

Role of Judiciary in Expanding the Horizon of Right to Life under Article 21 of the Indian Constitution

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Article 21 is one of the fundamental rights which imbibes most of the rights in it and has received expanded meaning. This Article may be said to be the heart of the fundamental rights. Article 21 guarantees a fundamental right to life. Right from mother's womb, one needs unpolluted air to breath, uncontaminated water to drink, nutritious food to eat and hygienic condition to live in. These elements are sine qua non, for sound development of human personality.

A bare reading of Article 21 of the Constitution of India would be:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Though Article 21 starts with a negative word but the word 'No' has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state as defined in Article 13 of the Constitution only.

Judiciary in India enjoys a very significant position since it has been made the guardian and custodian of the Constitution. It not only is a watchdog against violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, against abuse of State power, arbitrariness and discrimination on grounds of sex, place of birth, religion etc. Indian Judiciary has been pro-active and has scrupulously and over-enthusiastically guarded the fundamental rights essential for human existence.

The scope of right to life has been enlarged so as to read within its

compass the right to live with dignity, right to healthy environment, right to humane conditions of work, right to education, right to food, right to sleep, right to shelter and social security, right to information, right to adequate nutrition and clothing and so on.

Personal Liberty

A great transformation in the judicial attitude towards the safeguard of personal liberty has been noticed after the horrible experiences of the infamous 1975 national emergency. *A.K. Gopalan v. Union of India* and *Maneka Gandhi v. Union of India*, are the two landmark cases which decided and expanded the horizon of rights under Art. 21. The judicial pronouncement before the case of *Maneka Gandhi Vs Union of India* (1978) were not satisfactory in providing adequate protection to the 'right to life and personal liberty' guaranteed under Article 21 of the Constitution of India. Prior to *Maneka Gandhi's* decision, Article 21 guaranteed the right to life and personal liberty only against the arbitrary action of the executive and not from the legislative action.

The question of interpretation of this provision possessing immense importance came before the Supreme Court in 1953 in the case of *A.K. Gopalan v. State of Madras* (AIR 1953 SC27) the court restricted itself to the literal interpretation of the article and exhibited judicial positivism. The connotation of life was restricted to the existence of the individual and liberty meant freedom from physical restraints. The procedure established by law was interpreted to mean law as enacted by the legislature or through ordinance and does not include the concept of due process.

It was experienced later that such a view led to the violation of various principles of natural justice and was grossly misused by the authorities. The judiciary has adopted judicial activism to put fetters to governmental actions by safeguarding public interests through the liberal interpretation of the fundamental rights.

Maneka Gandhi Vs Union of India (AIR1978SC597) was a landmark judgment and played the most significant role towards the transformation of the judicial view on Article 21 of the constitution of India so as to imply many more fundamental rights from Article 21. *Justice Krishna Iyer in this case observed that, “the spirit of man is at the root of Article 21”, “personal liberty makes for the worth of the human person” and “travel makes liberty worthwhile”.* In this case, the passport of Mrs. Maneka Gandhi was impounded and she was denied from knowing the grounds on which such an action was taken. Law must be fair, just and reasonable and a combined reading of Art.14, 19 and 21 was established. It was observed that the term ‘Liberty’ is of widest amplitude and encompasses within itself all that is needed for the fullest achievement of human life.

The court finally held that the *right to travel and go outside the country* is included in the right to personal liberty. Section 10(3) (c) of the Passport Act is not violative of Article 21 as it is implied in the provision that the principles of natural justice would be applicable in the exercise of the power of impounding a passport . The defect of the order was removed and the order was passed in accordance with procedure established by law.

In Icchu Devi Choraria v. Union of India (1980 SCC531), the court declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned detention of suspects without trial observing that “the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil”.

