



CONCEPT OF RIGHT TO LIFE AND PERSONAL LIBERTY: AN ANALYTICAL STUDY

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ABSTRACT :

Right to life and personal liberty is the basic right which every human being should have. In India, right to life and personal liberty is given in Article 21 of the Constitution. The main purpose of this article is to provide all the human being all the basic rights so that they can develop their personality. There is no doubt that Indian Judiciary has provided various rights by interpreting and implementing Article 21 of the Indian Constitution. This is an attempt to highlight some of the extended areas of "right to life and personal liberty" and to find out its effects on the administration of justice.

KEYWORDS : Constitution, personal liberty, right to life, Article 21 etc.

INTRODUCTION

The concept of right to life and personal liberty are as old as mankind. The nature creates the life and right to it is essentially natural. In the pre legal stages man was living more or less like an animal existence and the jungle law was applied which meant "Might is Right" the survival of the stronger 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 exist. The most important fact of the society is the interdependence of man. In the present day society man exists by its membership of the society. Each man cannot manufacture and procure the necessities of life himself. The realization of interdependence culminated into his living as a responsible member of the human beings, called society.¹

ANCIENT ERA

The origin of these concepts may be treated in ancient Greek civilization. Greek distinguished



between the liberty of the group and the liberty of the individual.² In the oration of priceless, the first Athenian statesman, delivered the funeral of countrymen, who died in the Peloponnesian War of 431 B.E, it was described³ that the concept of liberty was the mecum of two nations; first protection of group from attack, secondly the ambition of the group to realize itself as fully as possible through the self realization of individuals by way of human reasons⁴. Further to the

¹ Sunil Deshta & Kiran Deshta, FHR.

² L.R Bhatt, Personal Liberty "A conceptual analysis K.U Law Journal 1979 Vol. 5 P. 12-13.

³ Laski ix encyclopedia of social science 1954 P. 442.

⁴ Pollock, History of the science of Politics 1952 P. 11

Greeks, state was living reality to which they assigned the duty of protecting their liberties. It would not be proper to hold the view that India knew no liberty before the British advent and that the concept of life and liberty is derived in India from west⁵. The ancient Vedas proclaimed liberty of body (Tana) dwelling house (Skridi) and life (Jivasi)⁶. The legal philosophy embodied dimension in the law codes of ancient India⁷. Their aims of life also affected the social system, the political system and consequently the judicial system. Dharma regulated the civil and political rights. Dharma was not religion in the technical sense but a code of conduct which regulated the whole expression of life. Further the concept of Dharma can safely be equated to rule of law. .

MUSLIM ERA:

The concept of human rights got lost on its way in the dark and narrow allies of the middle ages. In the medieval period of the philosophical and idea speculation were replaced by new idea of chivalry, war and others heroic traditions which led to confusion and uncertainty. With invasion of India by the Muslims created new situation where in Muslim rulers or Sultans followed a policy of discrimination against the Hindu. So the significance of the Muslim rule in India was counterproductive to harmony, justice and equality⁸.

The operational ramifications of the Islamic norms can be gleaned from the Mugal history of India. There was one law for the Muslims (faithful) and another's for Hindus (kefir) and the principle of equality was not given much importance the state was basically theocracy deriving legal strength from the fundamental law of Shariat as lay down by the holy Koran. Hindus were rarely treated on par with Muslims to be true. Rulers like Allauddin Khilzie was most despotic and autocratic who did not bother for religious laws and Quazi justice. He said, " law is what I say not what Koran say". The advent of Muslim rule led to the system and ideals totally different from Hindu view of society and life. Muslim conquers especially Mahmud Ghaznavi and others made frontal attacks on ancient way of life and religion. The destruction of temples, idols and large scale conversion to Islam alienated the masses.⁹

It was, however, at a later stage that Muslim state in India became considerably modified in its form. The Mughal rulers especially with Akbar a new era began in Mughal history of India in the field of right with his policy of universal reconciliation and tolerance. He was earnestly concerned with the welfare of his subjects. At one place, Akbar went to the extent of saying that if he was guilty of an unjust act, he would rise in judgment against himself. His justice loving tradition was followed by his son Jahangir too. There was a popular legend that Jahangir arranged a chain with bells to be hunged outside the palace in order to enable petitioners to approach him for the redressal of their grievances. Strictly speaking, it was an easily accessible individual petition system in comparison to our modern lengthy and expensive writ petition system¹⁰.

