

Right of Life and Personal Liberty in India- New Dimensions

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Introduction to Concept of 'Right to Life'

Right to life is the basic need of every human being. Without right to life we cannot dream of civilized society and the state. If the state will not protect the lives of its citizens then the citizens will always feel insecure.

'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 chapter will examine the right to life as interpreted and applied by the Supreme Court of India.

Article 21 of the Constitution of India, 1950 provides that, "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*"

'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 human being and includes all those aspects of life which go to make a man's life meaningful, and worth living. The right to live is not confined to the protection of any faculty of limb through which life is enjoyed or the soul communicates with.

The Main Object of Article 21 : A person is deprived of his life or personal liberty by the State, the procedure established by law must be strictly followed. Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country. As far as Personal Liberty is concerned, it means freedom from physical restraint of the person by personal incarceration or otherwise and it includes all the varieties of rights other than those provided under Article 19 of the Constitution.

Right to Live with Human Dignity: Article 21 of the Constitution of India, 1950 provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

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 human being and includes all those aspects of life which go to make a man's life meaningful, complete and worth living.

Quality life : . It has a much wider meaning which includes right to live with human dignity, right to livelihood. 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 and Personal Liberty given to Citizens and Non- Citizens

Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life which go to make a man's life meaningful, complete and worth living.

National human rights commission v. state of Arunachal Pradesh (5). In this case supreme court held that the right to life and personal liberty are also given to non- citizens. (1996, SCC 742).

Following Rights are held to be covered under Article 21:

In Maneka Gandhi's (11) AIR 1981 SC 746 case the court gave a new dimension to Article 21. It held that the right to live is not merely confined to physical existence but it includes

within its ambit the right to live with human dignity. Right to live is not confined to the protection of any limb through which life is enjoyed but it also includes the right to live with human dignity and all that goes along with it namely the bare necessity of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human beings.

The following rights are held to be covered under Article 21:

A) Right to livelihood

In *Sodan Singh v. New Delhi municipal committee* (14) AIR 1989 SC 1988 the five judge bench of the Supreme Court has held, the right to carry on any trade or business is not included in the concept of life and personal liberty. Article 21 is not erected in a case of trade and business. The petitioners, hawkers doing business of the pavement of roads in Delhi, had claimed that the refusal by the municipal authorities to them to carry on business of their livelihood amounted to violation of their right under article 21 of the constitution.

B) Right to shelter

Right to shelter is a fundamental right under Article 21 of the Constitution. In any organized society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is ensured only when he is assured of all the facilities to benefit himself. The right to live is not confined to the protection of any limb through which life is enjoyed but it also includes the right to live with human dignity and all that goes along with it namely the bare necessity of life such as adequate nutrition, clothing and shelter. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. Right to shelter therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.

Chameli Singh V. State of U.P a Bench of three Judges of Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful.

C) Right to privacy

The Supreme Court held that a citizen has right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing, and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise. This rule is subject to an exception that if any publication of such matters is based on public record including court record it will be unobjectionable. The second exception is that the right to privacy or the, (1996, SC 549) remedy of action for damage is simply not available to public officials as long as the criticism concerns the discharge of their public duties. Telephone Tapping is an Invasion on Right to privacy.

D) Right to health and medical assistance

In Parmananda Katara v. Union of India, (19) The petitioner, who claims himself to be a human right activist, filed this writ petition in public interest on the basis of a newspaper report concerning the death of a scooterist who was knocked down by a speeding car. The report further states that the injured person was taken to the nearest hospital but the doctors there refused to attend on him; that they told that he be taken to another hospital, located some 20 kilometers away, which was authorised to handle medico-legal cases; and that the victim succumbed to his injuries before he could be taken to the other hospital. The petitioner has prayed the directions be issued to the Union of India that every injured citizen brought for treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death, and in the event of breach of such direction, apart from any action that may be taken for negligence, appropriate compensation should be admissible. (19)AIR 1989 SC 2039

E) Right to get pollution free water and air

In Subhash Kumar v. Bihar, (21)the Apex Court has held that enjoyment of pollution free environment is included under right to life under Article 21 of the Constitution. It is also included in the article 21 that we have the right to get the free pollution free environment and fresh water and air. So that we do not become ill. Right to live with in the healthy environment is also our right.

