



REVIEW ON ARTICLE 21

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ABSTRACT

Article 21 is considered as paramount and the most controversial article of the constitution, Supreme court has defined it as “the heart of all fundamental rights”. Article 21 has evolved and altered with changing times, This Article talks about two rights which are the right to life and the right to personal liberty. Article 21 has been one of the most controversial article because life and personal liberty cannot be properly defined as for example Right life states that everyone in this country to live with human dignity, free from exploitation and in much wider sense it also includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. On the other hand, right to personal liberty has found its meaning through various judicial pronouncement. In this paper it has been explained how right to life is not limited to just life or liberty but how to live a life with dignity and meaning, this paper also explains how new dimensions have been added to Article 21. Article 21 also defines the principle of due process of law which makes sure that the government respects the fundamental rights which are provided to citizens of India.

This paper deals with how article 21 has been changed throughout the year with various landmark judgements by the Supreme court

and how has this article helped in protecting human rights of every citizen of India.

INTRODUCTION:

Article 21 of the Indian constitution protects every individual’s right to live and also protects their personal liberties from exploitation. This right is a collage of many rights; by the continuous pronouncement of the judiciary the scope and the meaning of this Article become wider than it was. Article 21 states: *No person shall be deprived of his life or personal liberty except according to procedure establish by law.*

The workings of this Article expressly protect everyone’s liberty and also ensure that they will not deprive of their life except according to the procedure establish by law. Article 21 is in paramount position among all the rights¹. These rights are as much available to non-citizens as to citizens and those whose citizenship is unknown².

Article 21 talks about two things first individual’s life and his liberty. Everyone has the right to life, liberty and the security of person. The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation.

As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to

¹ Kehar singh vs. Union of India (1989) 1 SCC 204

² National Human Rights Commission vs. State of Anurachal Pradesh, (1996) 1 SCC 742



life as interpreted and applied by the Supreme Court of India.

LIFE:

The right to life which is most fundamental of all is also the most difficult to define. Right to life cannot be confined to a guarantee against the taking of life; it must have a wider application. The provisions of 5th and 4th Amendment of the US constitution say that no person shall be deprived of his "life, liberty or property, without due process of law". In *Munn vs. Illinois* (foot note), 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 limb and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg, or the putting out of an eye, or the destruction of any other body organ through which the soul communicates with the outer world.

This statement has been further explained in **Francis Coralia Mullin vs. UT of Delhi**³, by the statement "that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21. Again relying on the Francis Coralia case, in **Bandhua Mukti Morcha vs. Union of India** case⁴, Bhagwati J held:

It is fundamental right of everyone in this country to live with human dignity, free from exploitation. The right to live with human dignity enshrined in Article 21 derives its life

breath from Directive Principles of State Policies and particularly clause (e) and (f) of Article 39 and Article 41 and 4, therefore, it must include protection of health and strength of the workers, men and women, and of the tender age of the children from abuse, opportunities for children to develop in a healthy manner and in condition of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum and necessary requirement which must exist to ensure one's right to live with human dignity.

Further in **Consumer Education and Research Centre vs. Union of India**⁵, the court held that the right to health and medical aid to protect the health and vigour of a worker while in service or after retirement is a fundamental right under Article 21. 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.

Right to life is fundamental to our very existence without which we cannot live as a human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21, so many rights have found shelter, growth, and nourishment. Thus, the bare necessities, minimum and basic requirements that is essential and unavoidable for a person is the core concept of the right to life.

³ (1981) 1 scc 608

⁴ (1984) 3 SCC 161

⁵ (1995) 3 SCC 42



In **Sunil Batra v. Delhi Administration**⁶, the Supreme Court reiterated with the approval the above observations and held that the “right to life” included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person’s tradition, culture, heritage and all that gives meaning to a man’s life. It includes the right to live in peace, to sleep in peace and the right to repose and health.

In **Maneka Gandhi v. Union of India**⁷ the Supreme Court gave a new dimension to Art. 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in **Francis Coralie v. Union Territory of Delhi**⁸, observed that:

“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.” Following the above-stated cases, the Supreme Court in **Peoples Union for Democratic Rights v. Union of India**[vi], held that non-payment of minimum wages to the workers employed in various said Projects in Delhi was a denial to them of their right to

live with basic human dignity and violative of Article 21 of the Constitution.

