

INTERPRETATION OF THE RIGHT TO LIFE

DUE PROCESS OF LAW

Article 21 of the Constitution says, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Maneka Gandhi v. Union of India¹ is not only a landmark case for the interpretation of Article 21 but it also gave an entirely new viewpoint to look at the Chapter III of the Constitution. 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. Broadly speaking, what this case did was extend this protection against legislative action too.

The concept of „personal liberty“ first came up for consideration of the Supreme Court in A.K. Gopalan vs The State Of Madras². In this case, the Petitioner had been detained under Preventive Detention Act, 1950. The petitioner challenged the validity of his detention on the ground that it was violative of his Right to freedom of movement under Art. 19(1)(d), which is the very essence of personal liberty guaranteed by Art. 21 of the Constitution. He argued that the words „personal liberty“ include the freedom of movement also and therefore the Preventive Detention Act, 1950 must also satisfy the requirements of Art. 19(5). It was further argued that Art. 21 and Art. 19 should be read together as Art. 19 laid out the substantive rights while Art. 21 provided procedural rights. It was also argued that the words “procedure established by law” actually meant “due process of law” from the American Constitution which includes principles of natural justice and the impugned law does not satisfy that requirement.

Rejecting both the contentions, Supreme Court, by the majority, using the meaning given to the phrase „personal liberty“ by Dicey, held that the phrase „personal liberty“ in Art. 21 meant nothing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority of law. According to majority, the term „liberty“ was wider in meaning and scope than „personal liberty“. Hence, while „liberty“ could be said to include Art. 19 within its ambit, „personal liberty“ had the same meaning as given to the expression “liberty of the person”

* Abhinav Pandey, Student, 4th year, Amity Law School, New Delhi.

¹ Maneka Gandhi v. Union of India (1978) 2 S.C.R. 621

² A.K. Gopalan v. The State Of Madras 1950 AIR 27

under English law. Hence, the majority took the view that Art. 19 and Art. 21 deal with different aspects of liberty. The Court further interpreted the term „law“ as „State made law“ and rejected the plea that the term „law“ in Art. 21 meant jus naturale or principles of natural justice.

It is pertinent to mention here that in A.K. Gopalan“s case, the attention of the Supreme Court was drawn to the legislative history of Art. 21 which showed why the expression “due process of law” was replaced by “procedure established by law”. The constitution makers felt the original expression imposed an “undue burden” on the judiciary. However, it is unfortunate that the legislative history of Art. 22, and particularly of clauses (1) and (2), whereby the substance of “due process” was reintroduced, was not brought to the attention of the Supreme Court.

But this restrictive interpretation of the expression „personal liberty“ has not been followed by the Supreme Court in its later decisions. Like for example, in Kharak Singh“s case, it was held that “personal liberty” was not only limited to bodily restraint but was used as compendious term including within itself all the varieties of rights which go to make up the personal liberty of man other than those dealt within Art. 19(1).

In Maneka Gandhi“s case, the meaning and content of the words „personal liberty“ again came up for the consideration of the Supreme Court. In this case, the petitioner“s passport had been impounded by the Central Government u/s 10(3)(c) of the Passport Act, 1967. Here, the Supreme Court not only overruled A.K. Gopalan“s case but also widened the scope of words „personal liberty“ considerably. Bhagwati, J. observed:

“The expression „personal liberty“ in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19.”

With respect to the relationship between Art. 19 and Art. 21, the Court held that Art. 21 is controlled by Art. 19, i.e., it must satisfy the requirement of Art. 19. The Court observed:

“The law must therefore now be settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty, and there is consequently no infringement of the fundamental right conferred by Article 21 such a law in so

far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenges of that Article.”

Thus a law “depriving a person of „personal liberty“ has not only to stand the test” of Article 21 but it must stand the test of Art. 19 and Art. 14 of the Constitution.