BRITISH ERA

The Britishers came into India through East India Company for the purpose of trading with India. Thus on 31th December 1600 Queen Elizabeth granted a chart authorizing the East India Company with the exclusive right of trades between British India other countries including United Kingdom over the next one hundred and fifty years , through a succession of charters, this trade adventures blossomed into political power. The Charter 1611 empowered the East India Company to regulate its affairs. The charter of 1661 extended the power of the company to include administration of justice in the settlement.

⁵ P.V.Mukherji Civil liberties Ramnand Lectures of Cal. Uni. 1968 P. 22.

⁶ Rigveda 8; 38;12 quoted in Mukherji supra note 61.

⁷ S.D Sharma the concept of personal liberty in ancient legal theory; its relevance.

⁸ . Sunil Deshta \$ kiran Deshta, Fundamental human right; the right to life and personal liberty 2003, P. 19.

⁹ M.Ramajois Legal and Constitutional History of India (1984) P .1

¹⁰ Sunil Deshta, Lok Adalat in India Genesis and Functioning (1955) P.29.

In India the national movement and process of evolution of liberty went side by side during British Era. In other words, the concept of liberty struck its roots in India during this era of administration. On November first 1858, the Queen of England declared crowning assumption of government in India. For the next sixty years, British crown and the parliament directly governed India.¹¹ On further major development was the drafting of Mrs. Annie Besant's common wealth of India bill, 1925. This bill contain seven fundamental rights which were similar to those contain in the constitution of India bill 1895. Within two years of the printing of Besant's bill 1923, came the announcement that a statutory commission under the chairmanship of Simon would undertake a study of possible constitution reforms in India.¹² In 1945 the Sapru committee made recommendations for incorporating fundamental rights in the future constitution of India. The proposal made by the Sapru committee was recognized and rights were divided into justifiable and non-justifiable rights. In 1946 the general elections were held and the congress promised to secure to the people of India fundamental rights including the protection of right and liberty. And it was for the first time that the British Government through cabinet mission conceded the demands for a bill of rights. Its proposal for constituting a constituent assembly for framing the Indian constitution also included recommendations for a bill of rights. As it known after a great fight, India attain independence in 1947 before which the cabinet plan had been accepted in 1946, which set out in detail the procedure regarding elections to constituent assembly which took place in July 1947.

RIGHT TO LIFE AND PERSONAL LIBERTY UNDER CONSTITUTION OF INDIA

Man is born free but everywhere he is in chains, observed by Rousseau. The canon of this observation has been reflected and translated as a global phenomenon and has been incorporated as a necessary, essential and sacrosanct condition of all human beings but as well as freedom to act according to their choice. Freedom which is sine qua non for the physical, mental, psychological spiritual etc. development of all human beings without which the human personality would be incomplete. The rational behind such freedom is not only an individual empowerment but the pathology of its lays the foundation for the collective, universal development of the society at large.¹³ "No person shall be deprived of his life or personal liberty except according to the procedure established by the law"¹⁴. This article is intended to guarantee protection to life and personal liberty. It means that if an individual is to be deprived either of his life or personal liberty, the authority concerned must follow the procedure established by law. It was held that it is open to the judiciary to see whether the procedural requirements of the law are followed or not, but it cannot question the law itself or the wisdom of the law makers in enacting the law in that particular way¹⁵.

RIGHT TO LIFE

The right to life does not merely mean the continuance of a person's animal existence, but a quality of life. It means the fullest opportunity to develop one's personality and potentiality to the highest level possible in the existing stage of our civilization. Inevitably, it means the right to live decently as a member of civilized society. It is to ensure all freedom and advantages that would go to make life agreeable. The right implies a reasonable standard of comfort and decency.¹⁶ In *Kharak Singh v. State of U.P.*, the incomparable court cited with endorsement *J's* perception in *Munn v. Illinois*, and held that by the expression "Life"

¹¹ Subhash C. Kashap, History of Parliament of India)(2000)P 20-22)

¹² Pattabhi Sitaramaya, the History of Indian National Congress 1946, volume 1 page 161.

