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ARTICLE 21 – THE CROWN OF INDIAN CONSTITUTION

AUTHORED BY - KUMAR KANISHK

Introduction

Right to life and personal liberty is an essential part of human life. In its wider connotation, it includes all the basic necessities of life without which one could not even survive. Article 21 (and its many interpretations) is the perfect example of the transformative character of the Constitution of India. The Indian judiciary has attributed wider connotation and meaning to Article 21, extending beyond the Constitution makers' imagination. These meanings derived from the 'right to life' present unique complexities. It is impossible to understand the expansive jurisprudence on Article 21 within the length of this piece. Article 21 is at the heart of the Constitution. It is the most organic and progressive provision in our living Constitution. 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. Thus, violation of the right by private individuals is not within the preview of Article 21.

Article 21 of the Indian Constitution

Article 21 of the Constitution of India, 1950 provides,

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.

[21A. Right to education.—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

Article 21 secures two rights:

- 1) Right to life, and
- 2) Right to personal liberty.

It 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 Eire 1937, and Article XXXI of the Constitution of Japan, 1946. It

is also fundamental to democracy as it extends to natural persons and not just citizens. 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 to the right to reside and settle in India, as mentioned in Article 19 (1) (e).

Meaning, Concept And Interpretation Of 'Right To Life' Under Article 21

‘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,

“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, including, including the right to live with human dignity, Right to livelihood, Right to health, Right to pollution-free air, etc.

The right to life is fundamental to our very existence, without which we cannot live as human beings and includes all those aspects of life, which make a man’s life meaningful, complete, and worth living. It is the only Article in the Constitution that has received the broadest possible interpretation. Thus, the bare necessities, minimum and basic requirements for a person from the core concept of the right to life.

In **Kharak Singh v. State of Uttar Pradesh**, the Supreme Court quoted and held:

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 approved the above observations. It held that the 'right to life' included the right to lead a healthy life to enjoy all faculties of the human body in their prime conditions. It would even include the right to protect a person's tradition, culture, heritage and all that gives meaning to a man's life. In addition, it consists of the Right to live and sleep in peace and the Right to repose and health.

Right To Live with Human Dignity

In **Maneka Gandhi v. Union of India**, the Supreme Court gave a new dimension to Art. 21. The Court held that 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** observed:

"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."

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Another broad formulation of life to dignity is found in **Bandhua Mukti Morcha v. Union of India**. Characterising Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed:

“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 essentials.”

Following the above-stated cases, the Supreme Court in **Peoples Union for Democratic Rights v. Union of India**, held that non-payment of minimum wages to the workers employed in various Asiad 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 labour laws are intended to ensure basic human dignity to workers. He held that the non-implementation by the private contractors engaged for constructing a 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 the fundamental right of workers to live with human dignity contained in Art. 21.

In **Chandra Raja Kumar v. Police Commissioner Hyderabad**, it has been held that the right to life includes the right to live with human dignity and decency. Therefore, keeping of beauty

contest is repugnant to the dignity or decency of women and offends Article 21 of the Constitution only if the same is grossly indecent, scurrilous, obscene or intended for blackmailing. Therefore, the government is empowered to prohibit the contest as objectionable performance under Section 3 of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956.

Right Against Sexual Harassment at Workplace

Sexual harassment of women has been held by the Supreme Court to be violative of the most cherished of the fundamental rights, namely, the Right to Life contained in Art. 21.

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse. “The above statement by Justice Verma in the famous Vishakha judgment liberalised the understanding of Article 21. Therefore, making it even more emancipatory.

In **Vishakha v. State of Rajasthan**, the Supreme Court declared sexual harassment at the workplace to violate the right to equality, life and liberty. Therefore, a violation of Articles 14, 15 and 21 of the Constitution. In this case, in the absence of a relevant law against sexual harassment, the Supreme Court laid down the following guidelines to ensure gender parity in the workplace: This meant that all employers or persons in charge of the workplace, whether in the public or private sector, should take appropriate steps to prevent sexual harassment.

Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

As regards private employers steps should be taken to include the prohibitions above in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

Appropriate work conditions should be provided for work, leisure, health, and hygiene to ensure

that there is no hostile environment towards women at workplaces. No employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment. Where such conduct amounts to specific offences under IPC or under any other law, the employer shall initiate appropriate action by making a complaint with the appropriate authority.

The victims of Sexual harassment should have the option to seek the transfer of the perpetrator or their own transfer.