Bhagwati J. held that rights and benefits conferred on workmen employed by a contractor under various labour laws are clearly intended to ensure basic human dignity to workmen. He held that the non-implementation by the private contractors engaged for constructing a building for holding Asian Games in Delhi, and non-enforcement of these laws by the State Authorities of the provisions of these laws was held to be violative of the fundamental right of workers to live with human dignity contained in Art. 21.

In **Charitra Raja Kumar v. Police Commissioner Hyderabad**⁹, it has been held that the right to life includes right to live with human dignity and decency and, therefore, holding of beauty contest is repugnant to dignity or decency of women and offends Article 21 of the Constitution only if the same is grossly indecent, scurrilous, obscene or intended for blackmailing. The government is empowered to prohibit the contest as objectionable performance under Section 3 of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956.

In **State of Maharashtra v. Chandrabhan**¹⁰, the Court struck down a provision of Bombay Civil Service Rules, 1959, which provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended Government Servant upon his conviction during the pendency of his appeal as unconstitutional on the ground

⁶ AIR 1978 SC 1675

⁷ 1978 AIR 597

⁸ (1981) 1 scc 608

⁹ AIR 1998 AP 302

¹⁰ 983 AIR 803



that it was violative of Article 21 of the Constitution

Board of Trustees of the **Port of Bombay v. Dilipkumar Raghavendranath Nandkarni**¹¹, came to hold that “the right to life” guaranteed by Article 21 includes “the right to livelihood”. **The Supreme Court in Olga Tellis v. Bombay Municipal Corporation**¹², popularly known as the “Pavement Dwellers Case” a five-judge bench of the Court now implied that ‘right to livelihood’ is borne out of the ‘right to life’, as no person can live without the means of living, that is, the means of Livelihood. That the court, in this case, observed that:

“The sweep of the right to life conferred by Art.21 is wide and far-reaching. It does not mean, merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect if the right to life. An equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood.”

If the right to livelihood is not treated as a part and parcel of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

In the instant case, the court further opined:

“The state may not by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But, any person who is deprived of his right to livelihood except according to just and fair procedure established by law can challenge

the deprivation as offending the right to life conferred in Article 21.”

Art. 21 do not place an absolute embargo on the deprivation of life or personal liberty and for that matter on right to livelihood. What Art. 21 insist is that such deprivation ought to be according to procedure established by law which must be fair, just and reasonable. Therefore anyone who is deprived of the right to livelihood without a just and fair procedure established by law can challenge such deprivation as being against Art. 21 and get it declared void

PERSONAL LIBERTY:

Liberty of the person is one of the oldest concepts to be protected by national courts. As long as 1215, the English Magna Carta provided that, No freeman shall be taken or imprisoned but by the law of the land. The smallest Article of eighteen words has the greatest significance for those who cherish the ideals of liberty.

In India, the concept of ‘liberty’ has received a far more expansive interpretation. The Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint, and has held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men.

The meaning of the term ‘personal liberty’ was considered by the Supreme Court in the Kharak Singh’s case¹³, which arose out of the challenge to Constitutional validity of the U. P. Police Regulations that provided for surveillance by way of domiciliary visits and secret picketing. Oddly enough both the

¹¹AIR 1983 SC 109

¹² AIR 1986 SC 180

AIR 1963 SC 129¹³



majority and minority on the bench relied on the meaning given to the term “personal liberty” by an American judgment (per Field, J.) in *Munn v Illinois*, which held the term ‘life’ meant something more than mere animal existence. The prohibition against its deprivation extended to all those limits and faculties by which the life was enjoyed.

This provision equally prohibited the mutilation of the body or the amputation of an arm or leg or the putting of an eye or the destruction of any other organ of the body through which the soul communicated with the outer world. The majority held that the U. P. Police Regulations authorizing domiciliary visits [at night by police officers as a form of surveillance, constituted a deprivation of liberty and thus] unconstitutional. The Court observed that the right to personal liberty in the Indian Constitution is the right of an individual to be free from restrictions or encroachments on his person, whether they are directly imposed or indirectly brought about by calculated measures.

