

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

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Article 21 is said to be the heart of the fundamental rights which imbibes most of the rights in it and has received expanded meaning. Article 21 guarantees a fundamental right to life. Right from mother's womb, one needs unpolluted air to breathe, 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."

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. 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.

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

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*¹ 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*² 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. In this case, Justice Krishna Iyer 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 had been taken. Law must be fair, just and reasonable and a combined reading of Article 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,

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*³ 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*.⁴ 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. 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. 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. 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*⁵ 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*⁶ 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*,⁷ it was held that living together is a right to life under Article 21. 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.

Right to Livelihood

Till 1960, the Supreme Court was of the view that Article 21 of Indian Constitution does not guarantee right to livelihood. But in *Olga Tellis v. Bombay Municipal Corporation*⁸ 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 Shelter

In *Olga Tellis vs Bombay Municipal Corporation*⁹, 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)

ISCC520;¹⁰ 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;¹¹it 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. On the other hand, Mathew, J. in his classic judgment in *Govind v. State of MP* (1975AIR 1378;¹² 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.¹³ 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 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 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*¹⁴, 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.

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*,¹⁵ it was held that it is the professional obligation of all doctors 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 Case*¹⁶, Justice B.S. Chauhan observed that when police disturbed the crowd in night at 1:00 AM their right to sleep was violated. He held 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 absurd 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.

Right to electricity is right to life

In *K. Aacharya v C.M.D.W.B.S.E. Distribution Co. Ltd.*¹⁷, 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

The judiciary expanded the meaning and scope of Article 21 and brought the right to a healthy, clean and wholesome environment under its umbrella. 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 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 *Oleum Gas Leak Case, M. C . Mehta Vs. Union of India*¹⁸, the Court clearly treated the rights to live in a healthy environment as fundamental right under Article 21 of the Constitution.

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. 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.

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