In **Apparel Export Promotion Council v. A.K. Chopra**, the Supreme Court reiterated the Vishakha ruling and observed that:

“There is no gainsaying that each incident of sexual harassment, at the place of work, results in the violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India....

“In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated....”

Understanding Article 21 Through Against Sexual Assault and Rape

Rape has been held to be a violation of a person’s fundamental life guaranteed under Article 21. Therefore, the right to life would include all those aspects of life that go on to make life meaningful, complete and worth living.

In **Bodhisattwa Gautam v. Subhra Chakraborty**, the Supreme Court observed:

“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 violative of the victim’s most cherished of the fundamental rights, namely, the right to life with human dignity contained

in Art 21”.

Right to Reputation and Article 21

Reputation is an essential part of one's life. It is one of the finer graces of human civilisation that makes life worth living. The Supreme Court referred to D.F. Marion v. Minnie Davis in Smt. Kiran Bedi v. Committee of Inquiry. It said:

“good reputation was an element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life, liberty, and property. The Court affirmed that the right to enjoyment of life, liberty, and property. The Court affirmed that the right to enjoyment of private reputation was of ancient origin and was necessary to human society.”

The same American decision has also been referred to in **State of Maharashtra v. Public Concern of Governance Trust**. The Court held that good reputation was an element of personal security and was protected by the Constitution, equally with the right to enjoy life, liberty and property.

It has been held that the right equally covers a person's reputation during and after his death. Thus, any wrong action of the state or agencies that sullies the reputation of a virtuous person would undoubtedly come under the scope of Article 21.

State of UP v. Mohammad Naim succinctly laid down the following tests while dealing the question of expunction of disgracing remarks against a person or authority whose conduct comes in consideration before a court of law. These are:

Whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself.

Whether there is evidence on record bearing on that conduct justifying the remarks.

Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct, it has also been recognised that judicial pronouncements must be judicial. It should not normally depart from sobriety, moderation, and reserve.

In State of Bihar v. Lal Krishna Advani, a two-member commission got appointed to inquire

into the communal disturbances in the Bhagalpur district on October 24, 1989. The commission made certain remarks in the report, which impinged upon the respondent's reputation as a public man without allowing him to be heard. The Apex Court ruled that it was amply clear that one was entitled to have and preserve one's reputation, and one also had the right to protect it.

The Court further said that if any authority, in the discharge of its duties fastened upon it under the law, transverse into the realm of personal reputation adversely affecting him, it must provide a chance to have his say in the matter. Finally, the Court observed that the principle of natural justice made it incumbent upon the authority to allow the person before any comment was made or opinion was expressed, likely to affect that person prejudicially.

Right To Livelihood

To begin with, the Supreme Court took the view that the right to life in Art. 21 would not include the right to livelihood. In *Re Sant Ram*, a case arose before the 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 the argument that the word 'life' in Art. 21 includes 'livelihood' also." But then the view changed. The definition of the word 'life' in Article 21 was read broadly. The Court, in **Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni**, came to hold that 'the right to life' guaranteed by Article 21 includes 'the right to livelihood'.

The **Olga Tellis v. Bombay Municipal Corporation**, popularly known as the 'Pavement Dwellers Case', is important. Herein, a five-judge bench of the Court implied that the right to livelihood is borne out of the right to life. It said so as no person can live without the means of living, that is, the means of livelihood. The Court further observed:

"The sweep of the 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 of 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 livelihood."

If the right to livelihood is not treated as 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.

In the instant case, the Court further opined:

“The state may not by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But, any person who is deprived of his right to livelihood except according to just and fair procedure established by law can challenge the deprivation as offending the right to life conferred in Article 21.”

Emphasising upon the close relationship of life and livelihood, the Court stated:

“That, which alone makes it impossible to live, leave aside what makes life livable, must be deemed to be an integral part of the right to life. Deprive a person from his right to livelihood and you shall have deprived him of his life.”

Article 21 does not place an absolute embargo on the deprivation of life or personal liberty and, for that matter, on the right to livelihood. What Article 21 insists is that such lack ought to be according to procedure established by law which must be fair, just and reasonable. Therefore, anyone deprived of the right to livelihood without a just and fair procedure set by law can challenge such deprivation as being against Article 21 and get it declared void.

In **DTC v. DTC Mazdoor Congress**, the Court was hearing a matter where an employee was laid off by issuing a notice without any reason. The Court held that the same was utterly arbitrary and violative of Article 21.

