

Right to Life and Personal Liberty under the Constitution of India

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Abstract: - India have adopted the democratic pattern of government and the constitution of India has guaranteed the *Right to life and personal liberty* under a Article 21. The Indian judicial history has also been able to set at rest the controversy with respect to scope of Article 21, but it has contributed to create the legal field for rethinking and reconstruction of Article 21 and related Article for widening the scope of the concept life and personal liberty so as to make the enjoyment of the same for meaningful universal Declaration of Human Right 1948 provides that everyone has the right to life, liberty and security of person. Similarly the international covenant on civil and political rights 1966 provides for the some Article 21 of the Constitution of India Provides.

I. INTRODUCTION

No person shall be deprived of the life or personal liberty except according to procedure established by law.

Thus Article 21 has come to occupy the position of burdening omnipresence in the scheme of fundamental Rights. A minute study reveals the word life and Personal Liberty do not only imply the protection of animal existence and its freeness but cannot a wider meaning. The Right to life which is primarily a natural right has been invariably given a place in all the constitution of the word. It is proper therefore to study those India constitutional provisions, which enshrine this right. Indian judiciary has no doubt contributed a great deal in the realization of right to life of man which belongs to him and him only. Article 21 of the constitution has not only survived but also widened in the scope and contract by judicial interpretation. The traditional notion of life was that it is limited to one physical existence. Now the judiciary by its arts and crafts of Interpretation has discovered a variety of Right in this concept Right to life. Emergency preventive detention and death sentence are the main embargo on one's Right to life.

II. CONCEPT OF LIFE

In common parlance life means animation or period from birth to death of every living beings, but in the broad sense life means activeness, liveliness, Physical or intellectual force, energy, and the vitality etc. The notion of life means the principle of animation and has to be understood as an antithesis of lifeless.

Human life is the consequence of the combination of body and soul. When the body deserted by the soul/life means to an end. It means that without the soul there is no life of human being. The aggregate of these organs constitutes the whole human self. Human beings are the most meticulously designed creatures on the earth and universe.

Right to life- Meaning:-

Right means a claim on entitlement and right to life signifies a claim to one's life. Right to life is most precious right among the fundamental rights. Other rights even though fundamental, without right to life there is no value. The right to life undoubtedly is an initial claim and all other claims emanate from this basic claim. The claim to one's life is inherent in every man by of virtues of the law and nature.

Right to life means that life includes bodily health and freedom from the pain and injury.

III. GENESIS OF RIGHT TO LIFE

The right to life of a human being is as old as mankind. The nature creates the life and right to it is essentially natural. In pre-legal stage man was living more or less like any other animal and the jungle law applied which means "might is right." The survival of the strong was the order of the society. But in legal stage when the process of civilization began, a human being became conscious of his rights, particularly his right to exist. The most important fact of the society is the interdependence of men. In the present day society man exists by his membership of the society arch man cannot manufacture and procure the necessities of life himself. The realization of inter dependence culminates into his living as a responsible member of the group of human being called society.

In Ancient India- There were small units joined together for the protection of their lives and property. There is ample evidence to show the existence of a political superior who was in charge of those small unions and was under an obligation to preserve the lives and property of the Individual members.

In vedic India, the individuals regulated their lives and conduct according to the custom which were supposed to be the dictates of all mighty. It can be safely said that the small communities in ancient India were united together under a re-organized superior for the protection of their life and property. Hence the life and individual liberty in ancient.

India was subject to only one qualification i.e its curtailments to the extent to protect the life and property and no more.

Scope of Personal Liberty:-

In *Paramananda Katara V. Union of India*¹ it has been held that it is the professional obligation on of all doctors, whether government or private o extend medical did to the injured immediately to preserve life without waiting legal formalities to be complied with by the police carder criminal procedure code Article 21 of the constitution casts on obligation on the state to preserve life.

The scope of Article 21 of the constitution of India was a bit narrow till 50, as it was held by the Apex court in *A.K Gopalan V. State of Madras*² that the contents and subjects matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case the word deprivation was construed in a narrow sense and it was held that deprivation was not restrict upon the right to moov freely which came under Article 19 (i) (d). At that time *A.K. Gopalan Case V. State of Madras* was leading in respect of Article 21.