¹³ K.T SHAH'S NOTE ON FUNDAMENTAL RIGHTS, B.SHIVA RAO THE FRAMING OF INDIA' CONSTITUTION, SELECTED DOCUMENT II 1967, 41.

¹⁴ Article 21 of Indian Constitution.

¹⁵ T.K. TOPE CONSTITUTIONAL LAW OF INDIA 2ND EDITION EASTERN BOOK COMPANY.

¹⁶ K.T Shah's note on Fundamental Rights, B.Shiva Rao, The Framing of India's Constitution, Selected Document II 1967, 41.

as here utilized something more is implied than insignificant creature presence. The hindrance against its hardship reaches out to each one of those appendages and resources by which life is delighted in. The arrangement similarly denies the mutilation of the body by removal of an arm or leg or the hauling out of an eye, or the devastation of any organ of the body through which the spirit speaks with the external world.

DIFFERENT FACETS OF RIGHT TO LIFE

Right to live with human dignity

Ideal to life additionally incorporate ideal to live with human pride and all that accompanies it, in particular, the minimum essentials of life, for example, satisfactory nourishment, garments and safe house over the head and offices for perusing, compositions, and conveying everything that needs to be conveyed in assorted structures, openly moving about furthermore, blending and intermixing with individual people. The offense of assault is a wrongdoing against essential human right and furthermore violative of the injured individual's entitlement to life. Article 21 guaranteed the privilege of ladies to be treated with conventionality and appropriate pride.

It is principal right of everybody in this nation to live with human pride free from abuse. This privilege to live with human respect cherished in Article 21 gets its life breath from the Directive Principles of State Policy provisions (e) and (f) of Article 39 and 41 and 42 at any rate, thusly it must incorporate assurance of wellbeing and quality of the laborers, people, and of the young period of youngsters against maltreatment, openings and offices for kids to create in a sound way and in state of work and maternity help.

Right to Reputation

Notoriety is a significant piece of one's life. It is one of the better graces of human progress which make life worth living. The preeminent court alluding to an American choice, in *State of Maharashtra v. Open Concern for Governance Trust*, held that a decent notoriety was an aspect of ideal to life of resident under Article 21. The court allude to the International pledge on common and political rights, 1965 which perceives ideal to have suppositions and the privilege of opportunity of articulations subject to one side of notoriety of others. The Apex court in *Dr. Dilip Kumar Deka v. Territory of Assam*, advised the better courts than use temperate and moderate language and furthermore held that the chance to be given to the influenced party before recoding of antagonistic comments by the court. The court refer to the International covenant on civil and political rights, 1965 which recognizes right to have opinions and the right of freedom of expressions subject to the right of reputation of others. The Apex court in *Dr. Dilip Kumar Deka v. State of Assam*, cautioned the superior courts to use temperate and moderate language and also held that the opportunity to be given to the affected party before recoding of adverse remarks by the court¹⁷.

Right to livelihood

Right to life includes the right to livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive a person of his right to livelihood and you shall have deprived of his life. In *Olga Tellis v. Bombay Municipal Corporation*¹⁸, it was held that "right to life" included the right to livelihood. However the court said that no

¹⁷ AIR (1996)6 SCC 234.

¹⁸ AIR 1986 SC 180, In *Sodan Singh v. New Delhi Municipal Corporation*, AIR 1989 SC 1988, a five judge's constitution bench of the Supreme Court distinguished the concept of life and personal liberty within Article 21 from the right to carry on any trade or business, a fundamental right conferred by Article 19(1) (g). The court held that Article 21 was not attracted in case of trade or business either big or small. The two rights were too remote to be connected together. The court distinguish the ruling in *Olga Tellis* and held that in that case the petitioners were very poor persons who had made pavements their homes existing in the midst of the filth and squalor and that they had to stay on the pavements so that they could get odd jobs in the city. It was not the case of a business of selling articles after investing some capital, the court observed.

person could claim the right to livelihood by the pursuit of an opprobrious occupation or a nefarious trade of business, like toutism, gambling or living on the gains of prostitution.