F) Protection of Ecology and environmental pollution

Judgments of the Supreme Court: The Supreme Court of India has made immense contribution to environmental jurisprudence of our country. These Courts have issued various directions on a number of issues concerning environment as part of their overall writ jurisdiction and in that context they have developed a vast environmental jurisprudence. They have used Art. 21 of the Constitution of India and expanded the meaning of the word 'life' in that Article as including a "right to a healthy environment".

G) Right against solitary confinement:

In *Sunit Batra v. Delhi administration* (AIR 33) That if by imposing solitary confinement there is total deprivation of camaraderie amongst co-prisoners, commingling and talking and being talked to, it would offend Article 21 "Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess."

H) Right to speedy trial

Hussainara Khaton v. Home secretary state of Bihar (AIR 1979 SC 1360).The procedure under which a person may be deprived of his life or liberty should be 'reasonable fair and just.' Free legal services to the poor and the needy is an essential element of any 'reasonable fair and just procedure.

I) Right against inhuman treatment

Kishore sing v. state of Rajasthan (36) AIR One of the petitioners, in a telegram to one of the Judges of this Court complained of insufferable, illegal solitary confinement. He also complained that he was kept in iron fetters along with the other two petitioners. By an order of this Court, the petitioners were directed to be set free from solitary confinement and brought before the Court. When the prisoners were brought before the Court they alleged that, while in transit, violence had been used by the escort police on the person of one of the petitioners resulting in deep wounds on his person. The Superintendent of Prisons who was present in the Court was directed to take special care of the prisoner after giving him proper medical treatment.

HELD: 1. Article 21 would become dysfunctional unless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article. The State

must re-educate the police and inculcate a respect for the human person. If any of the escort were found to have misconducted themselves they should be given condign punishment. (AIR 1981 SC 625)

J) Right to Education

The Fundamental Right to Education has been incorporated in our Constitution under Article 21A, on April 1, 2010. From now onwards all the children in the age group of 6-14 years will be provided 8 years of elementary education in an appropriate classroom in the vicinity of his/her neighborhood. The cost of facilitating school education to a child will be borne by the State. The government will be responsible for the enrollment and regular attendance of children. All schools will have to prescribe to norms and standards laid out in the Act and no school that does not fulfill these standards within 3 years will be allowed to function. Unrecognized private schools operating in the country will have to apply for recognition, failing which they will be penalized to the tune of Rs 1 lakh and if they still continue to function will be liable to pay Rs 10,000 per day as fine.

New Dimensions of Right to Life and Personal Liberty in India

In this section it will demonstrated how judiciary dramatically changed the traditional interpretation of right to life to a modern and flexible interpretation. It was not until 1978 that the Supreme Court breathed substantive life into Article 21 by subjecting state action interfering with a person's right to life to a test of reasonableness; requiring not only that the procedures be authorized by law, but that they are 'right, just, fair and reasonable.'] This transformation paved the way for a substantive re-interpretation of constitutional and legal guarantees and positive judicial intervention. In the case of Maneka Gandhi v Union of India, the petitioners passport was impounded 'in public interest' by an order dated July 2, 1977. The Government of India declined 'in the interests of the general public' to furnish the reasons for its decision. Thereupon, the petitioner filed a writ petition under Article 32 of the Constitution to challenge the order. The petitioner contended before the Court that the order of the Government of India does not prescribe 'procedure' within the meaning of Article 21 and if it is held that procedure has been prescribed, it is unfair, unjust and unreasonable. The Supreme Court held that the order passed against the petitioner was neither fair nor proper according to the procedure established by law. The decision given by the Supreme Court in

this case is historic and landmark because it is the first of its kind which enhanced the scope of right to life. Specifically, Maneka Gandhi's case recognized an implied substantive component to the term 'liberty' in article 21 that provides broad protection of individual freedom against unreasonable or arbitrary curtailment. This paved the way for a dramatic increase in constitutional protection of human rights in India under the mantle of the Public Interest Litigation movement (PIL).

Constitutional Bench of Seven judges (Overruling Gopalan) read into Article 21 a new dimension: it was not enough, said the Court, that the law prescribed some semblance of procedure for depriving a person of his life or personal liberty; the procedure prescribed by the law had to be reasonable, fair and just; if not, the law would be held void as violating the guarantee of Article 21. This fresh look at Article 21 has helped the apex court in its new role as the institutional ombudsman of human rights .

Justice Kuldip Singh described the government's role in the protection of fundamental rights: "[I]t is the obligation of the State to assume such responsibility and protect its citizens." The Court held that the government's obligation to protect fundamental rights forces it to protect the environment. Thus, from time to time the Supreme Court interpreted Article 21 broadly so as to infuse real life in the said article. It also waived the rule of locus standi so as to make the life of the citizens of India meaningful.

