JUDICIAL INTERPRETATION ON “RIGHT TO LIFE AND PERSONAL LIBERTY” UNDER ARTICLE 21 OF INDIAN CONSTITUTION

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ABSTRACT

Doctrine of “Separation of Powers” is the essential feature of the Indian Constitution. According to this Doctrine each and every organ of the Government i.e. Legislature, Executive and Judiciary is free to work in its periphery and no other organ can interfere on that. This Doctrine is not existed in India in its absolute form but the Framers of the Constitution adopted this Principle with the Theory of “Check and Balance”.

According to which each and every Organ is having separate power and can work according to that, but if any organ is going beyond the power than other organ can check and balance that. Because in Our Country, Constitution is Supreme and every organ is bound to work according to the Principle of Constitution.

Under the Constitution Supreme Court has power to act as the guardian of Constitution, guardian of Fundamental Rights as well as Final Interpreter of the Constitution. Under this power Supreme Court has created major reforms in the protection of human right, taking a judicial activist role. The court has put itself in a unique position to intervene when it sees violation of these fundamental rights.

Article 13 directly gives the power to the Supreme Court for Judicial Review if there is any law in the contradiction of Fundamental Rights. Under the Constitution of India we have 6 fundamental rights, “RIGHT TO LIFE AND PERSONAL LIBERTY” is one of them as given in Article 21.

According to Article 21- “No person shall be deprived of his life or personal liberty except according to Procedure Established by Law”

Means an individual can be deprived of his life and personal liberty only under a law passed by legislature and by laying down a procedure for such deprivation.

A person can be deprived of his life and personal liberty if two conditions are satisfied: firstly, there must be a law and secondly, there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable. Supreme Court has expanded gradually the scope of Article 21 Under the power of Interpretation of the Constitution.

The basic guideline for such expansion are -

- Life means dignified life and therefore whatever falls to be essential for upholding the dignity of life will become an implied fundamental right
- Personal liberty means not mere freedom of movement but much more
- This paper will discuss:
- the visionary Interpretation by Judiciary on Article 21

Reason for judicial creativity and justify the role played by the Supreme Court of India in protecting the Fundamental Right of citizen when the legislative and executive failed in performing their duties.

This study is Multi-disciplinary, comparative, exploratory and analytical in approach. Thus I propose to carry out Doctrinal Research Methodology for this purpose.
INTRODUCTION:

Constitution of India provides (After 44th Amendment Act 1978) six Fundamental Rights under Part III, Articles 12 to 35. These rights are guaranteed by the Constitution against the State as defined under Article 12 of Indian Constitution.

- Right to Equality : Article 14 to 18
- Right to Freedom : Article 19 to 22
- Right against Exploitation : Article 23 to 24
- Right to Freedom of Religion : Article 25 to 28
- Cultural and Educational Right: Article 29 to 30
- Right to Constitutional Remedies : Article 32 to 35

In Maneka Gandhi v Union of India AIR 1978 SC 597- Justice Bhagvati Said- “these Fundamental rights represent the basic value cherished by the citizen of India since the Vedic times. The aim of the Fundamental Rights to protect the dignity of the individuals”.

These rights are regarded as fundamental because they are most essential to the individual to live a life with full dignity.

The object behind the inclusion of Part III is to establish a “Government of Law or Rule of Law and not of Man”

Right to Property which was initially a Fundamental Right under Article 31 and 19(1) (f) has been repealed by the 44th Amendment Act 1978 from the list of Fundamental Right under part III of Indian Constitution and a new Article ie. Article 300 A has been inserted according to which now “Right to Property” is now only a “Constitutional Right”.

These Fundamental Rights are not absolute in nature certain restriction and limitation has been imposed under Constitution of India.

ARTICLE 21: “RIGHT TO LIFE AND PERSONAL LIBERTY”

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RIGHT TO LIFE:

Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country but also available to any foreigner staying in India for any lawful purpose.

PERSONAL LIBERTY:

The meaning of the words “Personal Liberty” came up for the consideration of the Supreme Court for the first time in A.K. Gopalan vs Union of India 1950 SC 27:

Fact of the case was, A. K. Gopalan, a communist leader was detained under the Preventive Detention Act. 1950. The petitioner challenged the validity of his detention under the Act on the ground, that-

1) it was violative of his right to freedom of movement under Article 19(1)(d) which is the very essence of personal liberty guaranteed by Article 21 of the Constitution.

2) Act was in contradiction with Article 21 of the Constitution as it provided for deprivation of the personal liberty of a man not in accordance with procedure established by law

3) Procedure established by law meant the same thing as Due Process of Law in the American Constitution

Rejecting the contention of the petitioner Supreme Court held that “the expression Procedure Established by law means procedure enacted by law and the word law in Article 21 does not mean that law must be based on the concept of Natural Justice”.

“That Art 21 gives protection only against the executive and not against the legislature”.

The majority took the view that Articles 19 and 21 deal with different aspects of 'liberty'. Article 21 is guarantee against deprivation (total loss) of personal liberty while Art19 afford protection against unreasonable restrictions (which is only partial control) on the right of movement.

Therefore any law which deprives a person of his personal liberty must satisfy the requirement of Article 19 & 21.

Thus Prior to the Meneka 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. The State could interfere with the liberty of citizen if it could support its action by a valid law

But after the Meneka Gandhi’s Case Art. 21 now protects the right of life and personal liberty of citizen not only from the executive action but from the legislative action also

Meneka Gandhi vs Union of India AIR 1978 SC 597: Supreme Court has not only overruled Gopalan’s case ruling but has expended the scope of Personal Liberty.

Justice Bhagwati observed: “the expression personal liberty in Art 21 is of widest amplitude and it covers a verity of rights which go to constitute the personal liberty. It protects the right of citizens not only from executive action but from the legislative action also”.

The Court further held that “the procedure which is established must satisfy the requirement of NATURAL JUSTICE ie it must be just fair and reasonable

Art 21 requires the following conditions to be fulfilled before a person is deprived of his life and liberty-

- There must be a valid law
- The law must provide a procedure
- The procedure must be just, fair and reasonable
- The law must satisfy the requirements of Arts. 14 and 19 i.e. it must be reasonable and must satisfy the principle of Natural Justice

PROCEDURE ESTABLISHED BY LAW:

Procedure established by Law means the law enacted by the State and it is differ from due process of law which Includes Natural Justice as provided in American Constitution.

Procedure established by law means procedure laid down by statute or procedure prescribed by the law of the State. For fulfilling this requirement following conditions must be satisfied-

- There must be a law justifying interference with the person’s life or personal liberty
- The law should be a valid law
- Procedure laid down by the law should have been strictly followed
- The executive in the absence of any procedure prescribed by law sustaining the deprivation of personal liberty shall act in violation of Art. 21

DUE PROCESS OF LAW:

US constitution provides that a person cannot be deprived by his liberty “without due process of law”. The American Supreme Court has interpreted the guarantee to mean that the Court would examine a law on the basis of procedure and the provision contain therein it must be “due” which means just fair and reasonable, upholding the principles of natural justice.

These ingredients are the soul of this provision. The fundamental right under Article 21 is one of the most important rights provided under the Constitution which has been described as heart of fundamental rights by the Apex Court.

ROLE OF SUPREME COURT UNDER THE CONSTITUTION OF INDIA:

The object of the Article 21 is to prevent encroachment upon personal liberty and deprivation of life except procedure established by law. Right to life and personal liberty is the most cherished and decisive fundamental right around which other rights of the individual revolves and therefore the study assumes great significance.

Right to life and personal liberty is the modern name for what have been traditionally known as natural right. These are the rights necessary for human being to live a life in dignified manner.
This right is one of the greatest rights of human being given by the Constitution and protected by the High Courts and Supreme Court respectively under Article 226 and 32 of Indian Constitution.

As jurist says Constitution is “not a mere lawyer’s document”, but “the vehicle of Nation’s Life”. The Indian Supreme Court has created major reforms in the protection of human right, taking a judicial activist role. The court has put itself in a unique position to intervene when it sees violation of these fundamental rights.

The Constitution has empowered the Supreme Court to safe guard the fundamental right enshrined in part III of Indian Constitution.

Article 13(1) of Indian Constitution talks about the Pre-Constitutional laws. According to this clause “All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void”.

Article 13(2) gives the provisions regarding Post Constitutional laws. According to this clause “The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void”.

We adopt the concept of Judicial Review from the Constitution of USA. In the USA, judicial Review of legislation became the most significant aspect of American Law. Though the Supreme Court of USA not having this power through the Constitution it is the result of Judicial decision itself, as Justice Marshall observed in Marbury vs Madison (1803) that “Judicial Review is implied in written Constitution”.

On the other hand In Indian Constitution Article 13 directly gives the power to the Supreme Court for Judicial Review if there is any law in the contradiction of Fundamental Rights.

In India the doctrine of Separation of Power is adopted but not in absolute form, it is adopted by using of check and balance theory concept. According to this theory if any organ of Government (legislature, executive or Judiciary) is going beyond the power as given by the Constitution, rest two organs are there for the purpose of checking and balancing.

As decided in Indira Gandhi Vs Raj NarayanAIR 1975 SC2299 that “The Supreme Court of India is an independent organ and independence of Judiciary is one of the important features of the Constitution”.

SUPREME COURT AS GUARDIAN OF FUNDAMENTAL RIGHTS:

Under Constitution of India all six fundamental rights has been provided against the State (as discuss in Article 12) only, it means if State is framing any law in the contravention of Article 21, any person (citizen and non citizen) have right to go directly to the Supreme Court under Article 32 and can file a petition for issuing a writ of appropriate nature.

If an act of private individual amounts to violation of personal liberty or deprivation of life of other person in such cases the remedy for aggrieved person would be either under Article 226 of Indian Constitution or under general law.

But where an act of Private Individual supported by the State infringes personal liberty or life of another person than aggrieved party have right to go to Supreme Court under Article 32.
SUPREME COURT AS FINAL INTERPRETER OF THE CONSTITUTION:

Under the Constitution Of India Supreme Court acts as a Final Interpreter of the Constitution. Under this power Supreme Court has expanded gradually the scope of Article 21.

Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others, AIR 1978 SC 597, it was held that “no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair, just and reasonable and not arbitrary or fanciful”.

The law of preventive detention has therefore now to pass the test not only for Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just.

IMPLIED FUNDAMENTAL RIGHTS UNDER ARTICLE 21:

The Supreme Court expanded the scope of Article 21 through various case laws and has involved certain right as a fundamental right under the list of “Implied Fundamental Right under Article 21” of the Indian Constitution and continuing towards this direction by applying its judicial review power, interpretatory power as given by Indian Constitution itself.

The basic guideline for such expansion are-

- Life means dignified life and therefore whatever falls to be essential for upholding the dignity of life will become an implied fundamental right
- Personal liberty means not mere freedom of movement but much more

In Olga Tellis and others v. Bombay Municipal Corporation and others AIR 1986 SC 180 (popularly known as Pavement dwellers case) it was further observed: Just as a malafide act has no existence in the eye of law, even so unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must confirm the norms of natural justice.

The protection of Article 21 is wide enough and it was further widened in the case of Bandhua Mukti Morcha v. Union of India and others AIR 1984 SC 802 in respect of bonded labour and weaker section of the society. It was held that Article 21 assures the right to live with human dignity, free from exploitation.

The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him.

Both the Central Government and the State Government are therefore bound to ensure observance of the various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the directive principles of the state policy. The meaning of the word life includes the right to live in fair and reasonable conditions, right to rehabilitation after release, right to live hood by legal means and decent environment.

In the case of S.S. Ahuwalia v. Union of India and others 2002 (6) BomCR 157 it was held that in the expanded meaning attributed to Article 21 of the Constitution, it is the duty of the State to create a
climate where members of the society belonging to different faiths, caste and creed live together and, therefore, the State has a duty to protect their life, liberty, dignity and worth of an individual which should not be jeopardized or endangered. If in any circumstance the state is not able to do so, then it cannot escape the liability to pay compensation to the family of the person killed during riots as his or her life has been extinguished in clear violation of Article 21 of the Constitution.

Certain Rights which has been putted by the Supreme Court in the ambit of Article 21 are as under:

- **Right to Shelter**: Chameli Singh vs State of UP 1996 (2) SCC 549
- **Right to Privacy**: R. Rajagopal vs State of Tamil Nadu AIR 1994 SC
- **Right to privacy available to a woman of easy virtues**: State of Maharashtra vs Madhukar Narain AIR 991 SC
- **Telephone Tapping is Invasion on right to Privacy**: People’s union for civil liberties vs Union of India AIR 1997 SC 568
- **Right to health and medical assistance**: Parmanand Katara vs Union of India AIR 1989 SC 2039
- **Right to life does not include right to die**: Gian Kaur vs State of Punjab 1996 (2) SCC 648
- **Right to pollution free water and air**: Subhas Kumar vs State of Bihar AIR 1991 SC 420
- **Freedom from noise pollution**: In Re Noise Pollution AIR 1995 KER 15
- **Right to free legal Aid**: M.H. Hoskot vs State of Maharashtra AIR 1978 SC 1548
- **Right against solitary confinement**: Sunil Batra vs Delhi Administration AIR 1978 SC 1675
- **Right to speedy trial**: Hussainara Khatoon vs Home Secretary, State of Bihar AIR 1979 SC 1360
- **Right against inhuman treatment by police**: Kishore Singh vs State of Rajasthan AIR 1981 SC 625
- **Ban on smoking in public places**: Murli S. Deora Vs Union of India AIR 2002 SC 40
- **The right against public hanging**: Attorney General of India vs Lachma Devi AIR 1986 SC 467
- **The right against delayed execution**: T.V Vatheeswaran vs State of Tamil Nadu AIR 1981 SC 643
- Prevention of Sexual Harassment of working Women: Vishaka vs State of Rajasthan AIR 1997 SC 3011

- Overloading School bus is violation of Article 21: Swapan Kumar Saha vs South Point Montessori Highschool and others AIR 2008 (NOC) 136 (GAU)

- Compensation for medical negligence: Naval vs Union of India AIR 2009 RAJ 63

- The right to travel abroad: Satwant Singh vs Asst Passport Officer, New Delhi AIR 1967 SC 1836

- Fair Trial includes Fair Investigation: Nirmal Singh Kahlon vs State of Punjab AIR 2009 SC 984

- Virginity test violate right to privacy under Art 21: Surjit Singh vs Kanwaljit Kaur AIR 2003 P & H 353

- Non Citizen also entitled to right to life: National Human right commission vs State of Arunachal Pradesh 1996 (1) SCC 742


- The right against hand cuffing: Prem Shankar vs Delhi Administration AIR 1988 SC 1535

- Right to know: R.P. Limited v Indian Express Newspapers 1989 AIR 190


Through various judgments the Apex Court also included many of the non-justifiable Directive Principles embodied under part IV of the Indian Constitution under the periphery of Article 21-

- Right to pollution free water and air

- Protection of under-trial.

- Right of every child to a full development.

- Protection of cultural heritage.

- Maintenance and improvement of public health,

- providing human conditions in prisons,

- maintaining hygienic condition in slaughter houses
The Supreme Court While dealing with the provision of Article 21 in respect of personal liberty, put some restrictions in a case of Javed and others v. State of Hariyana AIR 2003 SC 3057 as follows: at the very outset we are constrained to observe that the law laid down by this court in the decisions relied on either being misread or read divorced of the context-

✓ The test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights. The lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice- economic, social and political cannot be given a go-by in the name of undue stress on fundamental rights and individual liberty

✓ Reasonableness and rationality, legally as well as philosophically, provide colour to the meaning of fundamental rights and these principles are deducible from those very decisions which have been relied on by the learned counsel for the petitioners.

✓ The Supreme Court led a great importance on reasonableness and rationality of the provision and it is pointed out that in the name of undue stress on Fundamental Rights and Individual Liberty, the ideals of social and economic justice cannot be given a go-by.

CONCLUSION:

Thus it is clear that the provision Article 21 was constructed narrowly at the initial stage but the law in respect of life and personal liberty of a person was developed gradually and a liberal interpretation was given to these words.

New dimensions have been added to the scope of Article 21 from time to time. It imposed a limitation upon a procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure must be reasonable, fair and just and such law should not be arbitrary and fanciful.

The interpretation which has been given to the words life and personal liberty in various decisions of the Supreme Court, it can be said that the protection of life and personal liberty has got multi dimensional meaning and any arbitrary and fanciful act of the State which deprived the life or personal liberty of a person would be against the provision of Article 21 of the Constitution.
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