

**PROTECTION OF LIFE AND PERSONAL LIBERTY****\*ROHIT SIHAG<sup>1</sup>**

"What difference does it take to the dead, the orphans and the homeless, whether the mad destruction is wrought under the name of totalitarianism or in the holy name of liberty or democracy?"

- Mahatma Gandhi.

Article 21 of the Indian Constitution says that:

"No person shall be deprived of his life and his personal liberty except according to procedure established by law."

According to **Bhagwati J.**, Article 21 "embodies a constitutional value of supreme importance in a democratic society."

According to **Iyer J.**, Article 21 is "the procedural replica of magna carta protective of life and liberty."

The right under Article 21 has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.

Before Maneka Gandhi's decision<sup>2</sup> protection under Article 21 i.e. right to life and personal liberty to citizens only against arbitrary action of the executive, and not from legislative action. But after Maneka Gandhi's decision, a person could be deprived of his life and personal liberty if two of the following conditions are fulfilled:

- There must be established law.
- The procedure should be prescribed by the law provided the procedure must be just, fair, reasonable and should comply with the Principles of Natural Justice.

Life- Meaning and Scope-

The right to life is the most foundational term and is also the most strenuous to define. In the case of **Maneka Gandhi vs. Union of India**, the Hon'ble Apex Court has given new dimension to the term right to 'live' and further it was held that right to live is not confined to merely animal existence but is also equipped with the leitmotif of human dignity in it.

Elaborating the same view the Hon'ble Apex Court in the case of **Francis Coralie**

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<sup>2</sup> Maneka Gandhi vs. Union of India AIR (1978).

**vs. Union Territory of Delhi**<sup>3</sup>, the Hon'ble Apex Court held that right to live does not include within its ambit a mere animal extant. The Apex Court further held that- "Right to live does not includes merely the protection of any faculty or limb but it includes within its ambit the bare necessities of life such as adequate nutrition, clothing, shelter etc.

Right to life in Article 21 includes within its ambit the right to livelihood and in the case of **Olga Tellis vs. Bombay Municipal Corporation**<sup>4</sup> the petitioners challenged S.313, 313-A, 314 & 497 of the Bombay Municipal Corporation Act, 1888 which empowered the Municipal Authorities to remove their huts from pavement and public places. The Hon'ble Apex Court adopted humanistic view and directed their removal only after monsoon seasons.

Another aspect in Right to life is "**right to shelter**". In the case of **Chameli Singh vs. State of Uttar Pradesh**<sup>5</sup>, it was held by the Hon'ble Apex Court that Right to Shelter comes under the purview of protection guaranteed under Article 21 of the Indian Constitution. The court in this case further held that in any organized society, the right to live as a human is ensured by right to shelter which further includes that living peace, safe and decent structure, pure air and water, roads etc. Therefore, the right to shelter, does not mean a mere right to roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.

Right to life also includes "**right to sleep**" and as held in the case of **RamlilaMaidan vs. Home Secretary Union of India**<sup>6</sup>, it was held that, sleep is a biological and essential ingredient of the basic necessities of life. If sleep is hindered in odd hours, it causes energy disturbance, indigestion and cardiovascular health is affected.

Right to life also includes within its ambit the right to die and in the case of **Common Cause (A Regd. Society) vs. Union of India**<sup>7</sup> the Hon'ble Apex Court held that there exist the 'right of a dying man to die with dignity when life is ebbing out', and in the case of terminally ill patient, where there is no hope of recovery, accelerating the process of death for reducing the period of suffering constitutes a right to live with dignity.

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<sup>3</sup> AIR 1981

<sup>4</sup> AIR 1986 SC 180.

<sup>5</sup> 1996 2 scc 549.

<sup>6</sup> 2012 Cr LJ 3516 (SC).

<sup>7</sup> AIR 2018 SC 1665.

### **Personal Liberty: Meaning and Scope**

The meaning of the word "Personal Liberty" was discussed by the Hon'ble Apex Court in some of its landmark judgment. For the first time in the case of **A.K. Gopalan vs. Union of India**<sup>8</sup>, the Hon'ble Apex Court held that the word 'personal liberty' under Article 21 of the Constitution of India means nothing more than the liberty of the physical body, that is, freedom from arrest and detention without the authority or permission of the law. The Court further held that the word 'liberty' is a very expansive term and it will include the rights as mentioned in Article 19 but as soon as the word liberty gets qualified it will be narrowed down to the expression 'liberty of the person'. The Court in this case further held that Article 21 guarantees protection against the total loss of liberty while Article 19 guarantees protection against on the partial restriction.

However in the subsequent case of **KharakSingh vs. State of Uttar Pradesh**<sup>9</sup> the Hon'ble Apex Court deviated from its dogmatic view point and held that the term 'personal liberty' is not confined to merely to 'freedom from physical restraint' or 'freedom from confinement', it is used as a compendious term to include within its ambit the personal liberties of a human being other than prescribed under Article 19 (1). In this case the Hon'ble Apex Court widened the scope of life and held that the word 'life' means something more than mere animal existence. Its deprivation extends to all those limits by which life is enjoyed.

