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Examination of Article 21 Right To Life and Personal Liberty

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Abstract

This right is guaranteed by the constitution. This right is provided under article 21 which reads as follows:-Article 21. Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law. The right to life and personal liberty is guaranteed by the Indian Constitution in Part III under the category of Right to Freedom (Articles 19-22). The right to life and personal liberty in accordance with the procedure established by law is guarantee by Article 21 of the Indian Constitution. The right is available to both citizens and non-citizens. The scope of Article 21 have been expands over the years through judicial pronouncements over the years. The Supreme Court of India in the famous Gopalan Case (1950) held that protection under Article 21 is available only against arbitrary executive action and not against arbitrary legislative action. It clarified that if personal liberty of an individual is taken away by a law, the validity of the law cannot be questioned. Article 21 is protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

Keywords: Protection of Life and Personal Liberty, foreigner, Magna Carta, American Constitution

Introduction

According to Bhagwati, J., Article 21 “embodies a constitutional value of supreme importance in a democratic society.” Iyer, J., has characterized Article 21 as “the procedural magna carta protective of life and liberty”¹. This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws. Article 21 can only be claimed when a person is deprived of his “life” or “personal liberty” by the “State” as defined in Article 12. Violation of the right by private individuals is not within the preview of Article 21². This right is guaranteed by the constitution. This right is provided under article 21 which reads as follows:-Article 21. Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law³. The right to life and personal liberty is guaranteed by the Indian Constitution in Part III under the category of Right to Freedom (Articles 19-22). The right to life and personal liberty in accordance with the procedure established by law is guarantee by Article 21 of the Indian Constitution. The right is available to both citizens and non-citizens. The scope of Article 21 have been expands over the years through judicial pronouncements over the years. The Supreme Court of India in the famous Gopalan Case (1950) held that protection under Article 21 is available only against arbitrary executive action and not against arbitrary legislative action. It clarified that if personal liberty of an individual is taken away by a law, the validity of the law cannot be

¹ SHRUTI SINGH “ALL YOU NEED TO KNOW ABOUT RIGHT TO LIFE AND PERSONAL LIBERTY” <http://lexhindustan.com/need-know-right-life-personal-liberty/>

² Riya Jain “Article 21 of the Constitution of India – Right to Life and Personal Liberty” [https:// www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/](https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/)

³ Vidhan Maheshwari “Article 21 of The Constitution of India - The Expanding Horizons” [http:// www.Legal serviceindia.com/articles/art222.htm](http://www.Legal serviceindia.com/articles/art222.htm)

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questioned. In the same case the Supreme Court held personal liberty would only mean liberty relating to the person or body of the individual⁴.

Conceptual Framework

Article 21 secures two rights: 1) Right to life; 2) Right to personal liberty

The Article prohibits the deprivation of the above rights except according to a procedure established by law. Article 21 corresponds to the Magna Carta of 1215, the Fifth Amendment to the American Constitution, Article 40(4) of the Constitution of Eire 1937, and Article XXXI of the Constitution of Japan, 1946.

Article 21 applies to natural persons. The right is available to every person, citizen or alien. Thus, even a foreigner can claim this right. It, however, does not entitle a foreigner the right to reside and settle in India, as mentioned in Article 19 (1) (e)⁵.

Article 21 is protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law. The Article prohibits the deprivation of the above rights except according to a procedure established by law. Article 21 corresponds to the Magna Carta of 1215, the Fifth Amendment to the American Constitution, Article 40(4) of the Constitution of Eire 1937, and Article XXXI of the Constitution of Japan, 1946. Article 21 applies to natural persons. The right is available to every person, citizen or alien. Thus, even a foreigner can claim this right. It, however, does not entitle a foreigner the right to reside and settle in India, as mentioned in Article 19 (1) (e)⁶.

Scope of Art. 21

The scope of Article 21 was a bit narrow till 50s as it was held by the Apex Court in A.K.Gopalan vs State of Madras that the contents and subject matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case the word deprivation was construed in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). at that time Gopalans case was the leading case in respect of Article 21 along with some other Articles of the Constitution, but post Gopalan case the scenario in respect of scope of Article 21 has been expanded or modified gradually through different decisions of the Apex Court and it was held that interference with the freedom of a person at home or restriction imposed on a person while in jail would require authority of law. Whether the reasonableness of a penal law can be examined with reference to Article 19, was the point in issue after Gopalans case in the case of Maneka Gandhi v. Union of India, the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable one.

Article 21 imposed a restriction upon the state where it

⁴ "Article 21 of the Constitution of India – Discussed!"