Right to Shelter

The right to shelter does not mean a mere right to a roof over one's head but "right to all the infrastructure necessary to enable him to live and develop as a human being". It, thus, includes the right to the basic facility, such as the sanitary facility, to lead a dignified life¹⁹. The Court referred to the 1980 Resolution of the U.N. General Assembly, passed to focus the attention of the member States towards the problems of homeless people in urban and rural areas of the developing countries, and said that the need to provide right to shelter was not peculiar to India but was a global problem being faced by all the developing and developed nations²⁰.

In *Chameli Singh v. State of U.P.*,²¹ the Supreme Court emphasized on the importance of the right to shelter as one of the basic human rights designed to ensure all facilities to the man to develop himself as a member of a civilized society

Right against Noise Pollution

Anyone who wishes to live in peace, comfort and quiet within his house had a right to prevent the noise as pollutant reaching him. That while one had a right to speech, others had right to listen or decline to listen. That nobody could be compelled to listen and nobody could claim that he had a right to make his voice trespass into the ears or mind of others and that nobody could indulge into aural aggression²². The use of loudspeakers, drums, tom-tom, etc. and playing of hi-fi amplifier systems had to be regulated. Preventive measures need to be directed more effectively at the source.

Right to Sustainable Development

The balance between environmental protection and developmental activities could only be maintained by strictly following the principle of 'sustainable development.' This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs.²³ Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to 'sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated an integral part of 'life' under Article 21. The weighty concepts like inter-generational equity, public trust doctrine²⁴ and precautionary principle which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

Right to Education

The Supreme Court in *Bandhua Mukti Morcha v. Union of India*,²⁵ while interpreting the scope of the "right to life" under article 21 held that it included "educational facilities". In *Mohini Jain v. State of Karnataka*,²⁶ the Court held that "right to life" was the compendious expression for all those rights which the courts must enforce because they were basic to the dignified enjoyment of life. The Court further observed that the right to life under Article 21 and the dignity of an individual could not be assured unless it was

¹⁹ *Samatha v. State A.P.* AIR 1997 SC 3297.

²⁰ *M.C.V. Samiti v. State of Rajasthan* AIR 2007 SC 1046.

²¹ AIR 1996 SC 1051 see also *D.N.V Reddy v. B.W. S.S.B.* AIR 2004 Kant 494.

²² *Re: Noise Pollution*, AIR 2005 SC 3136.

²³ *Vellore Citizens Welfare Forum v. Union of India & Others*, 2002 (4) SCC 353.

²⁴ *M.C. Mehta v. Kamal Nath* AIR 2000 SC 1997

²⁵ AIR 1984 SC 802

²⁶ AIR 1992 SC 1858

accompanied by the right to education. The Court thus declared “the right to education flows directly from right to life”

Having regard to the significance of education to the life of an individual and the Nation and reiterating the earlier judicial pronouncements with approval, the majority of the Supreme Court in *Unni Krishnan v. State of A.P.*,²⁷ held that the right to education was a fundamental right under Article 21 and that “it directly flows from the right to life”. The right is, however, not an absolute right and that its content and parameters have to be determined in the light of Articles 41 and 45, the Court said. These observations of the Apex Court have been acknowledged and incorporated by the constitution 86th Amendment Act, 2002 inserting a new Article 21-A declaring right to education independent fundamental right.

RIGHT TO PERSONAL LIBERTY

The word personal liberty derived from the Latin word ‘liber’ and ‘liberties’ is defined in encyclopedia Britannica as a “State of freedom” which is specially opposed to political subjection, imprisonment or slavery. It is also defined as being from captivity, imprisonment, slavery or despotic control. Chamber’s Twentieth Century dictionary defined “liberty” as freedom to do as one pleases the unrestrained employment of natural rights, “power to free chance”, privileges, exemption, relaxation of restraint, the bounds within which certain privileges are enjoyed, freedom of speech and action beyond ordinary civility. John Stuart Mill defined liberty as “protection against the tyranny of the political rulers”. According to lord Denning, “Liberty” means freedom of every law abiding citizens to think what he will to say that his will and to go where he will on his lawful occasion without let or hindrance from any other person. The freedom must be matched with social security that is the peace and good order of the community in which he lives.

