

Expanding scope of right to life and liberty under article 21

Since the enactment of Indian Constitution, the scope of Article 21 has widened according to the changing needs of society. Article 21 is a proof the law is not static rather it is evolving.

1st Case: Supreme Court's take on meaning of word, "Law" for article 21 in A. K. Gopalan Case:

Due process of law and procedure established by law

A.K. Gopalan v. State of Madras was the 1st landmark case in the process of evolution of article 21. This case challenged the validity of the Preventive Detection Act. 1950:

- Supreme Court in this case took a narrow interpretation of 'procedure established by law'. In this case it was held that under article 21 protection is available only against the arbitrary actions of executive i.e. against the procedure that has been established by a law.
- This protection does not include the arbitrary legislative actions by which laws are formulated.
- It means when a law has been formulated by the legislature for taking away personal liberty then a law itself cannot be held invalid. The only protection that will be available is against how this law has been implemented by the executive.
- If the executive has taken any arbitrary decision in the use of specific law than this action can be held invalid by the Court but not the law itself on the grounds that law is unreasonable, unfair or unjust.
- Whereas the term 'due process of law' means law and procedure both should be reasonable which basically means principles of natural justice.

Other important aspects of the judgment

- SC said the meaning of the word law is not to be interpreted as inclusive of Principles of Natural Justice.
- In essence, SC said Article 21 is not a substantive right, it is a mere procedural right.
- **SC said that Article 14, 19 and 21 are mutually exclusive. That is, one article need not come in the way of implementation of another article.**

2nd Case: Habeas Corpus case- ADM Jabalpur Versus Shivkant Shukla case 1975

Emergency Article 352 read with Article 359: Right to Constitutional Remedies under Article 32 and 226 is also suspended.

- Article 352: Proclamation of Emergency.
- Article 359. Suspension of the enforcement of the rights conferred by Part III during proclamation of Emergency.

- Supreme Court submitted before the State by agreeing that Right to approach the Court U/A 32 and 226 is also suspended during Emergency even in case of violation of Right to Life and Personal Liberty.

❑ **Takeaway from Supreme Court's judgement in Habeas Corpus Case:**

1. Parliament and Executive have unrestrained powers during Emergency.
2. Even Right to Life can be dispensed with during Emergency.
3. Part III was subservient to Part XVIII.

3rd Case: Maneka Gandhi Case, 1978:

Summary of the Case:

In this case, Maneka Gandhi's passport was impounded and she was restrained from travelling abroad. There was no violation of any Fundamental Right *per se*.

Maneka Gandhi challenged the Supreme Court's stance in A.K. Gopalan Case, in which SC had propounded the Doctrine of Mutual Exclusivity of Fundamental Rights under Articles 14, 19 and 21.

Outcome: A law has to be Just, Fair & Reasonable.

Fortunately, S.C. took a 180 degree turn on this issue in the Maneka Gandhi case of 1978. The provocation was the arbitrary law that had allowed the Janata Party government to take away Maneka's passport without any remedy.

Importing the **American concept of due process**, the Supreme Court ruled that the procedure established by law for depriving somebody of their life or personal liberty had to be "*just, fair and reasonable*".

This Passport related case led "Judiciary to import DPL feature of American Constitution"

❑ **Takeaways from Maneka Gandhi's case:**

[I] The meaning of "Liberty" under Article 21 is of widest amplitude.

[ii] Articles 19 and 21 are not mutually exclusive. That is, a law coming under article 21 must also satisfy article 19. In other words, a law made by the legislature which seeks to deprive a person of his personal liberty must prescribe a procedure for such deprivation. And the procedure must not be arbitrary.

Implied Fundamental Rights

The interpretation of the Article 21 by the Supreme Court has opened a new chapter of human rights jurisprudence. In several cases, the court has held the following as implied fundamental

rights, though not all of them have been specifically mentioned. These all are called Implied Fundamental Rights.

1. Right to Privacy
2. Right to Dignity
3. Right to Speedy Trial
4. Right to Travel Abroad
5. Right to Clean Environment: Ban on polluting vehicles
6. Right to Livelihood
7. Right to marriage
8. Right against torture
9. Right against Bonded labour
10. Right to legal aid
11. Right to Food.

Some important developments linked to article 21

Right to travel abroad

In the case of *Satish Chandra Verma v. Union of India*, SC held that right to travel abroad is an important basic human right.

SC was hearing an appeal filed by IPS Officer Satish Chandra Verma, who was denied permission to travel abroad on account of a pending departmental inquiry against him.

The court also placed reliance on its judgment in the case of *Maneka Gandhi v. Union of India*, where the right to travel was upheld.

Recent developments on article 21

Vishaka & ors. v/s state of Rajasthan is a landmark judgment case in the history of sexual harassment.

Sexual Harassment means an uninvited/unwelcome sexual favour or sexual gestures from one gender towards the other gender.

The court ordered that the fundamental rights under Article 14, 19 and 21 of Constitution of India provides that, every profession, trade or occupation should provide safe working environment to the employees. It hampered the right to life and the right to live a dignified life.

Sexual harassment hampers the right to life and the right to live a dignified life. The basic requirement was that there should be the availability of safe working environment at workplace.