The Supreme Court in the 2010 case, *Selvi v. State of Karnataka*³ asserted that substantive due process is a “guarantee” under the Indian Constitution. In *Union Of India v. R. Gandhi*⁴ opinion, the Supreme Court has remarkably applied loose constitutional principles rooted in its understanding of “fairness” or constitutional “basic structure” to ordinary law, much in the same way as Justice Frankfurter would have done in the American due process cases.

DUE PROCESS IN U.S.A AND U.K.

The fifth and fourteenth amendments to the American Constitution provide that life, liberty and property cannot be deprived without “due process of law.” This seemingly innocuous phrase, borrowed, oddly, from *per legem terre* in the Magna Carta, acquired a nuanced meaning in the American constitutional context, consequent to years of judicial exposition.

Over time, the phrase acquired “substantive” and “procedural” meanings, each of which enhanced the powers of the judiciary. For example, in exercise of powers conferred by the “due process” clause of the Constitution, American courts would create “new” or unenumerated rights. Most notably, these were the rights to abortion, marriage, homosexuality, the use of contraceptives, child-rearing, and so on. The “due process” clause mandated harmonious constitutional interpretation, and enabled American courts to apply federal constitutional standards against the States on principles of “fairness” or “ordered liberty.” Interestingly, in the Magna Carta the phrase “due process of law” was meant to curb the powers of the royal judiciary in favour of the feudal baronage, quite contrary to the spirit of judicial activism that is now attributed to the clause.

³ (2010) 7 S.C.C. 263

⁴ (2010) 11 SCC 1

ARTICLE 21 AND INTERNATIONAL HUMAN RIGHTS DOCUMENTS

While international treaties do not automatically become part of domestic law upon ratification,⁵ the Constitution provides, as Directive Principles of State Policy, that the government “shall endeavour to foster respect for international law and treaty obligations in dealings of organized people with one another,”⁶ and also authorises the central government to enact legislation implementing its international law obligations without regard to the ordinary division of central and state government powers.⁷ The Supreme Court of India has frequently interpreted in light of India’s international law obligations.⁸

Justice A .S. Anand argues that any interpretation of a national law or constitution which advances the cause of human rights and seeks to fulfil the purposes of international instruments must be preferred to a sterile alternative.⁹ He further argues that it is a proper part of the judicial process and a well established judicial function for national courts to have regard to the international obligations undertaken by the country in question whether or not these have been incorporated into domestic law for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law.¹⁰

In **Nilabati Behera v State of Orissa**¹¹ while justifying its award of compensation for infringement of the right to life, the Court referred to the ICCPR¹², which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right.

⁵ E.g., *State of Madras v G. G. Menon*, AIR 1954 SC 517.

⁶ Indian Constitution arts. 51(c), 253.

⁷ *Ibid.*

⁸ See, e.g., *People’s Union for Civil Liberties v Union of India*, AIR 1998 SC 568; *Kesavananda Bharati v State of Kerala*, AIR 1973 SC 1461; *Jolly George Verhese v Bank of Cochin*, AIR 1980 SC 470.

⁹ Justice Anand, „The Domestic Application of International Human Rights Norms“ (1998).

¹⁰ *Ibid.*

¹¹ AIR 1993 SC 1960, at 1970.

¹² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force on 23 March 1976) 999 UNTS 171 (ICCPR).

In **Prem Shankar Shukla v Delhi Administration**¹³ while dealing with the handcuffing of prisoners and other humiliations inflicted on persons in custody, the Supreme Court of India observed:

“After all, even while discussing the relevant statutory provisions and constitutional requirements, court and counsel must never forget the core principle found in Article 5 of the Universal Declaration of Human Rights, 1948¹⁴: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

In **Hussainara Khatoon cases**¹⁵, the Supreme Court not only advanced the prison reform in favour of under-trials but also declared the right to speedy trial as an essential ingredient of Article 21. Reaffirming as well as paving way for the implementation of Article 14, clause (3) (c) of the International Covenant on Civil and Political Rights which lays down that everyone is entitled “to be tried without delay” and Article 16 of the Draft Principles on Equality in the Administration of Justice which provides that everyone shall be guaranteed the right to prompt and speedy hearing the Court directed the release of all those under trials against whom the police had not filed charge sheets within the prescribed period of limitation. Such persons were directed to be released forthwith as any further detention of such under trials would be according to the court, a clear violation of Article 21.

