

Different perspectives of 'Article 21' of Constitution of India

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Abstract:

The Constitution of India is a 'lakshman rekha'- connotation of the 'lakshman rekha' is for the judiciary to interpret, but its jurisdiction is for the public to determine!

The Constitution provides certain fundamental rights to the citizens of the country. Of these Article 21 provides protection against encroachment upon personal liberty and deprivation of life except according to procedure established by law. Judicial interpretation has broadened the scope of Article 21 to include within it a number of rights including those to livelihood, education, good health, clean environment, privacy, speedy trial and humanitarian treatment while imprisoned.

This paper aims to understand the concept of Article 21 and its judicial interpretation. It also seeks to understand the ever evolving, dynamic concept of life and liberty as has been promulgated by the framers of our Constitution.

Keywords: Constitution of India, Article 21, fundamental right, Life, liberty, Supreme Court of India,

Introduction

1.1 Constitution of India

India is a Democratic Republic with a parliamentary system of government. It is governed in terms of the Constitution of India which is the supreme law. The Constitution of India guarantees protection of life and personal liberty to one and all. It provides adequate safeguards to fundamental rights against arbitrary decisions.

1.2. Fundamental Rights

Chapter III of the constitution provides fundamental rights to the citizen of the country. Fundamental right is the basic right to which every citizen can lay

claim. With every right there lies a corresponding duty for securing the right. In the case of fundamental Rights, it is the duty of the State i.e. the Government to ensure that these rights are protected. In case of violation, it is the State that is answerable to the aggrieved person.

Article 14 to 32 contain fundamental rights, of these Article 21 is of particular importance since it covers the key area of human survival, i.e. right to 'life' and 'liberty'.

1.3. Article 21:

Article 21 reads as 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.

Rights hold value only when there is a corresponding duty or obligation on other/s to ensure that the rights are not violated. In case of article 21, the duty lies on the State. It means that if there is deprivation of life or encroachment upon personal liberty of other, by an act of a private individual supported by the state, then the aggrieved person can seek remedy under Article 21

2. Objectives of study

1. To analyse the implications of Article 21 in furtherance of fundamental rights of Indian citizens.
2. To list out the wide areas where article 21, i.e. right to life and liberty has been used as a base for judgment.
3. To understand the ever evolving, dynamic concept of life and liberty vis- a vis the Indian Constitution.

3. Methodology

This is a descriptive research paper. The researcher has relied on secondary data obtained from news reports, journals and different websites.

4. Different Perspectives on Article 21:

Until the doctrine of due process was in force, article 21 was construed very narrowly as being restricted to executive action. However, in 1978, the Supreme Court in the case of *Maneka Gandhi v. Union of India* extended the protection of Article 21 to legislative action, holding that any law laying down a procedure must be just, fair and reasonable. In the

same case, the Supreme Court also ruled that "life" under Article 21 meant more than a mere "animal existence"; it would include the right to live with human dignity and all other aspects which made life "meaningful, complete and worth living".

Thereafter, Article 21 has been quoted and used as a base for several litigations, adding a wide ambit of perception to the concept of life and liberty. The researcher in this paper has presented a few areas in which Article 21 has served as a turning point.

4.1. Freedom of Speech and Expression

In the case '*Maneka Gandhi v. Union of India*', the Supreme Court held that the freedom of speech and expression has no geographical limitation and it carries with it the right of a citizen to gather information and to exchange thought with others not only in India but abroad also.

Mrs. Maneka Gandhi, whose passport was seized by the Government successfully appealed against it by calling it a violation of her fundamental right to life and liberty.

