. Everyone has the right to have his honour respected and his dignity recognised
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home or his correspondence or an unlawful attacks on his honour or reputation.
3. Every one has the right to the protection of the law against such interference or attacks.

Right to information and right to privacy were considered by the Supreme Court in **S.P. Gupta v. President of India**³⁶, it was held thus:

“The demand for openness is based principally on two reasons. It is now widely accepted that democracy does not consist merely of people exercising their franchises once in five years to choose their rulers and once the vote is cast, then retiring in

passivity and not taking any interest in the Government.”

“Today it is common knowledge that democracy has more positive intent and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgement in the conduct of the Government and merits of public policies or that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of Government’s attitude and habit of mind”

The judges went on to add:

“But this important role people can fulfil in a democracy only if it is an open Government where there is full access to information in regard to the functioning of the Government”. The Apex Court laid down that the right to information formed part of Art 19(1)(a)

In **India Express v. Union of India**³⁷, it was held thus:

“Public interest in freedom of discussion of which freedom of the press is one aspect stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently, the decisions which may affect themselves”

Similarly in **L.K. Koolwal v. State**³⁸, the Rajasthan High Court observed thus:

³⁵ COMMENTARY ON THE CONSTITUTION OF INDIA BY D. D. BASU (8th EDITION)

³⁶ S.P. Gupta vs President of India: AIR 1982 SC 149

³⁷ India Express vs Union of India: AIR 1986 Raj 515

³⁸ L.K. Koolwal v. State: AIR 1988 Raj 2



“The citizen has a right to know about the activities of the State, its instrumentalities, the departments and the agencies of the State. The privilege of secrecy which existed in old times that the State is not bound to disclose certain facts to its citizens does not survive to a great extent now”

The author is of the view that right to privacy by its nature conflict with freedom of information and other competing liberties. As we can see, privacy is not explicitly mentioned in the Indian Constitution. It has over the time been read with Article 21.³⁹ During hearing in the PIL questioning the vires of the Aadhaar scheme, the Government took the stand that privacy was not a fundamental right. In support of their argument, the government relied on two judgements of the Supreme Court, i.e., *M.P. Sharma v. Satish Chandra*⁴⁰ and *Kharak Singh v. State of U.P.*⁴¹, wherein the majority judgement was that privacy was not inherent in Article 21. The Supreme Court accepted the submission and has referred the PIL for deciding on reading privacy into Article 21 to a larger bench. Interestingly, just before the hearing in the above matter, details of a draft Privacy Bill of 2014 were leaked and have been compared with an earlier draft of the Privacy Bill of 2011. Details of the 2014 Bill leaked disclose that the Bill specifically reads the right to privacy into Article 21.

Considering that privacy is a human right and India having undertaken to protect it as

³⁹ Technology Law Decoded by N.S. Nappinai (LexisNexis 2017)

⁴⁰ *M.P. Sharma v. Satish Chandra*: AIR 1954 SC 300

⁴¹ *Kharak Singh v. State of U.P.*: AIR 1963 SC 1295

such, specific legislations protecting this right and also clarity in reading this right into Article 21 is imperative. In *Govind v. State*⁴², the Supreme Court read privacy into Article 21 to hold harassing domiciliary visits by police to be a violation of privacy. Catena of judgements thereafter have emphasised and reiterated inclusion of privacy, as part of Article 21 and right to life and liberty. The author is of the view that until and unless right to privacy is recognised and protected by the State, threat to one’s life and liberty will remain.

The cases of waiver and the case for waiver in India

Waiver can occur under various circumstances. A right may be waived for a singular specific purpose or it might be waived more generally. Waiver may happen spontaneously, with little reflection, on the other hand it might be made after thoughtful consideration and professional advice. Such waiver might have quite trivial consequences to an individual and hardly even be noticed. Alternatively, such waiver might have serious repercussions.

Undoubtedly, waiver implicitly does operate in many occasions. Right to legal assistance and to be represented by the counsel are fundamental rights recognised under Article 21. In criminal trials it does happen that an accused may plead guilty, or enter into a plea bargain, or argue his defence himself. On such occasions he gives up and waives his right of being represented by a counsel, and of a complete trial proving his guilt. Can he at a later stage contend that he did it under a mistake or for some other reason

⁴² *Govind vs State* : 1975 AIR 1378



and that he cannot waive his fundamental rights? Can the Court, then hold that he cannot waive his fundamental rights when in fact he had intelligently, knowingly and voluntarily waived the same? It cannot, and nothing to the contrary seems to have been upheld in India. In this context, Chapter XXI-A Cr.PC 1973, incorporated by virtue of the Criminal Law (Amendment) Act, 2005, provides for plea bargaining which was hitherto unavailable. Without doubt, plea bargaining involves waiver of many fundamental rights. Similarly, a number of rights under the Central and State Land Acquisition Acts, which automatically attract Article 300-A's guarantee of right to property, have been held subject to waiver acquiescence and estoppel.