<http://www.yourarticlelibrary.com/indian-constitution/article-21-of-the-constitution-of-india-discussed/5497>

⁵ drishti "Article 21 of the Constitution of India – Right to Life and Personal Liberty" <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

⁶ Vicky Nanjappa "What is Article 21 of the Indian Constitution?" <https://www.oneindia.com/india/what-is-article-21-of-the-indian-constitution-2528713.html>

prescribed a procedure for depriving a person of his life or personal liberty⁷.

This view has been further relied upon in a case of Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others⁸ as follows:

Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. The law of preventive detention has therefore now to pass the test not only for Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. In another case of Olga Tellis and others v. Bombay Municipal Corporation and others, it was further observed: Just as a mala fide act has no existence in the eye of law, even so, unreasonableness

vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform the norms of justice and fair play. Procedure, which is just or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. As stated earlier, the protection of Article 21 is wide enough and it was further widened in the case of Bandhua Mukti Morcha v. Union of India and others in respect of bonded labour and weaker section of the society⁹.

Right to Live with Human Dignity

In Menka Gandhi v. Union of India 1978 SCR (2) 621 the Supreme Court gave a new dimension to Art. 21 and held that the right to live 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 1981 SCR (2) 516, 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 mixing 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."

Another broad formulation of the theme of life to dignity is to be found in Bandhua Mukti Morcha v. Union of India 1984 SCR (2) 67. Characterizing Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed:

⁷ Vidhan Maheshwari "Article 21 of The Constitution of India - The Expanding Horizons

<http://www.legalserviceindia.com/articles/art222.htm>

⁸ 1981 AIR 746, 1981 SCR (2) 516

<https://indiankanoon.org/doc/78536/>

⁹ Vidhan Maheshwari "Article 21 of The Constitution of India - The Expanding Horizons

<http://www.legalserviceindia.com/articles/art222.htm>

“It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity 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 Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, 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 to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials¹⁰.”

Following the above stated cases, the Supreme Court in Peoples Union for Democratic Rights v. Union of India 1983 SCR (1) 456, held that non-payment of minimum wages to the workers employed in various Asiatic 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 labor laws are clearly intended to ensure basic human dignity to workmen. He held that the non-implementation by the private contractors engaged for constructing 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 fundamental right of workers to live with human dignity contained in Art. 21¹¹.

Right against Sexual Harassment at Workplace

Articles 14 and 15 of the Constitution of India ("Constitution") and her right to life and to live with dignity as per Article 21 of the Constitution. It has also been considered as a violation of a right to practice or to carry out any occupation, trade or business under Article 19(1) (g) of the Constitution, which includes a right to a safe environment free from harassment. The definition of sexual harassment in the Sexual Harassment Act is in line with the Supreme Court's definition in the Vishaka Judgment and includes any unwelcome sexually determined behavior (whether directly or by implication) such as physical contact and advances, demand or request for sexual favors, sexually colored remarks, showing pornography, or any other unwelcome physical verbal or non-verbal conduct of sexual nature¹².

¹⁰Drishiti “Article 21 of the Constitution of India – Right to Life and Personal Liberty

<https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty>

¹¹ drishiti “Article 21 of the Constitution of India – Right to Life and Personal Liberty

<https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

¹² Nikunj Keyal “Sexual Harassment of Women At Workplace” <http://www.legalservicesindia.com/article/article/sexual-harassment-of-women-at-workplace-2114-1.html>

Vishaka Guidelines against Sexual Harassment at Work Place

Guidelines and norms laid down by honorable Supreme Court in Vishaka and others vs. State of Rajasthan and others. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women. Duty of the employer or other responsible persons in work places and other institutions: It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.

Preventive Steps

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- a. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.¹³
- b. The rules of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- c. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the industrial employment (standing orders) act, 1946.
- d. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment¹⁴.

Right against Rape

Rape has been held to a violation of a person's fundamental life guaranteed under Art. 21. Right to life right to live with human dignity. Right to life, would, therefore, include all those aspects of life that go on to make life meaningful, complete and worth living.

In Bodhisattwa Gautam v. Subhra Chakraborty 1996 AIR 922, the Supreme Court held that

“Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society, which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also

¹³ Nikunj Keyal “Sexual Harassment of Women At Workplace” <http://www.legalservicesindia.com/article/article/sexual-harassment-of-women-at-workplace-2114-1.html>

¹⁴ Nikunj Keyal “Sexual Harassment of Women At Workplace” <http://www.legalservicesindia.com/article/article/sexual-harassment-of-women-at-workplace-2114-1.html>

violative of the victim's most cherished of the fundamental rights, namely, the right to life with human dignity contained in Art 21"¹⁵.