The Supreme Court has held that even lawful imprisonment does not spell farewell to all fundamental rights. A prisoner retains all the rights enjoyed by a free citizen except only those ‘necessarily’ lost as an incident of imprisonment

PROCEDURE ESTABLISHED BY LAW:

The expression “procedure established by law” has been the subject matter of interpretation in a catena of cases. A survey of these cases reveals that courts in the process of judicial interpretation have enlarged the scope of the expression. The Supreme Court took the view that “procedure established by law” in Article 21 means procedure prescribed by law as enacted by

the state and rejected to equate it with the American “due process of law.”

But, in *Maneka Gandhi v Union of India* the Supreme Court observed that the procedure prescribed by law for depriving a person of his life and personal liberty must be “right, just and fair” and not “arbitrary, fanciful and oppressive,” otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied. Thus, the “procedure established by law” has acquired the same significance in India as the “due process of law” clause in America.

Justice V. R. Krishna Iyer, speaking in *Sunil Batra v Delhi Administration* has said that though “our Constitution has no due process clause” but after *Maneka Gandhi’s* case “the consequence is the same and as much as such Article 21 may be treated as counterpart of the due process clause in American Constitution.” Recently the Supreme Court has dealt with an increasing number of people sentenced to death for “bride-burning”.

In December 1985 the Rajasthan High Court sentenced a man, Jagdish Kumar, and a woman, Lichma Devi, to death for two separate cases of killing two young women by setting them on fire. In an unprecedented move, the court ordered both prisoners to be publicly executed. In a response to a review petition by the Attorney General against this judgment, the Supreme Court in December 1985 stayed the public hangings, observing that “a barbaric crime does not have to be met with a barbaric penalty.”

The Court observed that the execution of death sentence by public hanging is a violation of Article 21, which mandates the observance of a just, fair and reasonable procedure. Thus, an order passed by the High Court of Rajasthan for public hanging was set



aside by the Supreme Court on the ground inter alia, that it was violative of article 21.

In **Sher Singh v State of Punjab**, the Supreme Court held that unjustifiable delay in execution of death sentence violates art 21. The Supreme Court has taken the view that this article read as a whole is concerned with the fullest development of an individual and ensuring his dignity through the rule of law. Every procedure must seem to be 'reasonable, fair and just.' The right to life and personal liberty has been interpreted widely to include the right to livelihood, health, education, environment and all those matters that contributed to life with dignity.

The test of procedural fairness has been deemed to be one that is commensurate to protecting such rights. Thus, where workers have been deemed to have the right to public employment and its concomitant right to livelihood, a hire-fire clause in favour of the State is not reasonable, fair and just even though the State cannot affirmatively provide a livelihood for all.

Under this doctrine, the Court will not just examine whether the procedure itself is reasonable, fair and just, but also whether it has been operated in a fair, just and reasonable manner. This has meant, for example, the right to speedy trial and legal aid is part of any reasonable, fair and just procedure. The process clause is comprehensive and applicable in all areas of State action covering civil, criminal and administrative action further, when there is an inordinate delay in the investigation – it affects the right of the accused, as he is kept in tenterhooks and suspense about the outcome of the case. If the investigating authority pursues the investigation as per the provisions of the Code, there can be no cause of action. But, if the case is kept alive without

any progress in any investigation, then the provisions of Article 21 are attracted and the right is not only against actual proceedings in court but also against police investigation.

The Supreme Court has widened the scope of 'procedure established by law' and held that merely a procedure has been established by law a person cannot be deprived of his life and liberty unless the procedure is just, fair and reasonable. It is thus now well established that the "procedure established by law" to deprive a person of his life and personal liberty, must be just, fair and reasonable and that it must not be arbitrary, fanciful or oppressive, that the procedure to be valid must comply with the principles of natural justice.

Conclusion

Change in society demands in change or alteration in laws as well, article 21 is one the most controversial article as it needs alteration with slightest changes. Right to life is a very vast right which includes so many rights that can't even be listed, article 21 has secured every citizen's right to life and even protects every citizen's right from government interference. Number of new rights have been found and old rights have been altered in various cases under article 21, this article has developed several rights which has helped in development of India as a country as well such as right to have pollution free air, right to education, right to privacy etc.

Article 21 is incumbent as it provides right life and personal liberty, it also protects the essence of democracy by protecting governments interference in fundamental rights. Article 21 guarantees a life with freedom and dignity, the scope of article 21 is endless as it covers everything which a human being needs for a quality life.