In **Sunil Batra v Delhi Administration**¹⁶ the Supreme Court took note of Article 10 of the ICCPR which states as that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Court then opined that:

¹³ AIR 1980 SC 1535, at 1537.

¹⁴ See Universal Declaration of Human Rights, (adopted 10 December 1948, UNGA Res.217.

¹⁵ Hussainara v Home Secretary, AIR 1979 SC 1360 at 1364.

¹⁶ AIR 1980 SC 1579.

The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategies. In this latter aspect, the observations we have made of holistic development of personality shall be kept in view.

The Court further emphasized that the Declaration of the Protection of All Persons from Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by U.N. General Assembly¹⁷ has relevance to our decision.

Thus, the Court has interpreted article 21 with the widest possible amplitude so as to include within its ambit basic human rights guaranteed by international human rights instruments though that has not been incorporated in national legislation.

The Court, from time to time, injects flesh, blood and vitality into the skeleton of the words used in Article 21 of the Constitution in consonance and harmony with international human rights instruments, and gives colour and content to the expressions made therein, and also provides it with the skin of living thought. Thus, in the wake of all the above cited cases it is becoming evident that the Indian Judiciary has evolved itself as a saviour of mankind by interpreting Article 21 of the Constitution in the widest possible manner. The Supreme Court has interpreted right to life in the lights of international documents to include right to pollution free environment, right to livelihood, freedom from noise pollution etc. The Court day-by-day is enhancing the ambit of right to life and personal liberty. There is considerable scope for further expansion of the content of Article 21 by the judiciary with the objective of taking India forward towards a modern industrial society.

WIDE INTERPRETATION OF ARTICLE 21

Article 21 is the cornerstone for natural justice in the Indian constitution. The following rights have been incorporated into the right to live.

1) A Right to live with human Dignity

¹⁷ Resolution 3452 of 9 December, 1975

In *Maneka Gandhi vs. Union of India*,¹⁸ the 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. The right to live is not confined to the protection of any limb through which life is enjoyed but it also includes the right to live with human dignity and all that goes along with it namely the bare necessity of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human beings

2) Right to livelihood

In *Olga Tellis v. Bombay Municipal Corporation*,¹⁹ popularly known as the pavement dwellers case, the Supreme Court has finally ruled out that the word „life“ in Article 21 includes the „right to livelihood“. The court said that an equally important facet of 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 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.

3) Right to shelter

Right to shelter is a fundamental right under Article 21 of the Constitution.²⁰ In any organized society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is ensured only when he is assured of all the facilities to benefit himself. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. Right to shelter therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.

4) Right to privacy

¹⁸ AIR 1978 SC 597

¹⁹ AIR 1986 SC 180

²⁰ *Shantistar Builders Vs. Narayan Khimalal Totame* (1990) 1 SCC 520; AIR 1990 SC 630, In *Chameli Singh V. State of U.P.* [(1996) 2 SCC 549, *Ahmedabad Municipal Nagarpalika Vs. Nawabkhan* (1997) 11 SCC 121

The Supreme Court held that a citizen has right to safeguard the privacy of his own,²¹ his family, marriage, procreation, motherhood, child bearing, and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise. This rule is subject to an exception that if any publication of such matters is based on public record including court record it will be unobjectionable. The second exception is that the right to privacy or the remedy of action for damage is simply not available to public officials as long as the criticism concerns the discharge of their public duties.

5) Right to health and medical assistance

In *Parmananda Katara v. Union of India*²², it has been held that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under Cr.P.C. Article 21 of the constitution cast 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.