Article 21 and personal laws

During the course of time, while deciding cases related to Article 21 many personal laws were added to the kitty of Article 21. Some of the decisions related to personal laws have been cited here:

Right to Marriage

The intervention of judiciary in formulating right to marriage among majors as a part of Article 21 first came up in the case of *Ravi Kumar v. State* (124(2005) DLT1) where the Delhi High Court answered in the positive. The same was reiterated by the Supreme court in the case of *Lata Singh v. State of Uttar Pradesh* ((2006) 5SCC475). In this case, it was held that Right to Marriage is an essential part of the right under Article 21 and that people have the right to choose their partners without any compulsion. In this case, the court came down heavily upon the acts of Khap Panchayats and honour killings that are prevalent in India particularly in Haryana. This judgement was delivered in lieu of the right to life of those young people who wish to marry according to their personal choice of partners. Right to life includes right to live without constant threat to life and right to liberty includes the liberty to choose the partners with whom one wishes to live.

While commenting on the honour killings in India, the court noted that, “there is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment.”

The Supreme Court has tried to protect the interests of a number of youth in India, but it has not had any significant impact on honour killings in India. There is a legislative vacuum in curbing the menace caused by the khap panchayats and its orders of honor killings.

Live-in Relationships

The definition of live in relationships is not clear and so is the status of the couples in a live in relationship. There is no specific law on the subject of live in relationships in India. There is no legislation to define the rights and obligations of the parties to a live in relationships, the status of children born to such couples. The issue the judicial front has created more confusion than it has solved.

The first case in which the Supreme Court of India first recognized the live in relationship as a valid marriage was that of *Badri Prasad v. Dy. Director of Consolidation (1978 AIR 1557)* in which the Court gave legal validity to a 50-year live in relationship of a couple. The Allahabad High Court again recognized the concept of live in relationship in the case of *Payal Katara v. Superintendent, Nari Niketan and Another (AIR 2001 ALL. 254)* wherein it held that live in relationship is not illegal and a couple can live together as per their wish even without getting married. It further said that it may be immoral for the society but is not illegal. In the case of *S. Khushboo v. Kanniammal & Anr (AIR 2010 SC3196)*, it was held that living together is a right to life under Article 21.

However, amidst all the confusion, the judiciary had at every step propagated the protection of women in a live-in relationship and laid down conditions wherein the man would be liable to pay alimony to the woman such as if they were married. This way the court had used activism in protecting the interests of women and ensuring women and children from such relationships right to live with dignity.

In the case of *Avinash v. State of Karnataka & Others (2011(4) Kar LJ 560)* the Karnataka High Court delivered a judgment that mandated parental consent for girls marrying below the age of 21. However, in this case the sole motivation and rationale for judges was the incompetence of the women to make their own decisions in light of unstable hormones. This judgment was highly derogatory of woman and was a violation of various constitutional provisions. It was

against the rationale of the Lata Singh judgment. The right of a woman to make decisions on her own and to live with dignity had been put at stake. These judgments are so intrinsically rooted in a patriarchal and archaic ideology that they end up being dictatorial in a manner that took away rights which were essential to individual dignity and thus a violation of fundamental rights rather than a saviour.

Right to Shelter

In *Olga Tellis vs Bombay Municipal Corporation (AIR 1986 SC 630)*, the court admitted at the abstract level that everyone had the right to shelter as part of his right to live, but the court was faced with persons who were living on footpaths and they had to be removed in order to clear footpaths for pedestrians. So the right to shelter, as a fundamental right, turned out to be a platitude when it could be dispensed with by the corporation after following proper procedure. The Court came to the conclusion that Section 314 of the Bombay Municipal Corporation Act for removal of encroachments on footpaths could not be regarded as unreasonable, unfair or unjust. However, while holding that Section 314 was constitutional, the Court also ordered that the eviction of the slum and pavement dwellers could be done only after arranging alternative accommodation for them and not before that.

Upholding the importance of the right to a decent environment and a reasonable accommodation, in *Shantistar Builders v. Narayan Khimalal Totame(1990) 1SCC520; AIR 1990SC630)* the Court held that the right to shelter, therefore, a mere right to a roof over one's head means they have the right to live and develop as a human being to all necessary infrastructure.

