



An overview of article 21 of the Indian constitution

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Abstract

The framers of Indian constitution were deeply influenced by the international document i.e. Universal Declaration of Human Right (UDHR) 1948 which had a great impact on the drafting of Indian constitution. The Article 9 of UDHR provides for 'protection of life and personal liberty' of every person. As India was signatory to the declaration, the constituent Assembly adopted the similar provision as a fundamental right therein. The Hon'ble Supreme Court observed that the UDHR may not be a legally binding instrument but it show how Indian understood the nature of Human Rights at the time when Constitution was adopted. Article 21 is the celebrity provision of the Indian Constitution and occupies a unique place as a fundamental right. It guarantees right to life and personal liberty to citizens and aliens and is enforceable against state.

Keywords: adjudicate, ultra vires, interpretation

Introduction

According to the Constitution, Parliament and the state legislatures in India have the power to make laws within their respective jurisdictions. This power is not absolute in nature. The Constitution vests in the judiciary, the power to adjudicate upon the constitutional validity of all laws. If a law made by Parliament or the state legislatures violates any provision of the Constitution, the Supreme Court has the power to declare such a law invalid or *ultra vires*. This check notwithstanding, the founding fathers wanted the Constitution to be an adaptable document rather than a rigid framework for governance. The judicial interpretation of Article 21 of the Indian Constitution and judicial activism on the part of the Supreme Court of India. It examines the reasons for judicial creativity and justifies the role played by the Supreme Court of the India in protection the fundamental rights of the citizens, when the legislative and executive failed in performing their duties. To some extent, judicial activism on the part of judiciary derives from underlying weakness and failure on the part of the other machineries of the state to perform their duties. Right to life and personal liberty is the most cherished and pivotal fundamental human rights around which other rights of the individual revolve and, therefore, the study assumes great significance. The study of right to life is indeed a study of the Supreme Court as a guardian of fundamental human rights. The Constitution of India provides Fundamental Rights under Chapter III, which are guaranteed by the constitution. One of these rights 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".

Though the phraseology of Article 21 starts with 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 only. If an act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person, such violation would not fall under the parameters set for the Article 21. In such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21. Article 21 of the Constitution of life of a person. The term person does include citizens as well as non-citizens.

Article 21 of the Constitution is available to both Citizens and Non-Citizens

According to the tenor of the language used in Art. 21, it will be available not only to every citizen of this country, but also to be a "person" who may not be a citizen of the country. Thus, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to "Life" in this country (Chairman, Railway Board v Chandrima Das)^[1].

The Traditional Approach of the Supreme Court

It is hard to appreciate fully the extent of development of right to life without an overview of the traditional approach. In A. K. Gopalan v Union of India^[2] the traditional interpretation of Article 21 of the Constitution was that a procedure established by law can deprive a person of his right to life. Thus, the earliest understanding of this provision was a narrow and procedural one. The state had to demonstrate the interference with the individual's right to life is accorded with the procedure laid down by properly enacted law. It didn't matter whether the law was just & fair. Moreover, in Gopalan's case the Court declined to infuse the guarantee of due process of law, contained in Article 21, with substantive content, holding that as long as the preventive detention statutes had been duly enacted in accordance with the procedures of article 22, the requirements of due process were satisfied. The interpretation

as made by the Court was nothing more than the freedom from arrest and detention, from false imprisonment or wrongful confinement of the physical body. Thus, “personal liberty” said to mean only liberty relating to person or body of individual and in this sense it was the antithesis of physical restraint or coercion. In course of time, the traditional and narrow approach of the Supreme Court in interpreting Article 21 has been changed. In Maneka Gandhi’s case, one can find the dramatic change of attitude by the Court in interpreting Article 21 in a manner so as to impliedly include ‘due process of law’ into the contents of Article 21.

Interpretation of Article 21- Post Maneka Gandhi’s Case

The decision of Constitutional Bench of Seven judges (overruling Gopalan’s case) in Maneka Gandhi’s case^[3] became the starting point, the springboard, for a spectacular evolution of the law relating to judicial intervention in (individual) human rights cases. Thus, the principle laid down by the Supreme Court in this case is that the procedure established by law for depriving a person of his right to life must be right, just, fair and reasonable.