In this case, SC defined sexual harassment and established the guidelines that has to be followed by all workplaces also known as 'Vishakha guidelines.

Right of prisoners

In the case of *Sunil Batra vs. Delhi Administration*, a prisoner on the death row was held in the solitary confinement since the date of conviction by the jail authorities.

A writ petition was filed against this order in Supreme Court. SC held that solitary confinement itself is a substantive punishment under the Indian Penal Code, 1860 and conviction of a person for a crime does not reduce him to non-person vulnerable to a major punishment imposed by jail authorities without observance of due procedural safeguards, thus violative of Article 21.

Right to legal aid

in the case of *Hussainara Khatoon vs. State of Bihar*, it was held that an accused who cannot afford legal services due to some valid established reasons, has right to free legal aid at the cost of the State.

This aid will form a part of fair, just and reasonable procedure under Article 21 of the Indian Constitution.

Right to privacy

- **In Justice KS Puttaswamy (Retd.) Vs. Union of India (2018 SC)** the **nine judge Constitutional Bench** of the Supreme Court **in rare unanimity** ruled that individual privacy is intrinsic to life and liberty and an inherent part of the fundamental rights enshrined in the Article 21 of the Constitution.
- The right to privacy is not just a common law right, not just a legal right, not just a fundamental right under the Constitution. It is **a natural right inherent in every individual**.
- The decision in Khadak Singh case and MP Sharma case to the extent that it held that right to privacy is not protected by the constitution was overruled.

What are the various features of Right to Privacy?

- It includes **the preservation of personal intimacies**, sanctity of family life, marriage, procreation, the home and sexual orientation.
- Privacy connotes **a right to be left alone**. It safeguards individual autonomy and recognizes one's ability to control vital aspects of his/her life.
- **Privacy is not an absolute right**, but any invasion must be based on legality, need and proportionality.
- A violation of privacy in the context of an arbitrary State action would attract an enquiry under following 3 points test, a law:

- Must be “*reasonableness*” enquiry under Article 14
- would have to be ‘just, fair and reasonable’ under article 21.
- Must fall under the specified restrictions under article 19(2).
- Informational privacy is a facet of this right. Dangers to this can originate from both state and non-state actors.

Right to health and livelihood

- In a recent judgment, while hearing Supreme Court refused to put a blanket ban on firecrackers and allowed the manufacture and sale of only “green” and reduced-emission or “improved” crackers.
- On the other hand, it banned all firecrackers that are loud and toxic to man, animal and the environment.
- The court had said that it needs to strike a balance between fundamental right of livelihood of firecracker manufacturers and the right to health of population. Both aspects are covered under Article 21 (right to life) and Article 19(1)(g) of the Constitution.

RIGHT TO SLEEP (ARTICLE 21)

- The Supreme Court broadened **the ambit of right of life to bring in a citizen's right to sleep peacefully** under it.
- A citizen has a right to sound sleep because it is fundamental to life, the Supreme Court said while ruling that the **police action on a sleeping crowd at Baba Ramdev's rally at Ramlila Maidan** amounted to violation of their crucial right.

RIGHT TO SPEEDY TRIAL

- Supreme Court directed courts to **dispose of bail pleas within 1 week.**
- It also issued **directions to tackle pendency of criminal cases**, reiterating that speedy trial is a part of reasonable, fair and just procedure as guaranteed by **Article 21** of the Constitution of India.
- Supreme Court in a 2:1 majority in a separate judgment held that **an accused is entitled to statutory bail** (default bail) under Section 167(2)(a)(2) of Code of Criminal procedure **if the police failed to file the charge-sheet within 60 days of his arrest for the offence punishable with ‘imprisonment up to 10 years.**

Section 377

- One of the grounds provided by SC against section 377 is that it violates the rights to life, dignity and autonomy of personal choice under Article 21.

Right to Die

- Initially The Court held that the right to life under Article 21 of the Constitution does not include the right to die.
- But later in Aruna Ramchandra Shanbaug v. Union of India the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court.
- In Common Cause (A Regd. Society) Vs. Union of India (2018 SC), a five-judge Constitution Bench, judgment delivered by Chief Justice Dipak Mishra, gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible state of coma. The SC held that the right to die with dignity is a fundamental right.
- Fundamental right to life and dignity includes right to refuse treatment and die with dignity because the fundamental right to a "meaningful existence" includes a person's choice to die without suffering (including terminally ill).

Right to live with family

- In a very recent case, Delhi High Court quashed the 'Leave India Notice' served on a Pakistan citizen, who is the wife of an Indian citizen and a mother of two kids.
- Bench stated that "family", being the natural and fundamental unit of society, is entitled to protection of its integrity against arbitrary interference by the State.
- The right to life under Article 21 of the Constitution of India would include the right of young children to live with their mother and the right of a husband to consortium with his wife.

Section 497 and article 21

- The law under section 497 dictates that any man who has an affair with a married woman will be punished. But it requires the consent of the husband of women involved in the affair.
- And if this affair took place with the consent of husband of the women involved, there will be no punishment. it deprived married women of their own consent and autonomy.
- Autonomy is intrinsic in dignified human existence. Section ion 497 denuded the woman from making choices. That is the violative of article 21.
- It became one of the major reasons for quashing section 497.

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