Right to Privacy

It is now a settled principle that right to life and liberty under Art. 21 includes right to privacy. Right to privacy is 'a right to be let alone'. A citizen has a right

to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. In *Kharak Singh v. State of UP* (1963 AIR 1295; 1964SCR (1) 332) it was held that police surveillance of a person by domiciliary visits would be violative of Article 21. In this case majority judgment was of the opinion that our constitution does not in terms confer any constitutional guarantee like right to privacy. But, Subba Rao, J. in his minority judgment opined that though the constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of 'personal liberty' in Article 21. The right to personal liberty takes in not only the right to be free from restrictions placed on his movements but also free from encroachments on his private life.

Mathew, J. in his classic judgment in *Govind v. State of MP* (1975AIR 1378; 1975 SCR(3) 946) accepted the right to privacy as an emanation from Arts. 19 (a), (d) and 21, but right to privacy is not an absolute right.

Right to privacy is one right in India which does not have proper recognition but has been given a place through judicial activism under Article 21. It is not a right against physical restrains but it is a right against psychological restrain or encroachment of right. It can have both positive and negative consequences. It protects sanctity of women (disclosure of personal problems (menstruation, pregnancy) would lead to violation of her right to privacy (1992) 1SCC286; AIR 1992 SC 392) . Supreme Court also uses the Right to Privacy to increase punishment of crime against women), in *People's Union for Civil Liberties vs Union of India*, the Supreme Court held that telephone tapping is a violation of right to privacy, disclosure of dreadful disease and personal affair like restriction of what one is eating is a violation of right to privacy. It is not absolute because in some situations like doping test of sports persons; for state security and for public welfare right to privacy does not stand. The courts can order this right with reasonable restrictions. It is might be lawfully restricted for

the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

Right to Livelihood

Till 1960, the Supreme Court was of the view that Article 21 of Indian Constitution does not guarantee right to livelihood. In ***Re Sant Ram (AIR1960 SC932)*** the Supreme Court ruled that the right to livelihood would not fall within the expression “life” in Article 21. The Court said curtly: “The argument that the word “life” in Article 21 includes “livelihood” has only to be rejected. The question of livelihood has not in terms been dealt with by Article 21.”

But in ***Olga Tellis v. Bombay Municipal Corporation (AIR 1986 SC180)*** popularly known as the “*Pavement Dwellers Case*” a five judge bench had finally ruled that the word “life” in Article 21 includes the right to livelihood also. The court held that 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.

The right to livelihood refers to their means of securing the basic necessities involving securing water, food, fodder, medicine, shelter, clothing and the capacity to acquire above necessities working either individually or as a group by using endowments (both human and material) for meeting the requirements of the self and his/her household on a sustainable basis with dignity.

Right to live with Human Dignity

In Maneka Gandhi case, the Supreme 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. Elaborating the

same view the Court in *Francis Coralie v. Union Territory of Delhi*(AIR 1981)ISCC608) , held that the right to live means something more than just physical survival. The right to live is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also 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 and facilitates for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human beings.

In *Prem Shankar Shukla v. Delhi Administration*(1980SCC526) , the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21).

Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to “manacle a man is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood....”.

The rule thus laid down was reiterated in the case of *Citizens for Democracy v. State of Assam* (1995 SCC 743).

In People’s Union for Democratic Rights v UOI (AIR1982 SC1473), also known as *Asiad Workers Case*, the Court held that the rights and benefits conferred on the workmen employed by a contractor under various labor laws are “clearly intended to ensure basic human dignity to workmen and if the workmen are deprived of any of these rights and benefits, that would be violation of Article 21.

This decision has heralded a new legal revolution. It has clothed millions of workers in factories, fields, mines and project sites with human dignity. They had fundamental right to maximum wages, drinking water, shelter crèches,

medical aid and safety in their respective occupations covered by the various welfare legislations.