Right of Privacy

The decision in Justice KS Puttaswamy (Retd.) & Anr. v. Union of India & Ors was rendered by a Bench of 9-judges comprising Chief Justice of India JS Khehar and Justices Jasti Chelameswar, SA Bobde, RK Agarwal, Rohinton Nariman, AM Sapre, DY Chandrachud, SK Kaul and S Abdul Nazeer. Justice Chandrachud authored a judgment on behalf of himself and Chief Justice JS Khehar, Justice RK Agarwal and Justice Abdul Nazeer. The other five judges rendered separate concurring judgments.

Here is a brief summary of what was held;

- Decision in MP Sharma overruled.
- Decision in Kharak Singh, to the extent it says Right to Privacy is not part of Right to Life, is over ruled
- Right to Privacy is an intrinsic part of life and personal liberty under Article 21.
- Decisions subsequent to Kharak Singh which held privacy as part of right to life are correct.

A number of writ petitions were tagged along with Justice K Puttaswamy's petition on Aadhaar, which led to the constitution of this 9 Judge Bench. A slew of Senior Advocates had appeared for various parties in the case¹⁶.

Right to Livelihood

To begin with, the Supreme Court took the view that the right to life in Art. 21 would not include right to livelihood. In Re Sant Ram AIR 1960 SC 932, a case which arose before Maneka Gandhi case, where the Supreme Court ruled that the right to livelihood would not fall within the expression "life" in Article 21. The court said curtly:

"The right to livelihood would be included in the freedoms enumerated in Art.19, or even in Art.16, in a limited sense. But the language of Art.21 cannot be pressed into aid of argument that the word 'life' in Art. 21 includes 'livelihood' also."

But then the view underwent a change. With the defining of the word "life" in Article 21 in broad and expansive manner, the court in Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni (1983) 1 SCC 124, 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 AIR 1986 SC 180, 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:

¹⁵Drishti "Article 21 of the Constitution of India – Right to Life and Personal Liberty

<https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

¹⁶ Right to Privacy is a Fundamental Right under Article 21, Supreme Court [Read judgment <https://barandbench.com/right-privacy-fundamental-right-supreme-court/>

"The sweep of 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 livelihood¹⁷."

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 Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint. It observed that liberty encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men. In Kharak Singh v. State of Uttar Pradesh, with approval of Field, J's observation in Munn v.Illinois, the Court quoted and held, that be the term "life" as here used something more is meant than mere animal existence. It means right to life with human dignity. It further extended scope of personal liberty¹⁸.

Article 21 and Right to Pollution free environment: The second major development has been the jurisprudence arising from certain remarkable judicial pronouncements in recent years, more specially relating to Article 21 of the Constitution dealing with 'the right to life'.

The constitution makers themselves construct the fundamental rights in its broad sense especially to right to life. The Supreme Court of India has given essence to the right so that every person can enjoy life to its fullest extent. The Indian Supreme Court came out of the shackles of mechanical and rule bound justice and provided impetus to the expanded horizons of the fundamental right to life and personal liberty guaranteed in Article 21. Thus the judiciary broadened the concept of life. Thus extended the scope of personal liberty so as to include within itself all the varieties of rights which go to make the personal liberties of man. Right to life extended its scope to include right to wholesome environment and right to sustainable development. Indian democracy wedded to rule of law aims not only to protect fundamental rights of its citizens but also to establish an egalitarian order. Law being an instrument of social engineering obliges the judiciary to carry out the process established by it¹⁹.

Conclusion

Deprivation of livelihood would not only denude the life of its effective content and meaningfulness but it would make

¹⁷Drishti "Article 21 of the Constitution of India – Right to Life and Personal Liberty

<https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

¹⁸Admin Lawnn "Constitutional Law: Article 21 of Indian Constitution (Right to life in Indian Constitution) (UPDATED)" <http://lawnn.com/article-21-indian-constitution-right-life-indian-constitution/>

¹⁹Dr.G. Indira Priya Darsini & Prof. K. Uma Devi "Article 21 of Indian Constitution- a Mandate to Pollution Free Environment" <http://www.legalserviceindia.com/article/1399-A-Mandate-To-Pollution-Free-Environment.html>

life impossible to live. And yet such deprivation of life would not be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. Right to work has not yet been recognised as a Fundamental Right. In *Secretary, State of Karnataka v. Umadevi* (3), AIR 2006 SC 1806 the argument of infringement on an expansive interpretation of Article 21 i.e., the right of employment was not accepted by the Supreme Court and the reason for that was amongst others, that the employees accepted the employment on their own violation and with eyes open as to the nature their employment. The Court also rejected the argument that the right to life under Article 21 would include the right of employment at the present point of time²⁰.

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