In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*,(2) the Honourable Supreme Court stated that,

The right to life includes the right to live with human dignity and all that goes along with it, namely, 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 mixing and commingling with fellow human beings.

Thus, the Supreme Court interpreted Article 21 in a widest possible manner and included within its ambit the right to live with human dignity.

The cases examined in this part primarily relate to the modern approach of the Indian judiciary which demonstrated the enhanced interpretation of right to life and (AIR 1978 SC 597) personal liberty. Thus, the scope of Article 21 of the Constitution has been considerably

expanded by the Indian Supreme Court, which has interpreted the right of life to mean the right to live a civilized life. In the next part of the essay we will discuss briefly the Meaning of judicial activism so as to understand the creativity of the Indian judiciary in interpreting Article 21.

Maneka Gandhi: New Dimension

In Maneka Gandhi's case, the meaning and content of the words 'personal liberty' again came up for the consideration of the Supreme Court. In this case, the petitioner's passport had been impounded by the Central Government u/s 10(3) (c) of the Passport Act, 1967. Here, the Supreme Court not only overruled A.K. Gopalan's case but also widened the scope of words 'personal liberty' considerably. Bhagwati, J. observed: "The expression 'personal liberty' in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19."

The Right to Life and Personal Liberty is the most fundamental of all the Fundamental Human Rights. The Right to Life does not mean a mere Physical existence or the right to live a lifeless life. The right to life includes the right to live with human dignity and all that goes alongwith it, namely, the basic necessities of life such as adequate nutrition, Clothing and shelter over the head and facilities for reading, Writing an expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Article 21 has not only ensured right to life but right to personal liberty also; and nobody can be deprived of these except according to the procedure established by law. The creativity of the Indian judicial system has been at its best whenever it was called to interpret Article 21, except perhaps during the short interregnum of the emergency rule.

The Supreme Court played the role of a crusader of people's liberty and introduced 'reasonableness, fairness and justness' in the procedure under "procedure established by law." Reasonableness under article 21 widened its scope and provided impetus to bring in fairness in number of fields. . They include rights common to most include individual rights common to most liberal democracies, such as equality before the law, freedom of association and peaceful assembly, freedom of religion, and the right to constitutional remedies for the protection of civil rights such as habeas corpus. This book explain the concept of

fundamental rights and explores various fundamental rights and explores various dimensions for its' protection and promotion. Wide dimension given to this right now covers various aspects which the framers of the Constitution might or might not visualized

Relationship between Art. 19 and Art. 21 : With respect to the relationship between Art. 19 and Art. 21, the Court held that Art. 21 is controlled by Art. 19, i.e., it must satisfy the requirement of Art. 19. The Court observed : “The law must therefore now be settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty, and there is consequently no infringement of the fundamental right conferred by Article 21 such a law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenges of that Article.”

Thus a law “depriving a person of ‘personal liberty’ has not only to stand the test” of Article 21 but it must stand the test of Art. 19 and Art. 14 of the Constitution. The main object of Article 21 is that before a person is deprived of his life or personal liberty by the State, the procedure established by law must be strictly followed. Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country. As far as Personal Liberty is concerned, it means freedom from physical restraint of the person by personal incarceration or otherwise and it includes all the varieties of rights other than those provided under Article 19 of the Constitution. Procedure established by law means the law enacted by the State. Deprived has also wide range of meaning under the Constitution. These ingredients are the soul of this provision.

Findings and Suggestions

One of the gifts of democracy to mankind is the right to life and personal liberty. Article 21 of the Constitution protects right to life which is the most precious right in a civilised society. The trinity i.e. liberty, equality and fraternity always blossoms and enlivens the flower of human dignity. One of the gifts of democracy to mankind is the right to personal liberty. Life and personal freedom are the prized jewels under Article 19 conjointly assured by Arts. 20(3), 21 and 22 of the Constitution and Article 19 ensures freedom of movement. Liberty

aims at freedom not only from arbitrary restraint but also to secure such conditions which are essential for the full development of human personality.

Right to life and Liberty is essential for other rights: Liberty must be controlled in the interest of the society but the social interest must never be overbearing to justify total deprivation of individual liberty. Liberty cannot stand alone but must be paired with a companion virtue; virtue and morality; liberty and law; liberty and justice; liberty and common good; liberty and responsibility which are concomitants for orderly progress and social stability.

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