Right to Health & Medical Aid

Article 21 casts the obligation on the state to preserve life. It is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. No law or state action can intervene to delay and discharge this paramount obligation of the members of the medical profession. *In Parmananda Katara v. Union of India*, (AIR 1989SC2039) it was held that it is the professional obligation of all doctors (government or private) to extend medical aid to the injured immediately to preserve life without legal formalities to be complied with the police. Right to preserve life of its citizens is the ultimate duty of a State. This decision helped many people to get immediate medical aid and thus, saved their lives. It is said that health is wealth, without proper health one cannot earn his livelihood and live a normal life.

Right to Sleep

In Ram Lila Maidan Case¹, Justice B.S. Chauhan observed that when police disturbed the crowd in night at 1:00 AM their right to sleep was violated. He holds that right to sleep forms an essential part of Article 21 which guarantees personal liberty and life to all. It was observed that 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. Undoubtedly, sleep is absolutely necessary; it is an essential requirement. But granting it the status of a right at par with right to food is stretching the concept of right to a preposterous level. Such a judgment can lead to Diwali revelers being jailed for infringing upon the right to sleep when they burst firecrackers closer to the midnight hour. It will have factory workers on night shift manufacture excuses

like lack of sleep as reason for inefficient performance. As a society, we shall begin to discourage most nocturnal activities because those might interfere with our sleeping habit.

1. Suo Motu Writ Petition (Crl) No. 122 of 2011 decided on 23.02.2012.

Right to electricity is right to life: In *K. Acharya v C.M.D.W.B.S.E. Distribution Co. Ltd.*(AIR 1992 SC789,795), the Court held that the right to electricity is right to life and liberty in terms of Article 21 of the Constitution. In modern days no one can survive without electricity. This is another example of judicial populism. How can the Court provide electricity to people? Providing electricity depends on the policies and measures taken by the State. It depends on the state policies and development in the area where such demand arises.

Right to live in a Pollution Free Environment

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

The judiciary expanded the meaning and scope of art. 21 and included the right to a healthy, clean environment; in other words, the right to life includes a pollution-free environment including water and air, because in the absence of a pollution-free environment the right to life will be meaningless. The right to a clean and wholesome environment was brought under the umbrella of Article 21.

The importation of the 'due process' clause by the activist approach of the Supreme Court in *Maneka Gandhi's case*(AIR 1978 SC597) has revolutionized the ambit and scope of the expression 'right to life' embodied in Article 21. The right to live in healthy environment is another golden feather in the cap of Article 21. This right connotes that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 embraces the protection and preservation of environment without which life cannot be enjoyed.

In another case *Rural litigation and Entitlement Kendra Vs. State of Uttar Pradesh* (AIR 1985SC52) although the Court had successfully read Article 21 in Article 48-A of the Constitution. The Bench ordered the closing down of mining operations on the ground that lime stone quarries operation causing ecological imbalance and a hazard to healthy environment.

In *M. C. Mehta Vs. Shriram Food and Fertilizer Industries and Union of India or Oleum Gas Leak Case*(AIR 1987 SC1965)The Court held that enterprise engaged in any hazardous or inherently dangerous industry which could pose a threat to public health and absolute duty to the community to ensure that no harm resulted to anyone.

In *Oleum Gas Leak Case, M. C . Mehta Vs. Union of India*(AIR 1987 SC1086), the Court clearly treated the rights to live in a healthy environment as fundamental right under Article 21 of the Constitution.

***Doon Valley Case*²**: This case was the first example or first indication of the right to a healthy environment. The Supreme Court held that even if the limestone quarry contractors have invested large sums of money and expended considerable time and effort, the right of people around to live in a healthy environment must be protected and safeguarded.

2. Rural Litigation Entitlement Kendra Dehradun vs State of U. P.

,AIR 1985 SC 652.

M.C. Mehta V/s Union of India (Ganga Pollution Case) (AIR 1988 SC111):

This case relates to the prevention of nuisance caused by the pollution of river Ganga. This nuisance, treated as a public one, was wide in its range and indiscriminate in its effect. The Supreme Court issued specific directions for all the municipalities of the towns situated on the river Ganga. It was observed by

the Court that Article 21 of the Constitution includes a right to clean and wholesome environment.