Along with some other Articles of the constitution but post *A.K. Gopalan V. State of Madras* case the Scenario in respect of Article 21 has been expanded or modified gradually though different decisions of the Apex court and it was held that interference with the freedom of a person while in jail would require authority of law. Whether the reasonableness of a India Penal law can be examined with reference to Article 21 was the point in issue after *A.K Gopalan Case*.

IV. ROLE OF JUDICIARY IN THE INTERPRETATION OF RIGHT TO LIFE UNDER THE CONSTITUTION-

Article 21 of the constitution protects the right to life and prohibits its deprivation except otherwise than a procedure established by law. The meaning of word life its scope and its contents has after came for judicial scrutiny before courts and they have applied their wisdom to work or proper meaning of these terms.

Article 21 though couched in negative language confers on every person the fundamental right to life and personal liberty. The right to which is the most fundamental of all is also the most difficult to define certainly it cannot be confined to a guarantee against the taking away of life. It must have a wide application with reference to a corresponding provision in the 5th and 14th amendment of the U.S constitution, which says that no person shall be deprived of his life liberty and property without due process of law. In *Munn V. Illionis*³ *field justice* spoke of the right to life in the following words;

1 Paramananda Katara V. Union of India AIR 1989 Sc 2039

2 A.K. Gopalan V. State of Madras AIR 1950 Sc. 27

3 Munn V. Illionis 94 v.s 113 (1876)

By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and facilities by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul.

Right to Dic:

Gandhi once observed: "Death is our friend, the trust of friends.

He delivers us from agony. I do not want to die of a creaping paralysis my faculties or defeated man." The English poet William Ernest Homely wrote;

I am the master of my fate , I am the captain is my soul.

Justice Hansaria observed:

Despite the above, Hamlet's dilemma of *To be or not to be facts many a soul in time of distress, agony and dic or not to die*. If the decision be to die and same is implemented to its fructification resulting in death, that is the end of the matter. The dead is relieved of the agony, pain and suffering and ho civil consequences known to our law follow. But is the person concerned be unfortunate to survive the attampt to commit suicide may see him behind the bar as the same is punishable under section 309 if our penal code. It is controversial issue that Right to Die' guaranteed or not guaranteed by Article 21 of the constitution. The judiciary of our country had occasion to deal with the after said aspect.

In *State of Maharashtra V/S Maruti Sripati Dubal*⁴ the Bombay high court has struck down section 309 Indian penal code which provides punishment for attempted suicide by a person as unconstitutional on the ground that it is violate of Article 21 and held that the right to live guaranteed by Article 21 includes also or 'Right To Die'.

V. CONCLUSION

In every democratic system of Government, there are some rights which are regarded as fundamental . They are so regarded because they are vitally necessary for the attainment by the individual of his full moral and spiritual stature. Without rights, the individual's moral and spiritual life would remain stunted, and he would be able to develop his potentialities.

The constitution of India has embodied a number of fundamental rights who are do act as limitation not only upon the powers of legislature. But through the model has been taken from the constituter of united states. Article 21 of the constitution provides.

No person shall be deprived of his life or personal liberty except according to procedure established by law. In *A.K Gopalan V. State of Madras*⁵ case personal liberty was

4 State of Maharashtra V. Maruti Spripati Dubal AIR 1986 Crj 549

5 AIR 1950 Sc 27

said to mean only liberty relating to, or concerning the person or body of individual and in this sense it was Anti –thesis or physical restraint or coercion. Constitution provides fundamental right of prisoner's appropriate directions have been given by the counts to the inmates of protective and remand homes for women and children. Right to free legal aid at the cost of the state to an accused who cannot afford legal services. Right to speedy trial is the most fundamental right of prisoners. The right to life and personal liberty includes all personal right and their enjoyment embracing the use and enjoyment of facilities, acquiring useful knowledge the right to contact, occupation, speech, assembly and press. Fundamental right apply for persons of any nationality whereas others over available only to the citizen of India. All people irrespective of race, religion caste, sex have been given the right to move the supreme court and the High Court for the enforcement of their fundamental rights.

The law to be effective under Article 21 of the Constitution has to be a valid law. This means that it should have enacted by the legislature having legislative power under the scheme of distribution of powers.

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