The new interpretation of Article 21 in Maneka Gandhi’s case has ushered a new era of expansion of the horizons of right to life and personal liberty. The wide dimension given to this right now covers various aspects which the founding fathers of the Constitution might or might not have visualized. The expression “procedure established by law” resembles with the 5th Amendment of the U. S. Constitution^[4]. Even though the word ‘due’ is not specifically provided under Art.21 but the Supreme Court in its various judgments interpreted it in a wider and dynamic manner.

Extended view of Article 21

The Supreme Court gave extended dimension to Article 21 in the post Maneka Gandhi era. Some of the landmark decisions are mentioned below.

1) Article 21 includes Right to Education

Right to education is considered as third eye of man without which no one can lead good, decent and dignified life. Earlier right to education was a part of directive principles of state policy^[5]. However as per the changing needs of society Supreme Court in Mohini Jain v. State Of Karnataka^[6] and Unni Krishna v. State of Andhra Pradesh^[7] rule that right to education is fundamental right because it directly flows from right to life.

Earlier the courts interpreted Right to Education under Art.21 but in the year 2002 by constitutional Amendment, Art.21A^[8] was inserted in the constitution and right to education was expressly made as a fundamental right.

2) Article 21 includes Right to Privacy

For the first time, the issue was raised in Kharak Singh v State of Tamil Nadu^[9]. Justice Subba Rao in his minority judgment said that the right to privacy flows from the expression personal liberty. This minority judgment paved path for the further development.

In R. Rajgopal v. State of Tamil Nadu^[10], the Supreme Court observed that right to privacy is nothing but ‘right to be let alone and it is implicit in right to life and personal liberty guaranteed under Art.21 of Indian Constitution.

3) Article 21 includes Right to Livelihood

Right to livelihood is borne out of right to life as no person can live without the means of living that is livelihood. If right to livelihood is not treated as part and parcel of right to life, the easiest way of depriving a person of his right life would be deprived him of his means of livelihood. Deprivation of livelihood would not only denude the life of his effective content and meaningfulness but it would make life impossible to live.

The Supreme Court in Olga Tellis v. Bombay Municipal Corporation^[11] held that the concept of “right to life and personal liberty” guaranteed under Article 21 of the Constitution includes the “right to live with dignity” which in turn includes right to livelihood.

4) Article 21 includes Right to speedy trial

Speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Art. 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach the Court for the purpose of enforcing such right. The Supreme Court held in Hussainara Khatoon (I) v. Home Secretary, State of Bihar^[12] that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Art. 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under Art. 32 for the purpose of enforcing such right and the Supreme Court in discharge of its constitutional obligation has the power to give necessary directions to the State.

5) Imposing Capital Punishment is not violation of Article 21

The validity of death sentence has been raised in various cases before Supreme Court. In Jagmohan Singh v. State of Uttar Pradesh^[13] the Supreme Court held that freedom to live could not be denied by a law unless it is reasonable & in public interest. However in Bachan Singh v. State of Punjab^[14] it was held that, the death penalty is an alternative punishment of murder in section 302 of I.P.C. Hence it is not unreasonable & is in public interest. It should be imposed only in “rarest of rare Cases.”

6. Delay in executing death sentence is a violation of Article 21

In Vatheeswaran v. State of Tamil Nadu^[15] the Supreme Court evolved another principle that prolonged delay (2 years) in executing death sentence would be unjust, unfair & unreasonable & therefore violative of Art 21 of the Constitution. In such a case, the accused has a right to get the death sentence commuted to life imprisonment. In Triveniben v State of Gujarat^[16], the Supreme Court ruled that no fixed period of delay is necessary to make the death sentence non – executable.

7) Article 21 includes Right to free legal aid

In M.H Hoskot v State of Maharashtra^[17] the Supreme Court has invoked Art. 39A and held that state under Article 21 should provide free legal aid to a prisoner who is indigent and or otherwise disabled from securing legal assistance where the ends of justice call for such service.

8) Article 21 includes Right to Health and Medical Care

Art. 21 as well as Directive principles of State policy ^[18] obligates State to preserve the life of person. In a landmark decision of *Parmanand Katara v Union Of India* ^[19] the Supreme Court held that in medico legal cases preservation of life is of paramount importance therefore it is the primary duty of doctor to give immediate aid to the victims either he is a criminal or innocent person and shall not wait for the completion of legal formalities. Similarly in *Paschim Banga Khet Mazdoor Samiti v State of West Bengal* ^[20] the Supreme Court awarded compensation to the victims aggrieved by the services provided by the government hospitals.