4.2. Euthanasia:

- i. A five judge bench of the Supreme court, headed by the CJI Deepak Mishra delivered a landmark judgement on 9th March 2018, declaring the right to die with dignity as a fundamental right, thus paving the way for legalizing passive euthanasia in the country. Justice Chandrachud held: "Life and death are inseparable. Life is not disconnected from death. Dying is a part of the process of living". Thus the right to die in peace could not be separated from Right to Life under Article 21 of the Constitution.
- ii. In an earlier case of '*Gian Kaur Vs State of Punjab*' in 1994, the apex court had held that both assisted suicide i.e. 'active euthanasia' and right to refuse artificial life support i.e. 'passive euthanasia'; for terminally ill patients, both were unlawful. The bench had stated then that the right to life did not include the right to die. Article 21 speaks of life with dignity, and only aspects of life which make it more dignified could be read into this Article.
- iii. It was the famous case of Aruna Ramchandra Shanbaug- versus- Union of India, that forced the apex Court to consider a new aspect of Article 21, i.e. 'right to a dignified death'. Social activist Pinky Virani through a writ petition contested that

Aruna Ramchandra Shanbaug who was living in a vegetative state since 1973, was being robbed of her fundamental right granted by Article 21. Since life and death are two sides of the same coin, by being denied the right to choose death, right to life was violated.

4.3. Right to privacy:

In an age where people post day to day updates of their lives on social media, it is an irony that Article 21 is being viewed in a new light, i.e. right to privacy as a fundamental right of life and liberty.

- i. In the case of *Surjit Singh Thind- Versus- Kawaljeet Kaur*, (AIR 2003 P H 353) the petitioner had moved Court seeking restraint on medical examination of a women's virginity. It was a violation of right to privacy and personal liberty.
- ii. The recent uproar over Aadhaar linking and subsequent PILs (Public Interest Litigation) has also used Article 21 as base. With the linking of Aadhaar cards to our phones and bank accounts to our every activity, the Government is unacceptably intruding on our privacy.

4.4. Individual Liberty:

(*Shafin Jahan v. UOI*; S.C/ 22/02/2018)

Although the right to pursue religion of one's choice is expressly stated in Article 25, when Akhila Ashokan alias Hadiya converted to Islam and chose to marry a Muslim man, the Sangh Parivar and her father moved Court for annulling her marriage. They called it a case of forceful conversion.

Hadiya contested that there was a violation of her right, as an adult, to exercise her autonomy; to choose her husband, after she exercised her right to convert to Islam. 'Life and Liberty' as given in Article 21 means freedom to act and live as one wants.

The Supreme Court bench headed by Chief Justice Dipak Misra, did the right thing by releasing her from her father's effective captivity.

4.5. Sexual crimes against women:

In the '*Vishakha Guidelines*' the apex Court opined that for a women whose body and soul has been bruised, apart from The Criminal Procedure Code penalizing rape, Article 21 was also violated. Rape amounts to invasion of a woman's right to life and liberty. Infact any kind of sexual harassment of women and children is a violation of Article 21.

In her book 'Ten Judgements that changed India', Zia Mody writes that "what happened in the case of Vishakha, a social worker from Rajasthan, set the Supreme Court thinking, eventually treating the case as a violation of fundamental right to life and liberty". It thus led to framing of the 'Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act, 2013.

4.6. Right to Education:

- i. The Supreme Court first recognised the right to education as a fundamental right in *Mohini Jain Vs. Union of India (1992) 3 SCC 666*. It was observed in this judgment that, the right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.
- ii. In the case of *J P Unnikrishnan Vs. State of Andhra Pradesh, 1993 SCC (1) 645*, the Court observed that, the right to education is implicit in the right to life and personal liberty.
- iii. In 2002, Article 21-A was inserted in the Constitution. It read 'free and compulsory education to be provided to all children in the age group of six to fourteen years in such a manner as the State may, by law, determine'.

As a result 'The Right of Children to Free and Compulsory Education (RTE) Act, 2009' was framed.

Conclusion:

The term life and liberty can be viewed from several perspectives. 'Life' means not just breathing but living a dignified life. From, 'sati prohibition', right to privacy, right to education to making a 'living will' that states a persons' choice of dignified death, 'life' as stated in article 21 has covered every aspect. Liberty in itself can hold different meaning for different people under different circumstances. In the case of Mrs. Maneka Gandhi liberty was freedom of movement, while in the Hadiya case it meant the right to choose life partner. From expression of opinion to right to speedy trial (*Motilal Saraf Vs State of Jammu & Kashmir 2006 SSC (1)774*) concept of liberty has seen wide connotations.

Article 21 has been used positively and creatively by the judiciary. The trend of interpreting Article 21 has changed progressively over the years.

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