6) Right to get pollution free water and air

In *Subhash Kumar v. Bihar*²³, the Apex Court has held that enjoyment of pollution free environment is included under right to life under Article 21 of the Constitution.

7) Right to free legal aid

Right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21.²⁴ In a democratic policy, governed by rule of law, it should be the main concern of the state to have a proper legal system. The crucial words are to provide free legal aid by suitable legislations or by schemes or in any other way so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

7) Right to Education

²¹ *R. Rajagopal v. State of T.N* (1994) 6 SCC 632

²² *Parmanand Katara V Union of India* AIR 1989 SC 2039

²³ AIR 1991 SC 420

²⁴ *Hussainara Khatun vs. State of Bihar* AIR 1979 SC 1369

The Fundamental Right to Education has been incorporated in our Constitution under Article 21A, on April 1, 2010. From now onwards all the children in the age group of 6-14 years will be provided 8 years of elementary education in an appropriate classroom in the vicinity of his/her neighborhood. The cost of facilitating school education to a child will be borne by the State. The government will be responsible for the enrollment and regular attendance of children. All schools will have to prescribe to norms and standards laid out in the Act and no school that does not fulfill these standards within 3 years will be allowed to function. Unrecognized private schools operating in the country will have to apply for recognition, failing which they will be penalized to the tune of Rs 1 lakh and if they still continue to function will be liable to pay Rs 10,000 per day as fine.

The recent trends in the interpretation of right to life include:

1) The incorporation of right to sleep under article 21.

The Supreme Court has held “The citizens/persons have a right to leisure; to sleep; not to hear and to remain silent. The knock at the door, whether by day or by night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen.”²⁵

2) The rising and the first case of right to food is the **Kishen Pattnayak v State of Orrisa**²⁶. In this case the letter by the social worker was considered as the petition by the supreme court. It was mentioned in the petition that the people of kalahandi and district of Orrisa are so poor that in order to survive and to get food they are forced to sell off their land and they are even selling their children. It was mentioned that there are many people dying due to hunger there.

The court made enquiries and found that the government has taken measures to tackle this problem but the court also ordered various further relief measure like formation of committees and holding of meetings in every 2 months etc.

²⁵ Ramlila Maidan Incident v. Home Secretary, Union of India , 2012 (2) SCALE 682

²⁶ (1989) AIR 677

The latest case dealing with this problem is the P.U.C.L v Union of India²⁷. On April 16, 2001, the PUCL submitted a “writ petition” to the Supreme Court of India asking three major questions:

1. Starvation deaths have become a National Phenomenon while there is a surplus stock of food grains in government go downs. Does the right to life mean that people who are starving and who are too poor to buy food grains free of cost by the State from the surplus stock lying with the State particularly when it is lying unused and rotting?
2. Does not the right to life under Article 21 of the Constitution of India include the right to food?
3. Does not the right to food which has been upheld by the apex Court imply that the State has a duty to provide food especially in situations of drought to people who are drought effected and are not in a position to purchase food.

The court said that what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. as in this case Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems. So, on September 3, 2001, the court directed through interim orders that 16 states and union territories that had not identified families below the poverty line must do so within two weeks, so that those families could be provided with food assistance. Further, the court required that “the Food for Work Programme in the scarcity areas should also be implemented by the various States to the extent possible”. The case is still on going.

²⁷ 2000(5) SC ALE (30)

CONCLUSION

Article 21 has been given a wide interpretation by the Indian judiciary. A number of sub rights have been included in the main right. Right to life has been used as tool to redress a variety of injustices and social wrongs.

Interpreting right to life in such a way as to include due process has increased of the judiciary's power. Right to privacy, right to shelter etc. have at times made up for lack of legislation on the issue and thus the court has strived to protect the rights of the people using article 21 as a potent weapon.

However the Supreme Court has started to declare rights which are difficult to enforce and may be only be law for namesake. The Court should take into consideration the enforceability of a right or else it will just remain an empty promise.