

Protection of life and personal liberty under Indian constitution (article 21)

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Abstract

In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guarantee in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. The word 'life' as employed by Article 21 takes in its sweep not only the concept of mere physical existence but also all finer values of life including the right to work and right to livelihood. This right is a fundamental right guaranteed to all persons residing in India, citizens and non-citizens alike. Right to life including right to livelihood and work as guaranteed by Article 21 is not reduced to a mere paper platitude but is kept alive, vibrant and pulsating so that the country can effectively march towards the avowed goal of establishment of an egalitarian society as envisaged by the founding fathers while enacting the Constitution of India along with its Preamble.

Keywords: Article 21, constitution, livelihood

Introduction

According to constitutional settings of Article 21: This Article is couched in a negative form and enjoins the State not to deprive any person not necessarily only a citizen, of his life or personal liberty except according to procedure established by law. It is axiomatic that the State can deprive any person of his life or personal liberty only through the medium of operation of any law which is a valid law. If any procedural law can validly deprive any person of his life or personal liberty it should comply with the requirements such: The procedure laid down by the said law should be as a result of valid exercise of legislative power by the concerned law making authority.

In other words only a competent legislature can enact such law. If the procedure laid down by such law is found to be established by an incompetent legislature such law would be a still-born one or an incompetent one and ultra vires the powers of the concerned legislature. Result would be that such a procedure flowing from such invalid law will have no effect on the life or personal liberty of any person governed by the sweep of Article 21; and Even though the procedure established by law is found to have been laid down by a legislature which is competent to enact such a law, if such law is found to conflict with any of the fundamental rights guaranteed by Part III of the Constitution then such law would become void and in that eventuality such law enacted by competent legislature would yet be invalid and would be treated as still-born having no impact on the deprivation of life and liberty of the deprivation of life and liberty of the concerned person and Article 21 would fully protect such life and personal liberty of that person.

So far as this second type of infirmity is concerned the relevant Articles which would govern such law as contemplated by Article 21 and in whose light such law will have to be tested are Articles 14, 19 and 22 of the Constitution of India. Article 14 guarantees equality before law or equal protection of law to every person in India. If the procedure laid down by the concerned law does not stand the test of Article 14 such law will

not be of any avail to the State for depriving the person concerned of his life or personal liberty as guaranteed under Article 21. Similarly under Article 19 (1) (g) all citizens of India amongst others have a right to practice any profession or carry on any occupation, trade or business. Of course, such a right is subject to Sub-article (6) of Article 19 which lays down that nothing in the said sub-clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it related to, or prevent the State from making any law relating to – the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise. Similarly Article 22 lays down the procedure which should be followed before any arrest or detention of any person is to be effected. If the procedure laid down by any law enacted by the competent legislature falls short of the requirements of Article 22 it will have no effect so far as the deprivation of life and personal liberty of the person concerned is on the anvil. In short in such a case the fundamental right guaranteed under Article 21 will stand untouched so far as such person is concerned. Article 21 also will have to be read in the light of relevant directive principles of State Policy found in Part IV of the constitution of India. As laid down by Article 37 the provisions contained in Part IV shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles as beckon lights for the State both in its executive as well as legislative capacity to be guided by them and these functions of the State have to be monitored in the light of these directive principles. The relevant

directive principles for our purpose are found in Articles 39(a) and 41. Article 39(a) lays down that State shall, in particular, direct its policy towards securing, (a) that the citizens, men or women equally, have the right to an adequate means of livelihood; while Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. We have to cull out the correct connotation of the term 'life' as employed by Article 21 keeping in view the constitutional duty of the State as flowing from the aforesaid directive principles of State Policy under Articles 39(a) and 41. A conjoint reading of these provisions, therefore, clearly indicates that it is the obligation of the State while enacting laws in connection with deprivation of life of any person which is protected by Article 21 to see to it that it does not falter in its constitutional obligation of making effective provisions for securing right to work and also for providing adequate means of livelihood to its citizens. It is in the background of the aforesaid constitutional scheme that we now turn to tackle the moot question as to whether right to livelihood or work is covered by the sweep of Article 21 or not