The right to reputation and the right to privacy have been held to be covered by Article 21 as fundamental rights. Does that mean that a libel action or an action claiming damages instituted after the expiry of limitation, or pleaded in a writ petition claiming violation of fundamental rights after lapse of a considerable period of time, which that person may have elected to waive during that period, cannot be defeated because a constitutional right cannot be waived?

It is submitted that a number of rights held to be covered by Article 21 can be waived, on applying the principles enunciated in U.S. As pointed out the right against unreasonable search and seizure, the right to be heard before being deprived of liberty and property under the "due process clause", the right to privacy and a number of criminal

rights can be waived in U.S. These are the very rights guaranteed by Article 21⁴³.

AUTHOR'S POINT OF VIEW

Law does not evolve, it only meanders. We have seen as to how Article 21 has been interpreted from time to time by the court through various judgements. It seems that such wide interpretation to Article 21 will end where the sea appears to meet the horizon. To my mind, the interpretation of this article is, at times appears to be, another example of judicial activism. Reason being that the language used in this article is vague and can be easily expanded or twisted, as per the view, approach or philosophy of the bench dealing with an issue; whatever is convenient. In countries where there is a Charter of Rights or a Bill of Rights, judicial activism is much in evidence⁴⁴. A classic instance is the judgement of the U.S. Supreme Court in *Griswold v. Connecticut*⁴⁵, popularly known as *Contraceptive case*. There was a law in the State of Connecticut which made the use of contraceptive a criminal offence. Under the statute the police could barge into the sacred precincts of marital bedrooms to search for tell-tale signs of used contraceptives. The law was challenged on the ground that it breached the right of privacy. Privacy is not expressly mentioned in the U.S. Bill of Rights. However, the U.S. Supreme Court deduced the right of privacy on the

⁴³ Waiver of Constitutional and Fundamental Rights: A Constitutional Discretion, Not an American Doctrine by Sachin H. Kulgod: (2011) 1 SCC J-19

⁴⁴ Judicial Activism Boon or Bane by Soli J. Sorabjee : (2008) 3 SCC J-24

⁴⁵ *Griswold vs Connecticut*: 381 US 479, 510: 14 L Ed 2d 511 (1965)



reasoning that various guarantees in the Bill of Rights create zones of privacy. The minority dissented on the ground that it was for the legislature to create a right of privacy and not for the court.

The Supreme Court of the Republic of Ireland has also adopted the judicial technique of spelling out fundamental rights which are not expressly mentioned in the Irish Constitution on the basis that there are rights which are anterior to and are solely derived from the Constitution. The Supreme Court of Canada has also deduced fundamental rights which are not expressly mentioned in the Charter. Our Supreme Court has also deduced other fundamental rights which are not expressly mentioned in the Constitution. For example, the right to travel abroad, the right to education, freedom from cruel and inhuman punishment or treatment, etc. The only criticism to my mind which is made regarding judicial activism is that it tends to destroy the fabric of separation of powers. The Indian Constitution gives unparalleled power to the Supreme Court under Article 142(1)⁴⁶. Coupled with the interpretation of Article 21, it can lead to a dangerous concoction. Having said that, it can prove to be advantageous as well. I think there is no

universal prototype of judicial activism. It largely depends on the prevailing situation which varies from place to place and society to society. Relief of human suffering and the quest for justice are the main proponents of judicial activism in this country. Without judicial activism, our fundamental rights will remain ornamental showpieces and become teasing illusions unless they are translated by activist judges into living realities. Rights enshrined in the constitution are of no value if they are not able to serve the unimaginable and the mounting needs of the downtrodden and the people at large, whose only protector is the constitution against the powerful and the mighty. This is where the need for judicial activism lies. When the state fails to protect the interests of the society by becoming the oppressor, the judiciary has to get the state back on track with the help of judicial activism. The fact that this mechanism can be misused cannot be ignored but to mind if it leads to improvement in the lives of the people then its objective is fulfilled as Cicero rightly said that “the welfare of the people is the paramount law”.

Before concluding one must remember that the highest judicial body dispensing justice consists of erudite men with great experience at the Bar and the Bench especially trained to deal against odd situations where they have encountered multiple disputes and offences in cases representing various facets of life thus they would never undertake a mission to undo the work contributed through ages with one sweep of parochial activism endangering life and liberty of the very people for whom the constitution has been made.

⁴⁶ Article 142- **Enforcement of decrees and orders of Supreme Court and orders as to discovery , etc:** 1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it , and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe .