

Article 21 of Indian constitution: Provide protections of life and liberty

Dr. Ashwani Kumar

LLB, M.A, M. Phil, Ph.D Assistant professor, Political Science, NIILM University Kaithal, Haryana, India

Abstract

In any organized society, right to measure as a personality's being is not ensured by meeting solely the animal wants of man. It is secured only if he's assured of all facilities to develop himself and is free of restrictions that inhibit his growth. All human rights square measure designed to attain this object. Right to measure bonded in any civilized society implies the correct to food, water, good setting, education, treatment and shelter. The word 'life' as used by Article 21 takes in its sweep not solely the idea of mere physical existence by additionally all finer values of life as well as the correct to figure and right to livelihood. This right could be a basic right bound to all persons residing in India, voters and non-citizens alike. Right to life as well as right to living and work as bonded by Article 21 isn't reduced to a mere paper cliché but is unbroken alive, spirited associate degreed rhythmic in order that the country will effectively march towards the declared goal of firm of an egalitarian society as envisaged by the creation fathers whereas enacting the Constitution of India beside its Preamble.

Keywords: Article 21, constitution of India, right to life, right to non-public liberty

Introduction

According to constitutional settings of Article 21:- this text is couched in a very negative type and enjoins the State to not deprive any individual not essentially solely a national, of his life or personal liberty except consistent with procedure established by law. It's axiomatic that the State will deprive any individual of his life or personal liberty solely through the medium of operation of any law that could be a valid law. If any procedural law will with validity deprive any individual of his life or personal liberty it ought to accommodate the need s such: The procedure arranged down by the same law ought to be as a results of valid exercise of legislative power by the involved law creating authority.

In different words, solely a competent general assembly will enact such law. If the procedure arranged down by such law is found to be established by associate degree incompetent general assembly such law would be a stillborn one or associate degree incompetent one and ultra vires the powers of the involved general assembly. Result would be that such a procedure flowing from such invalid law can don't have any impact on the life or personal liberty of any individual ruled by the sweep of Article 21; and even if the procedure established by law is found to possess been arranged down by a general assembly that is competent to enact such a law, if such law is found to conflict with any of the basic rights bonded by half III of the Constitution then such law would become void and in this happening such law enacted by competent general assembly would nevertheless 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 involved person and Article 21 would totally shield such life and private liberty of that person.

As far as this second sort of debility is bothered the relevant Articles which might govern such law as contemplated by

Article 21 and in whose lightweight such law can got to be tested square measure Articles 14, 19 and 22 of the Constitution of India. Article fourteen guarantees equality before law or equal protection of law to each person in India. If the procedure arranged down by the involved law does not stand the check of Article fourteen such law won't be of any avail to the State for depriving the person involved of his life or personal liberty as bonded below Article 21. Equally below Article 19 (1) (g) all voters of India amongst others have a right to observe any profession or keep on any occupation, trade or business. Of course, such a right is subject to Sub-article (6) of Article 19 that lays down that nothing within the same sub-clause shall have an effect on the operation of any existing law in to this point because it imposes, or forestall the State from creating any law imposing, within the interest of general public, cheap restrictions on the exercise of the correct bestowed by the same sub-clause, and particularly, nothing within the same sub-clause shall aggett the operation of any existing law in to this point because it regarding, or forestall the State from creating any law regarding – the skilled or technical qualifications necessary for active any profession or carrying on any occupation, trade or business, or the carrying on by the State, or by a company closely-held or controlled by the State, of any trade, business, trade or service, whether or not to the exclusion, complete or partial, of voters or otherwise. Equally Article 22 lays down the procedure that ought to be followed before any arrest or detention of any individual is to be established. If the procedure arranged down by any law enacted by the competent general assembly falls wanting the wants of Article twenty two it'll don't have any impact to this point because the deprivation of life and private liberty of the person involved is on the anvil. In brief in such a case the basic right bonded below Article 21 can stand untouched to this point intrinsically person is bothered. Article

21 additionally can go to be browse within the lightweight of relevant directive principles of State Policy found partially IV of the constitution of India. As arranged down by Article thirty seven the provisions contained partially IV shall not be enforceable by any court, however the principles in that arranged down square measure however basic within the governance of the country and it shall be the duty of the State to use these principles square measure beckon lightweights for the State each in its government additionally as legislative capability to be target-hunting by them and these functions of the State got to monitored within the light of those directive principles. The relevant directive principles for our purpose square measure found in Articles 39(a) and forty-one. Article 39(a) lays down that State shall, particularly, direct its policy towards securing, (a) that the voters, men or girls equally, have the correct to associate degree adequate suggests that of livelihood; whereas Article forty-one provides that the State shall, among the boundaries of its economic capability and development, create effective provision for securing the correct to figure, to education and to public help in cases of state, old age, illness and impairment, and in different cases of unmerited wish.

We have to cull our the right connotation of the term 'life' as used by Article 21 keeping in sight the constitutional duty of the State as flowing from the same directive principles of State Policy below Articles 39(a) and forty-one. A conjoined reading of those provisions, therefore, clearly indicates that it's the requirement of the State whereas enacting laws in reference to deprivation of lifetime of any individual that is protected by Article 21 to visualize thereto that it doesn't falter in its constitutional obligation of creating effective provisions for securing right to figure and additionally for providing adequate suggests that of livelihood to its voters. it's within the background of the same constitutional theme that we have a tendency to currently communicate tackle the moot question on whether or not right to livelihood or work is roofed by the sweep of Article 21 or not.

Historical Evolution

Protection against arbitrary arrest and detention

Article 21 provides the correct to truthful trial, speedy trial, right against handcuffing, right against ill-usage right against delayed execution and right against protective harassment. of these rights works as a safeguard to the suspect and these rights square measure offered after giving wider interpretation to Article 21 by the Supreme Court in variety of cases.

The Article provides those procedural needs that square measure in evi-table whereas depriving someone of his right to life and private liberty, provided by Article 21.

Meaning and 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.

Objective of the analysis Paper

- To analyses right to life and right to non-public liberty
- To analyses article 21 protection of life and private liberty below Indian constitution.

Research Methodology

In the study, the subsequent analysis methodology is used: the specified secondary information is collected through printed material i.e. books, pamphlets, articles, newspapers etc.

According to Bhagwati, J., Article 21 "embodies a constitutional price of supreme importance in a very democratic society." Iyer, J., has characterised Article 21 as "the procedural Magna Charta protecting of life and liberty.

This right has been command to be the center of the Constitution, the foremost organic and progressive provision in our living constitution, the muse of our laws. Article 21 will solely be claimed once someone is bereft of his "life" or "personal liberty" by the "State" as outlined in Article twelve. Violation of the correct by personal people isn't among the preview of Article 21.

The origin of the correct to life enshrined below Article 21 may be derived by the analysis of assorted international human right instruments and legal documents. The idea of life has emerged from the days of Adam and Eve and has perpetually evolved since ages. The correct of life is associate degree inherent and inalienable right presented on terribly soul by all the powerful God himself. Similarly, varied countries have incorporated this all powerful right in their legal documents to allow it a legal force.

Article 21 secures Right:

- Right to non-public liberty
- Right to life

Concept of 'Right to Life'

'Everyone has the correct to life, liberty and also the security of person.' the correct to life is beyond any doubt the foremost basic of all rights. All different rights add quality to the life in question and rely upon the pre-existence of life itself for his or

her operation. As human rights will solely attach to living beings, one may expect the correct to life itself to be in some sense primary, since none of the opposite rights would have any price or utility while not it. There would be no basic Rights price mentioning if Article 21 had been understood in its original sense. This Section can examine the correct to life as understood and applied by the Supreme Court of India.

Article 21 of the Constitution of India, 1950 provides that, "No person shall be bereft of his life or personal liberty except consistent with procedure established by law." 'Life' in Article 21 of the Constitution isn't simply the physical act of respiration. It doesn't connote mere animal existence or continuing grind through life. It's a way wider that means which incorporates right to measure with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is key to our terribly existence while not that we have a tendency to cannot live as soul and includes all those aspects of life, that head to create a man's life substantive, complete, and value living. It's the sole article within the Constitution that has received the widest doable interpretation. Below the cover of Article 21 such, a lot of rights have found shelter, growth and nourishment. Thus, the blank wants, minimum and basic needs that is essential and inevitable for someone is that the core idea of right to life.

In the case of *Kharak Singh v. State of Uttar Pradesh*; the Supreme Court quoted and commands that:

By the term "life" as here, used one thing a lot of is supposed than mere animal existence. The inhibition against its deprivation extends to all or any those limbs and a school by that life is enjoyed. The availability equally prohibits the injury of the body by amputation of associate degree armour leg or the withdrawal method of an eye fixed, or the destruction of the other organ of the body through that the soul communicates with the outer world.

In *Sunil Batra v. Delhi Administration*, the Supreme Court reiterated with the approval the higher than observations and command that the "right to life" enclosed the correct to guide a healthy life therefore on get pleasure from all schools of the physical structure in their prime conditions. it might even embody the correct to protection of a person's tradition, culture, heritage and every one that offers intending to a man's life. It includes the correct to measure in peace, to sleep in peace and the right to repose and health.

No person shall be bereft of his life or personal liberty except consistent with procedure established by law."

Life and private Liberty-Article 21, though' couched in negative language confers on all and sundry the basic right to life and private liberty. The foreigners square measure the maximum amount enticed to those rights because the voters. the 2 rights are given predominate position by our Courts. The correct to life that is that the most basic of all is additionally the foremost troublesome to outline.

Although most of the cases regarding the growth of Article 21 in numerous directions are given by art, nevertheless there square measure more that haven't received adequate attention below them. For the sake of convenience they'll be mentioned below the subsequent totally different subheads:

Rights of Prisoners

The case of *Prabhakar Pandurang*, it's command that the

correct of a detent to send his book, written throughout detention, for publication was recognised.

An unfortunate person is entitled to all or any his basic rights unless his liberty has been constitutionally curtailed. Therefore, any imposition of a significant penalty among the jail system is conditional upon the observance of the procedural safeguards of basic rights because of the terribly nature of the regime to that he is lawfully committed. In *Sunil Batra v. Delhi Administration*, the solitary of an unfortunate person, WHO was awarded the capital sentence for having committed the offence of murder below Section 30(2) of the Prisons Act, 1894, was command unhealthy because it was obligatory not as a consequence of the violation of the jail discipline however on the bottom that the unfortunate person was one below sentence of death. Desai, I. pointed out that the conviction of someone for a criminal offense didn't scale back him to a non-person susceptible to major penalty obligatory by the jail authorities while not observance of procedural safeguards. It was additionally command that bar-fetters, to a very hefty extent, obligatory below Section 56 of the Prisons Act, 1984, curtail, if not all deprive, locomotion that is one among the aspects of non-public liberty and such action will solely be even within the circumstances relatable to the character of the unfortunate person and his safe custody. However, prisoners do not have any basic right to flee from lawful custody, and hence, the presence of armed police guards causes no interference with the correct to non-public liberty. So also, jailers cannot complain of the installation of the doer mechanism with that they are seemingly to return in-tuned as long as they decide to throw off the prison. In addition, the denials of amenities or their poor maintenance don't essentially represent associate degree encroachment on the correct to non-public liberty. If a unfortunate person demands that he ought to have higher companions in jail or ought to be removed to a ward with a lot of relaxation and resents keeping convict cooks or having wardens as jail mates in his cell, the Superintendent of Jail might with reason flip down such requests in sight of the prisoner's record and potential. but a unfortunate person has the basic right to be protected against the co-prisoners. just in case a unfortunate person to killed by his co-prisoner the State could also be compelled to compensate the dependants of the deceased. Similar rights of the arrestees and persons in police custody have additionally been recognised

Moreover, in many cases courts have issued applicable directions to jail and police authorities for safeguarding the rights of the prisoners and persons in police lock-up, notably of girls and kids against statutory offense and for his or her early trials. Handcuffing of under trials while not adequate reasons in writing has additionally been found against Article 21 and also the Court has directed the Union of India to issue applicable tips during this regard. A right to be released on bail has not nevertheless been recognised below Article 21 and it's been command that to that extent because the regular Caste (Prevention of Atrocities) Act, 1989 prohibits antecedent bail for offences under it Act it's not offensive of Article 21

Provision in Section 32-A of Narcotic medicine and mind-bending Substances Act, 1985, doing away with right of Court to suspend sentence awarded below the Act, unfinished

associate degree charm, violates Article 21, notably once no mechanism is provided for early disposal of the charm.

Concept of Non-public Liberty

The next necessary ingredient of Article 21 is that the expression 'Personal Liberty'. once the Constitution was being framed, the word utilized in the draft Constitution as ready even up to the stage of Informatory Committee was "liberty" while not being qualified the word "liberty" by "personal" being of the read that otherwise "liberty" may be construed terribly wide therefore on embody freedom already dealt below article 19. The result's that article 21 because it finally found place in our Constitution protects "personal liberty". Expansion of Article 21 has light-emitting diode to several of the directive principles being implemented as basic rights. On account of this swollen interpretation, currently the correct to pollution free water and air, right to food covering, setting, protection of cultural heritage, Right to each kid to a full development, Right of persons residing in mountainous areas to possess access to roads and Right to education (Mohini Jain v. State of Karnataka) have all found their manner into Article 21. The Article prohibits the deprivation of the higher than rights except consistent with a procedure established by law. Article 21 corresponds to the Magna Charta of 1215, the amendment to the yank Constitution, Article 40(4) of the Constitution of Ireland 1937, and Article cardinal of the Constitution of Japan, 1946.

Article 21 applies to natural persons. The correct is obtainable to each person, national or alien. Thus, even a foreigner will claim this right. It, however, does not entitle a foreigner the correct to reside and settle in India, as mentioned in Article 19 (1) (e).

Conclusions

Now is the time to require stock of things for transferral down the curtain. As seen higher than by a concatenation of choices of the Supreme Court contact decades it's currently well settled that the word 'life' as used by Article 21 takes in its sweep not solely the idea of mere physical existence by additionally all finer values of life as well as the correct to figure and right to livelihood. This right could be a basic right bound to all persons residing in India as contradistinguished with solely voters lined by the sweep of Article 19(1) (g). This right can't be interfered with by the State save and except by a procedure emanating from a sound law that ought to be guided by a competent general assembly and that mustn't are offered conflict in any of the opposite basic rights particularly those bonded below Article fourteen and 19(1) (g) in to this point as they're available to involved person invoking such a basic right. Though' Article 19(1) (g) caters to the wants of solely voters, Article fourteen is obtainable to all or any persons and not essentially solely to voters. Therefore, Article 21 goes hand in hand with Article fourteen and each of them serve constant category of humanity residing in India each voters and non-citizens. it's after all true that Article 21 is couched in a very negative type and can't be implemented in absolute terms by manner of a substantive provision as is that the case with the basic right below Article 19(1)(g) offered to voters of India. Still, however, the very fact remains that the State is prohibited from tinkering with right to figure or tight to

livelihood bonded below Article 21 to all or any residents of India, voters and non-citizens alike save and except by enacting a procedural law that stands the check of half III of the Constitution of India and State has also a positive duty to be target-hunting by the provisions of Articles 39(a) and forty-one for creating the correct to life as envisaged by Article 21 more practical and kicking. it's additionally to be unbroken in sight that Article 21 is neither suspend able throughout emergency nor capable of being abrogated or amended and, therefore, the State being ruled and target-hunting by the provisions of Article 21 partially III and also the Directive Principles partially IV during this association must see thereto that right to life as well as right to living and work as bonded by Article 21 isn't reduced to a mere paper cliché but is unbroken alive, spirited associate degree rhythmic in order that the country will effectively march towards the declared goal of firm of an egalitarian society as envisaged by the creation fathers whereas enacting the Constitution of India beside its Preamble.

References

1. The Board of Trustees of the Port of Bombay v. Dilipkumar R. Nadkaarni and ors. AIR SC Para. 1963, 109.
2. Right to Life and Liberty under the Constitution Justice B.L. Hansaria, Ed. published by N. M. Tripathi Pvt. Ltd., Bombay, 1993.
3. Olga Tellis and others v. Bombay Municipal Corporation and others AIR SC 180 para. 1986, 32-33.
4. LIC of India and another v. Consumer Education & Research Centre and others. 1995, 5:482.
5. Delhi Transport Corporation D.T.C v. Mazdoor Congress and Others AIR. 1991; 101:223.
6. Olga Tellis and others v. Bombay Municipal Corporation
7. Delhi Transport Corporation D.T.C v. Mazdoor Congress
8. The Board of Trustees of the Port of Bombay v. Dilip kumar
9. LIC of India and another v. Consumer Education &
10. Dr. Haniraj J, Chulani v. Bar Council of Maharashtra & Goa
11. Dr. Haniraj J, Chulani v. Bar Council of Maharashtra & Goa. 1996; 3:342.
12. Chameli Singh, Ors. v. State of U.P. and Anr. 1996; 2.
13. Sivani MJ, Ors V. State of Karnataka & Ors. 1995, 6.
14. Sivani MJ, Ors V. State of Karnataka & Ors. 1995, 6:289. 1996; 3:342
15. Research Centre and others. 1995; 5:482.
16. Chameli Singh, Ors. V. State of U.P. and Anr. 1996; 2:549.
17. Baksey. 1954; 347:442
18. Bakishi, PM. Constitution of India. 46.
19. SCC 289
20. 549
21. 597
22. 1 SCC 81: AIR 1979 SC 1360. Hussainara Khatoun (I) v. Home Secretary, Bihar, 1980.
23. State of Maharashtra v. Prabhakar pandurang sanzgeri, AIR. 1966, 424.
24. This right is also ensured in criminal procedure code, 1973.

25. Smt. Maneka Gandhi v. Union of India & Anr. AIR SC, 1978.
26. Nadkaarni R. ors. AIR, 1963; 109:13.
27. others AIR. 1986; 180:32-33
28. Narendra v State of Haryana AIR. 1995, 519.
29. Smt. Maneka Gandhi v. Union of India & Anr. AIR 1978, 597.
30. Kharak Singh v. State of U.P. AIR 1963 SC 1295 para 17
Munn v. Illinois. 1876; 94(113):142.