In **M. Paul Anthony v. Bihar Gold Mines Ltd**, it was held that when a government servant or one in a public undertaking is suspended pending a departmental disciplinary inquiry against him, subsistence allowance must be paid to him. The Court has emphasised that a government servant does not have his right to life and other fundamental rights.

However, if a person is deprived of such a right according to procedure established by law which must be fair, just and reasonable and in the larger interest of people, the plea of deprivation of the right to livelihood under Article 21 is unsustainable.

ARTICLE 21-A

(The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Insertion of education as a FR - 86th Am, 2002)

“Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development”

~ Kofi Annan

EDUCATION is a key to development of humanity. Future of any country depends on the nature of education system of the country. Though members of constituent assembly knew the importance of universal education but even then, due to paucity of resources they could not provide it as a fundamental right, but it was mentioned in Directive Principles of State Policy. Subsequently, the Supreme Court of India Court affirmed the fundamental right to education in two landmark cases, **Mohini Jain v State of Karnataka,1992** - SC held, “Right to education is the essence of the right to life and directly flow and interlinked with it, and life living with dignity can only be assured when there is a significant role of education”. Case did not specify age limit for this right to be exercised and **Unni Krishnan J.P. v State of Andhra Pradesh,1993** - Court held “Right to education means citizen has the right to call up the state to provide the facilities of education to them in according to the financial capacity”. “Thus it is well observed by the decisions of this Court that the provisions of Part III and Part IV are complementary and supplementary in nature to each other and fundamental right means to achieve the goal inculcate in Part IV of Indian constitution, It is also observed that the fundamental rights should be established in the light of the directive principles”. This case specified age upto 14 years

In **Bandhua Mukti Morcha, etc v. Union of India**- Court held that “It would be therefore the necessary duty of the State to ensure the facilities and opportunity to children enjoined under article 39(e), 39 (f) of the Constitution and to prevent exploitation of their childhood due to extreme poverty and notion.”

In December 2002, the Constitution (Eighty-Sixth Amendment) Act was passed, entrenching the right to education in Article 21A which reads: ‘The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.’ Article 21A is in Part III of the Constitution and therefore the right to education is now considered a ‘fundamental right’ under the Constitution. Article 21A contemplated

enabling legislation. 86th constitutional amendment act, 2002 brings three new changes in our constitution:

- a) Insertion of new Article i.e, 21A in part III of the Indian constitution, which provides that every child has the right to free and compulsory education of equitable quality and subject to some norms and standards.
- b) Bring alteration and modification in Article 45 and substituted as the State shall endeavour to assure early childhood care and free and compulsory education for all children until they complete the age of six years.
- c) Adding the new clause, (K) under Article 51A, the result of this new fundamental duty is added which states that whosoever is a parent or guardian has a duty to furnish opportunities for education to his child or, as the case may be, ward between the age group of six to fourteen years.

In the matter of *Avinash Mehrotra v Union of India*, 2009 the Supreme Court of India interpreted the right to education to include the right to the provision of a safe environment in schools, and imposed an obligation on schools to comply with certain fire safety precautions which were detailed in the judgment. This decision provided that the State's duty cannot be discharged by the provision of unsafe schools. The State must ensure that children suffer no harm in exercising their fundamental right to education and, accordingly, must ensure that schools provide safe facilities as part of a compulsory education.

Judiciary or parliament have clearly explained the nature of this newly created fundamental right especially with reference to its possible clash with already existed fundamental right of minorities to establish and administer educational institutions of their choice. Supreme Court has got several occasions to discuss the nature of rights provided by article 30 (1), such as in *Re Kerala Education Bill*, *Xavier College v. State of Gujarat*, *Stephen's College v. University of Delhi*, *T.M.A. Pai Foundation v. State of Karnataka*. But every time the issue was related only to the extent to which various government regulations may penetrate in to the right to 'administer' minority educational institutions; even in *Pramati Educational and Cultural Trust v. Union of India*, 2014, constitutional bench of apex court concentrated only on the question that whether aided or unaided minority education institutions are under obligation to provide "free" and compulsory education to "all".

Conclusion

The drafters of the Indian Constitution have drafted this article in such a way that neither it is made any provision compulsory nor makes any individual free from fundamental duties that must be followed by every citizen of the country. This article has observed so intensely the socio-economic set-up of the countries that no rights or duties will be omitted. Possible this is the most unique feature of our constitution that makes it different from the constitutions of the rest of the world.