Historical Evolution

The origin of the right to life enshrined under Article 21 can be traced by the analysis of various international human right instruments and legal documents. The concept of life has emerged from the times of Adam and Eve and has constantly evolved since ages. The right of life is an inherent and inalienable right bestowed on every human being by all the powerful God himself. Similarly, various countries have incorporated this all powerful right in their legal documents to give it a legal force.

Protection against arbitrary arrest and detention

Article 21 provides the right to fair trial, speedy trial, right against handcuffing, right against inhuman treatment right against delayed execution and right against custodial harassment. All these rights work as a safeguard to the accused and these rights are available after giving wider interpretation to Article 21 by the Supreme Court in number of cases.

Objective of the Research Paper

- To analyse article 21 protection of life and personal liberty under Indian constitution
- To analyse right to life and right to personal liberty

Research Methodology

In the study the following research methodology is used: The required secondary data will be collected through published material i.e. books, pamphlets, articles, newspapers and reports etc.

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.

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 21.

Article 21 secures two rights:

Right to life

Right to personal liberty

Concept of 'Right to Life'

'Everyone has the right to life, liberty and the security of person.' The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to life as interpreted and applied by the Supreme Court of India.

Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21 so many rights have found shelter, growth and nourishment. Thus, the bare necessities, minimum and basic requirements that is essential and unavoidable for a person is the core concept of right to life. In the case of *Kharak Singh v. State of Uttar Pradesh*, the Supreme Court quoted and held that: By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

In *Sunil Batra v. Delhi Administration*, the Supreme Court reiterated with the approval the above observations and held that the "right to life" included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person's tradition, culture, heritage and all that gives meaning to a man's life. It includes the right to live in peace, to sleep in peace and the right to repose and health.

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

Life and personal Liberty-Article 21, though couched in negative language confers on every person the fundamental right to life and personal liberty. The foreigners are as much entitled to these rights as the citizens. The two rights have been given paramount position by our Courts. The right to life which is the most fundamental of all is also the most difficult to define.

Although most of the cases concerning the expansion of Article 21 in different directions have been given by art, yet there are

many more which have not received adequate attention under them. For the sake of convenience they may be mentioned under the following different subheads:

Rights of Prisoners: The case of Prabhakar Pandurang, it has held that the right of a detenu to send his book, written during detention, for publication was recognised. A prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. Therefore, any imposition of a major punishment within the prison system is conditional upon the observance of the procedural safeguards of fundamental rights due to the very nature of the regime to which he is lawfully committed. In *Sunil Batra v. Delhi Administration*, the solitary confinement of a prisoner, who was awarded the capital sentence for having committed the offence of murder under Section 30(2) of the Prisons Act, 1894, was held bad as it was imposed not as a consequence of the violation of the prison discipline but on the ground that the prisoner was one under sentence of death. Desai, I. pointed out that the conviction of a person for a crime did not reduce him to a non-person vulnerable to major punishment imposed by the jail authorities without observance of procedural safeguards. It was also held that bar-fetters, to a very considerable extent, imposed under Section 56 of the Prisons Act, 1984, curtail, if not wholly deprive, locomotion which is one of the facets of personal liberty and such action can only be justified in the circumstances relatable to the character of the prisoner and his safe custody. However, prisoners have no fundamental right to escape from lawful custody, and hence, the presence of armed police guards causes no interference with the right to personal liberty. So also, prisoners cannot complain of the installation of the live wire mechanism with which they are likely to come in contact only if they attempt to escape from the prison. Also, the denial of amenities or their poor maintenance do not necessarily constitute an encroachment on the right to personal liberty. If a prisoner demands that he should have better companions in jail or should be removed to a ward with more relaxation and resents keeping convict cooks or having wardens as jail mates in his cell, the Superintendent of Jail may justifiably turn down such requests in view of the prisoner's record and potential. However a prisoner has the fundamental right to be protected from the co-prisoners. In case a prisoner to kill by his co-prisoner the State may be compelled to compensate the dependants of the deceased. Similar rights of the arrestees and persons in police custody have also been recognised

