

Role of Judiciary in Expansion of Right to Life and Personal Liberty

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Abstract: The Constitution of India being written constitutes the fundamental law of the land. All democratic constitutions recognize the fundamental right to life and personal liberty. In modern constitutions this freedom too is not recognised in absolute terms. But the judiciary in India has widened the scope & dimensions of this right to a large extent.

Keywords: Right to Life and Personal Liberty, Judiciary

I. INTRODUCTION

Article 21 of the Constitution of India provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The Indian Judicial history has not only been able to set at rest the controversy with respect to scope of Article 21, but it has also contributed to create the legal field for re-thinking and reconstruction of Article 21 & related Articles for widening the scope of the concept of life and personal liberty so as to make the enjoyment of the same for a meaningful life. The traditional notion of life was that it is limited to one’s physical existence. Now judiciary by its art and crafts of interpretation has discovered a variety of rights in the concept of right to life & personal liberty.

Role of Judiciary in Interpretation of Article 21:-

Article 21, consisting of total 18 words, seems apparently to be a short provision, but the apex court in India by its pronouncements has given an enlarged scope to it. With the changing of society and new era the Hon’ble Supreme Court realised that now the time has come to enlarge the wings of Article 21 so that law can appropriately serve the society.

Earlier a myth exist that Right to life restricted to bodily health & freedom from the pain and injury. Same myth apply to the concept of Liberty also as it included physical liberty only. Now the concept has changed as the Supreme Court makes himself the guardian of it and on behalf of various Public interest litigation, Writs etc., includes various Dimensions under Article 21 which are as follows:-

II. RIGHT TO LIFE

1. Right to privacy –

Case-Kharak Singh V. State of UP¹

First time this topic raised in this case. The S.C. Held – Right to Privacy includes Fundamental Right.

Naz Foundation Case²

Landmark Judgment – Right to privacy protect a private space in which man may become & remain himself.

A) Right to privacy- Permissible restriction-

Intrusion into privacy may be by –

1. Legislative provision
2. Executive Order
3. Judicial Order.

B) Tapping of Telephone

Case – People’s Union for Civil liberties V. Union of India³

HELD-tapping of telephone is a serious invasion of privacy unless it is permitted under the procedure established by law.

1. AIR 1963 SC 1295
2. 2009 Delhi, High Court
3. AIR 1997 SC 1203

2. Right to shelter :-

Case-Chameli Singh V. State of UP⁴

Held – Right to shelter is a fundamental Right.

3. Right to health and medical Assistance –

Case- Parmanand Katara V. Union of India⁵

Held – Professional obligation on doctor government or private to extend aid to the injured without legal formalities.

4. Right to pollution free environment-

Case- Subhash Kumar V.State of Bihar⁶ M.C. Mehta V. Union of India⁷

A) Noise Pollution :-

Case-Re Noise pollution⁸

Held:- Every person has the right to live with a noise free atmosphere.

5. Right to Livelihood:-

Case- Olga Tellis V. Bombay municipal corporation⁹

Held:- Right to livelihood important facet of right to life because no person can live without the means of livelihood.

Personal Liberty

1. Right Against Solitary confinement:-

Case-Sunil Batra V. Delhi Administration¹⁰

Held:- The Supreme Court held that right against solitary confinement is necessary for the personal liberty of person.

2. **Right against Handcuffing:-**

Case- Prem Shankar V. Delhi Administration¹¹

Held:- Handcuffing of under trail without adequate reasons is to be against Article 21.

3 **Right against in human treatment :-**

Case- Kishore Singh V. State of Rajasthan¹²

The SC held that use of third degree method by police is violative of Article 21.

4 **Right to speedy Trial :-**

Case-Hussainara Khaton V.Home Secretary, Bihar¹³

Held:- Right to speedy trial is not specifically mention as fundamental right but it is implicit in the broad sweep & content of Article 21.

4. (1996) 2 SCC 549

10. AIR 1980 SC 1535

5. AIR 1989 SC 2039

11. AIR 1981 SC 625

6. AIR 1991 SC 420

12. AIR 1979 SC 1360

7. (1986)2 SCC 176

13. AIR 1983 SC 339

8. AIR 2005 SC 3136

9. (1985) 3 SCC 387

5. **Right to Free legal aid:-**

Case- MH Hoskot V. Sate of Maharashtra¹⁴

Held :- The SC held that providing free legal aid to accused is the state's duty & its not government charity.

6 **Right against delay execution :-**

Case-Sher singh V. State of Punjab¹⁵

Held :- Prolonged detention to await the execution of sentence of death is an unjust, unfair & unreasonable procedure. The only way to undo the wrong is to quash the death sentence. However the court held that this cannot be applied in every case.

7 **Right to fair trial:-**

Case- Maneka Gandhi V.Union of India¹⁶

Held:- Propounded the Doctrine of reasonable, Fair & just procedure.

The Rights provided by the constitution of India are not an unruly horse therefore restrictions are also provided for Maintaining balance amount the members of the society.

III. **RESTRICTIONS ON THE RIGHT TO LIFE & PERSONAL LIBERTY**

A. **Procedure established by law :-**

The drafting committee suggested some changes in this article & substituted the words "Except according to procedure established by law" for the words

"Due process of law". Due process of law expression curtails the power of judicial scrutiny to protect individual liberty & the legislature has to be the ultimate protector of individual liberty instead of the judiciary.

B. **Meaning & concept of procedure established by law:-**

First:- There must be a law justifying interference with the person's life or personal liberty.

Second:- The law should be valid law.

Third:- The procedure prescribed by law should have been strictly followed.

Expanding Horizons of Article 21 with latest trends

The judiciary many times said that Article 21 hasvarious dimension but this is also correct that Article 21 is such a diamond article of the constitution which is mingled with other provision of different laws.

1.Article 21 (read with 304B IPC 1860)

Bhola Ram V. State of Punjab¹⁷

Dowry death took place on 6th sep. 1989.

The trial court pronounced its decision on 3rd dec 1991 within two years of victim's death. The first appeal was decide by the High Court on 5th july 2004 which is more than twelve years later. A petition for special leave of appeal was filed in Supreme Court in 2004 & leave was granted only after a gap of years in 2008. Thereafter this appeal of 2008 rather than a petition of 2004 thereby wiping away 4 years its age in SC. Even then, it has taken another five years for its disposal, making a in total of nine years spent in this court. It is high time those of us who are judges of this court and decision makers also become policy makers.

2.Article 21 (read with section 154 CRPC 1973)

Beenu Rawat and Others V. Union of India and Others¹⁸

In this case the Supreme Court protected the rights of peaceful protestors who were demanding registration on FIR on respect of rape but they were beaten by the police mercilessly, therefore the court gave directions to order investigation by special investigation team to protect their rights under Article 21.

14. AIR 1978 SC 1548

AIR 2014 SC 214

15. AIR 1981 SC 465

18. AIR 2014 SC 538

16. AIR 1978 SC 597

17.

3.Article 21 { read with section 500 IPC)

Umesh Kumar V. State of Andhra Pradesh¹⁹

A good reputation is an element of personal security and is protected by the constitution equally with the right to the enjoyment of life, liberty & Property. Therefore, it is necessary element in regard to life of a citizen under article 21.

4.Article 21 (read with 154 IPC)

Lalita Kumari V.Government of UP & others²⁰

The Honourable Supreme Court held that it is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of individual. Therefore, mandatory registration of FIR under S. 154 of the code will not be in contamination of article 21.

5. Article 21 (read with S.41 & 41A of CRPC)

KM. Hema Mishra V. State of UP & Others²¹

This case is related with personal liberty:- Arrest is cognizable offences-not mandatory in offences for which maximum sentence is 7 years.- S.41 & 41A of CRPC place check on arbitrary unwarranted exercise of power of arrest.

6. Article 21 (read with S. 377 IPC 1860)

Suresh Kumar Koushal V. Naz Foundation²²

Reversing the decision of Delhi high court the Supreme Court held that Section 377 of IPC constitutionally valid.

7. Right to Die:-

Common Cause (A registered Society)

V. Union of India and Another²³

Right to die with a dignity is a fundamental Right. The Supreme Court allows Passive euthanasia and a living Will and also issue guidelines in this regard. The Supreme Court held that Article 21 includes smoothening of process of dying in Case of terminally ill patient.

8. Bail Applications be disposed of within 7 days.

Hussain and Another V. Union of India²⁴

IV. CONCLUSION:-

The Judiciary has played a pivotal role in safe guarding the life and liberty of every individual as can be seen by having recourse to its judicial pronouncements the honourable supreme court of India is very active and vigilant in case violation of right to life and personal liberty. It has given the true meaning and scope to the right as intended by the makers of the constitution. The provision of the Indian Constitution, UDHR and the ruling of the Supreme Court make the life and liberty of every individual truly meaningful. But this is not the end of expanding the horizons of right to life and personal liberty instead we can call it's the beginning of new era of judicial activism.

19. AIR 2014 SC 1106

20. AIR 2014 SC 187

21. AIR 2014 SC 1066

22. AIR 2014 SC 563

23 Writ Petition(Civil) No. 215 of 2005 decided on 09 March, 2018

24. Criminal Appeal No. 509 of 2017, Decided on 09th March, 2017.

Abbreviations:-

1. AIR-	All	India
Reporter		
2. Art.-	Article	
3. CRPC-	Criminal	Procedure
Code		
4. Hon'ble-	Honourable	
5. IPC-	Indian	Penal
Code		
6. SCC-	Supreme	Court
Cases		
7. SC-	Supreme	Court
8. V.-	Versus	