Finally in the case of **Maneka Gandhi vs Union of India**, the Hon'ble Apex Court overruled the decision of AK Gopalan Case ad held that Article 21 is adjudged by Article 19. Therefore, a law depriving a person of 'personal liberty' has not only to stand the test of Article 21, but it must stand the tests of Article 19 and 14.

Another aspect which will transpire under the shade of personal liberty and which was discussed ramphantically all over the Indian Judicial System was the '**right to privacy**'. There were series of cases in this point and following the chronological order the Hon'ble Apex Court in the case of **Kharak Singh vs. State of Uttar Pradesh**, the Hon'ble Apex Court held that right to privacy will not form the wedge of personal liberty.

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<sup>8</sup> AIR 1950 SC 27.

<sup>9</sup> AIR 1963 SC 1295.

The Hon'ble Apex Court in the case **R. Rajgopal vs. State of Tamil Nadu**<sup>10</sup> which is also known as **Auto Shanker Case** held that right to privacy is guaranteed in its implicit form by Article 21 of the Constitution of India but this right is prone to precise reins which are as follows:

- The rule regarding right to privacy will be not available in the case of public records which also includes court records.
- Right to Privacy or the reedy of action for damage is simply not available to public officials as long as the criticism concerns the discharge of their public duties, not even when the publication is based on untrue and false facts and conformations unless and until the official can establish that the statements had been made with reckless disregard of truth.

Finally in the latest judgment of the Hon'ble Apex Court in the case of **Justice K.S. Puttuswamy vs. Union of India**<sup>11</sup> the Hon'ble Apex Court with a Nine-Judge bench had overruled its previous judgment in Kharak Singh's case and Auto Shanker's Case and held that the 'Right to Privacy' is protected as an intrinsic part of the right to life and personal liberty and also it forms a part of freedoms guaranteed under Part III of the Constitution. The Court further made it clear that- "Life and Personal Liberty are inalienable rights and are not the creations of the Constitution"<sup>12</sup>.

#### **Procedure Established By Law: Meaning and Scope-**

The Supreme Court of US has interpreted the guarantee given under 5<sup>th</sup> and 14<sup>th</sup> Amendments to the US Constitution to the effect that it empowers the court to examine a law, both the substantive provisions and the procedure contained therein, to ascertain whether it is a just law or not.<sup>13</sup>

For the first time the Hon'ble Apex Court examine the expression procedure established by law in the case of **A.K. Gopalan vs. State of Madras**<sup>14</sup>, the Hon'ble Supreme Court held that the expression "procedure established by law" means procedure ratified by the State, the Hon'ble Apex Court also rejected the contention that the word 'law' as used in Article 21 is used in the sense of jus or lex i.e. just law or the principles of natural justice as interpreted by the US Court.

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<sup>10</sup> 1994 6 SCC 632.

<sup>11</sup> AIR 2015 SC 3081.

<sup>12</sup> Justice K.S. Puttuswamy vs. Union of India, AIR (2015) SC 3081.

<sup>13</sup> RaoMamta, Constitutional Law, 1<sup>st</sup>edn., (Lucknow Eastern Book Company, 2013), p.222.

<sup>14</sup> AIR 1950 SC 27.

Therefore, if from the above-mentioned judgment it is crystal-clear that Article 21 guaranteed protection only against the executive action but not against the legislative action

But in the case of **Maneka Gandhi vs. Union of India**<sup>15</sup>, the Hon'ble Apex Court has overruled the A.K. Gopalan's Case and stated that mere introduction of some kind of procedure is not enough to have a rational nexus with the mandate of Article 21. Procedure established by law should be equipped with the traits of fairness, justness and reasonableness and should be devoid of fancifulness, oppressiveness and arbitrariness, and a procedure in order to get complied with these requirements should embody the principles of Natural Justice.

The judgment in Maneka Gandhi's case made it clear that our Hon'ble Apex Court has imported the concept of 'due process of law' into our constitution.

In the case of **Sunil Batra vs. Delhi Administration**<sup>16</sup> **Desai J.** proclaimed- "The word 'Law' in the expression 'procedure established by law' in Article 21 has been interpreted to mean in Maneka Gandhi case that the law must be right, just and fair and not arbitrary, fanciful or oppressive."<sup>17</sup>

Further **Krishna Iyer J.** throw light on the concept of procedure established by law and held that-"The high value of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence."<sup>18</sup>

### **Conclusion-**

From the above mentioned it is crystal clear that the ambit of Article 21 and various of its species that are developed either through judicial precedents or legislative intents, clearly paves the way for the evolution of an inscribed picture of Indian Constitution, where it can be depicted that the Indian Constitution and Indian Judicial System both are on the way of securing an leitmotif where every person within the territory of Indian can ensure his personal liberty and these all leads to his overall personality and also the territory of India is nurtured effectively despite many pros and cons in the sociological aspects of the society.

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<sup>15</sup> AIR 1978 SC 597.

<sup>16</sup> AIR 1980 SC 1579.

<sup>17</sup> Stated in Maneka Gandhi's Case.

<sup>18</sup> Jolly Varghese vs. Bank of Cochin, AIR 1980, 470.