Moreover, in several cases courts have issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lock-up, particularly of women and children against sexual abuse and for their early trials. Handcuffing of under trials without adequate reasons in writing has also been found against Article 21 and the Court has directed the Union of India to issue appropriate guidelines in this regard. A right to be released on bail has not yet been recognised under Article 21 and it has been held that insofar as the Scheduled Caste (Prevention of Atrocities) Act, 1989 prohibits anticipatory bail for offences under that Act it is not violative of Article 21

Provision in Section 32-A of Narcotic Drugs and Psychotropic Substances Act, 1985, taking away right of Court to suspend sentence awarded under the Act, pending an appeal, violates Article 21, particularly when no mechanism is provided for early disposal of the appeal.

Concept of Personal Liberty

The next important ingredient of Article 21 is the expression 'Personal Liberty'. When the Constitution was being framed, the word used in the draft Constitution as prepared even up to the stage of Advisory Committee was "liberty" without being qualified the word "liberty" by "personal" being of the view that otherwise "liberty" might be construed very widely so as to include freedom already dealt under article 19. The result is that article 21 as it finally found place in our Constitution protects "personal liberty". Expansion of Article 21 has led to many of the directive principles being enforced as fundamental rights. On account of this expanded interpretation, now the right to pollution free water and air, right to food clothing, environment, protection of cultural heritage, Right to every child to a full development, Right of persons residing in hilly areas to have access to roads and Right to education (*Mohini Jain v. State of Karnataka*) have all found their way into Article 21

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).

Conclusions

Now is the time to take stock of the situation for bringing down the curtain. As seen above by a catena of decisions of the Supreme Court spread over decades it is now well settled that the word 'life' as employed by Article 21 takes in its sweep not only the concept of mere physical existence by also all finer values of life including the right to work and right to livelihood. This right is a fundamental right guaranteed to all persons residing in India as contradistinguished with only citizens covered by the sweep of Article 19(1) (g). This right cannot be interfered with by the State save and except by a procedure emanating from a valid law which should be passed by a competent legislature and which should not come in conflict in any of the other fundamental rights especially those guaranteed under Article 14 and 19(1) (g) in so far as they are available to concerned person invoking such a fundamental right. Though Article 19(1) (g) caters to the needs of only citizens, Article 14 is available to all persons and not necessarily only to citizens. Therefore, Article 21 goes hand in hand with Article 14 and both of them serve the same class of humanity residing in India both citizens and non-citizens. It is of course true that Article 21 is couched in a negative form and cannot be enforced in absolute terms by way of a substantive provision as is the case with the fundamental right under Article 19(1)(g) available to citizens of India. Still, however, the fact remains that the State is prohibited from tinkering with right to work or right to livelihood guaranteed under Article 21 to all residents of India, citizens and non-citizens alike save and except by enacting a procedural law which stands the test of Part III of the Constitution of India and the State has also a positive duty to be guided by the provisions of Articles 39(a) and 41 for making the right to life as envisaged by Article 21 more effective and kicking. It has also to be kept in view that Article 21 is neither suspend able during emergency nor capable of being abrogated or amended and, therefore, the

State being governed and guided by the provisions of Article 21 in Part III and the Directive Principles in Part IV in this connection has to see to it that right to life including right to livelihood and work as guaranteed by Article 21 is not reduced to a mere paper platitude but is kept alive, vibrant and pulsating so that the country can effectively march towards the avowed goal of establishment of an egalitarian society as envisaged by the founding fathers while enacting the Constitution of India along with its Preamble.

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