Clean, green and pollution free environment is the need of the hour. With increasing technology and modernization, our environment is also degrading. But, in my view, it is really not in the power of courts to provide clear air, water & environment to the people. This can be achieved by everyone's initiative not solely by the courts. However, courts can order removal of industries or factories away from residential area.

Right of Prisoners

The protection of Article 21 is available even to convicts in jail. The convicts are not by mere reason of their conviction deprived of all their fundamental rights which they otherwise possess. When the convict is put into a jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India. But a convict is entitled to the precious right guaranteed under Article 21 and he shall not be deprived of his life and personal liberty except by a procedure established by law. In *Charles Sobraj v. Superintendent, Central Jail* (AIR 1978SC1514) and *Sunil Batra v. Delhi Administration* (AIR 1978SC1675), it was held that a prisoner was not denuded of his fundamental rights such as right to equality or right to life or personal liberty beyond what has been taken away by the nature of the imprisonment itself.

The right to prisoners was a great initiative for the human rights of prisoners. It covered Right to speedy trial (*Sheela Barse v. UoI*), Right against prison torture and custodial death (*Sunil Batra case*), Right to compensation for illegal & unlawful detention [*Rudal Shah v. State of Bihar*], Right against handcuffing (*Prem Shankar Shukla v. Delhi Administration*), Right against bar fetters (*Charles Sobhraj case*), Right against solitary confinement (*Sunil Batra case*).

Justice Krishna Iyer while speaking on behalf of majority in the case of ***Sunil Batra v. Delhi Administration*** made it constitutionally clear that when a person gets arrested, he steps into the prison cell with his fundamental rights intact and not in devoid of them, he also made it amply clear that Article 21 is to be interpreted in the widest possible sense because fundamental rights form the spirit of the Constitution and Article 14, 19 and 21 are the spirit of the fundamental rights- over and onto which all other fundamental rights rest.

Sexual harassment of working women: violative of Art 14 and 21.

In case of ***Vishakha v. state of Rajasthan (AIR 1997 SC3011)*** the SC has made it clear that the sexual harassment of working women amounts to violation of right of gender equality and right to life and personal liberty. As a logical consequence it also amounts to the violation of right to practice any profession, occupation or trade. The SC laid down certain guidelines to be observed at all work place or other institutions until legislation is enacted for the purpose. These guidelines would be treated as the law declared by SC under Art 141. This case law provided relief to millions of working women who were compelled to remain silent at their working place even though they face sexual comment, harassment etc.

Compensation for Violation of Article 21

In ***Rudal Singh v. State of Bihar(1983)4SCC141***, the Supreme Court had held that the Court has the power to award monetary compensation in appropriate cases where there had been a violation in the constitutional right of the citizens. In this case the Supreme Court directed Bihar Government to pay “Compensation” of Rs. 30,000 to Rudal Singh who had to remain in jail for 14 years because of irresponsible behavior of the State Government Officers even after acquittal”. Through this judgement people whose fundamental rights were violated under art 21 would get financial compensation. It will keep the faith of

getting justice and relief alive among those people who had been deprived of their fundamental rights.

Same view was reiterated in *Nilabati Behera v. State of Orissa* (1993SCC746), the Supreme Court holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the “duty of care” which could not be denied to anyone.

Conclusion

The judiciary as a guardian of fundamental right has protected the right of each individual in relation to environment under Article 21 of the Constitution of India. With due respect to the above views it is submitted that it would be better if such matters are left to the specific legislation rather than accumulating everything in the constitutional text. After all the sanctity of the Constitution must be upheld. The exploration of the different dimensions of the Article 21 is ongoing process and the new horizons of the article 21 are coming up from case to case.³

3. Kashyap Subhash C. (ed.) *Reforming the Constitution*, New Delhi: UBS Publishers, 1992.

The aforesaid cases are only few examples from numerous judicial pronouncements made by the Supreme Court of India concerning human rights. In order to preserve and protect the essence of our constitution, a creative judiciary is a must, and that sorts of judicial intervention should be with clear vision and intelligence.