9) Right to life under Article 21 does not include right to die

Human life is precious one. The Supreme Court has shown radical change in its view. In *Gian Kaur v. State of Punjab* ^[21] while deciding the validity of Sec.309 of I.P.C, the Court overruled the earlier view which was taken in *P. Rathinam's* case ^[22] and held that "right to life" does not include "right to die" and the "extinction of life" is not included in "protection of life" thus provision penalizing attempt to commit suicide is not violative to Art. 21 of the Constitution.

10) Article 21 guarantees Freedom from Police Atrocities

The Supreme Court has shown its great concern in cases of maltreatment of prisoners. As far as mode of punishment is concerned in *Prem Shankar v Delhi Administration* ^[23] the Supreme Court held that handcuffing is a prima facie is inhuman in nature therefore it must be the last refuge as there are other ways for ensuring security. Similarly in *D.K Basu v State of West Bengal* ^[24] the Supreme Court held that any form of torture or cruel inhuman or degrading treatment during the investigation, interrogation or otherwise is violative of Article 21 of the Constitution. In *Sheela Barse v State of Maharashtra* ^[25] the Supreme Court has given directions to prison authorities to ensure rights of women against torture and maltreatment in police lockup.

11) Article 21 includes Right to claim Compensation

The Supreme Court of India has also shown its dynamic and activist role in compensatory jurisprudence. For the first time in *Nilabati Behera v State of Orissa* ^[26] the Supreme Court held right to compensation as a fundamental right under Article 21 of the Constitution. Earlier it was the discretion of the Court wherein it has awarded compensation to the victim ^[27]. In *Rudal Shah v State of Bihar* ^[28] the Supreme Court awarded Rs. 35000/- to the petitioner who was kept in jail for 14 years despite of his acquittal order. Recently in *Chairman, Railway Board v Chandrima Das* ^[29] the employees of the Railway Board had gang raped a Bangladeshi Women for which the Central Government was directed to award compensation under Article 21 of the constitution.

Conclusion

The most respected public institution in India is the Supreme Court, respected by the elite and the illiterate alike. If the Court has come increasingly effective in its role as the final arbiter of justice, it is because of the confidence the common man has placed in it. The Court has no army at its command. It does not hold any purse strings. Its strength lies largely in the command it has over the hearts and minds of the public and the manner in which it can influence and mould public opinion.

As stated above in several cases, the Supreme Court of India played a significant role while interpreting Article 21 of the constitution. In this way the Supreme Court has expanded the liabilities, duties and responsibilities of the State and its authorities thorough its interpretative and activist judicial process. It is quite possible that in course of time, the Court may possibly be able to imply some more rights for the people in interpreting Article 21 of the Constitution because the concept of dignified life guaranteed by Article 21 seems to be inexhaustible in range and scope.

Reference

1. AIR 2000 SC 998
2. AIR 1950 SC 27
3. *Maneka Gandhi v Union of India* AIR 1978 SC 597
4. 5th Constitution Amendment is USA- "No person shall be deprived of his life, liberty or property without due process of law"
5. Art. 51 A of the Indian Constitution.
6. AIR 1992 SC 1858
7. AIR 1993 SC 2178
8. 86th Amendment 2002
9. AIR 1963 SC 1295
10. AIR 1995 SC 264
11. (1985) 3 SCC 5
12. (1980) 1 SCC 81
13. AIR 1973 SC 947
14. AIR 1980 SC 898
15. AIR 1983 SC 261
16. AIR 1989 SC 1335
17. AIR 1978 SC 1548
18. Art. 46 and 47 of Indian Constitution
19. AIR 1989 SC 2039
20. AIR 1996 SC 2426
21. AIR 1996 SC 953
22. *P Rathinam v Union of India*, AIR 1994 SC 1844
23. AIR 1980 SC 1535
24. AIR 1997 SC 610
25. AIR 1983 SC 378
26. AIR 1993 SC 1960
27. *Khatri v State of Bihar*, AIR 1981 SC 928
28. AIR 1983 SC 1086
29. AIR 2000 SC 998