Whatever “Liberty” may mean today, the liberty guaranteed by our bills of rights, said Dean Roscoe Pound is a reservation to the individual of certain fundamental reasonable expectations involved in life in civilized society and a freedom from arbitrary and unreasonable exercise of the power of and authority of those who are designated or chosen in a politically organized society to adjust relatives and order conduct and so are able to apply the force of that society to individuals. According to Justice Khanna “Liberty” postulates the creation of a climate wherein there is no suppression of human spirit^{6s}, wherein there is no denial of opportunity for full growth of human personality. Wherein, is held high and there is no servility of the human body.

Various aspect of the right to personal liberty

The Supreme Court of India has developed the concept of right to personal liberty after the *Maneka Gandhi* case. The Supreme Court has given a new dimension to the article 21 and has laid down new constitutional jurisprudence. A new approach to personal liberty has been discussed below.

Right to privacy

It has been provided by *American Convention on Human Right*²⁸ that everyone has the right to have his honor respected and his dignity recognized. It also state that no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. Any right to privacy must encompass and protect the personal intimacies of the home, the family marriage, motherhood, procreation .and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of that distinctive characteristic of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the

²⁷ AIR 1993 SC 2178

²⁸ American Convention on Human Rights, *Human constitutional Rights Documents*, Chapter 2, Article 11. Right to Privacy

concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty.

Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. 'Liberty against government' a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy. There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might engage in such activities that such harm is not constitutionally protectable by the state. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask and desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures.²⁹

Right to Privacy and disclosure of dreadful diseases

"The standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners." It is under these provisions that the Code of Medical Ethics has been made by the Indian Medical Council which, inter alia provides as under:

"Do not disclose the secrets³⁰ of a patient that have been learnt in the exercise of your profession. Those may be disclosed only in a Court of Law under orders of the presiding judge."

It is true that in the doctor-patient relationship, the most important aspect is the doctor's duty of maintaining secrecy. A doctor cannot disclose to a person any information regarding his patient which he has gathered in the course of treatment nor can the doctor disclose to anyone else the mode of treatment or the advice given by him to the patient. It is contended that the doctor's duty to maintain secrecy has a correlative right vested in the patient that whatever has come to the knowledge of the Doctor would not be divulged and it is this right which is being enforced through these proceedings. It is the basic principle of Jurisprudence that every Right has a Co-relative Duty and every Duty has a co-relative Right.³¹ The case of Mr. 'X' v. Hospital 'Z', decided by Supreme Court deals with 'suspended right to marry'. In that case, a doctor's marriage could not take place as he was tested HIV+ve. He approached the National Consumer Disputes Redressal Commission for damages against the hospital, which revealed that he was infected with HIV. When the claim was rejected by the National Commission, he approached the Supreme Court, inter alia, contending that the right to marry is a fundamental right and, therefore, the hospital must be directed to pay compensation by way of damages.³²

Right to go abroad

Freedom to go abroad incorporates the important function of an *ultimum refunium liberatis* when other basic freedoms are refused. Freedom to go abroad has much social value and represents a basic human right of great significance. It is in fact incorporated as an alienable human right in Article 13 of the Universal Declaration of Human Rights. But it is not specifically named as a fundamental right in Article 19(1) of the Constitution.

Deprivation of personal liberty³³, which inter alia includes the right to eat or sleep when one likes or to work or not to work as and when one pleases and several such rights sought to be protected by the expression 'personal liberty' in article 21, is quite different from restriction (which is only a partial control) of

²⁹ See 26 *Stanford Law Rev.* 1161 at 1187. 955

³⁰ Section 33 of Indian Medical Council Act

³¹ Jurisprudence (legal theory) B. N. Mani Tripathi

³² AIR 2003 SC 664

³³ *Maneka Gandhi v. Union of India* AIR 1978 p. 106-107

the right to move freely (which is relatively a minor right of a citizen) as safeguarded by article 19(1) (d). Deprivation of personal liberty has not the same meaning as restriction of free movement in the territory of India. This is made clear when the provisions of the Criminal Procedure Code in Chapter VIII Relating to security of peace or maintenance of public order are read. Therefore article 19 (5) cannot apply to a substantive law depriving a citizen of personal liberty.

Right to Speedy Trial

The right to speedy trial has been interpreted to be part of fundamental right and personal liberty under Article 21 of the Indian Constitution. A person can be deprived of his liberty only in accordance with the procedures established by law which should be a just fair and reasonable procedure. A procedure cannot be reasonable, fair or just unless it ensures its speedy trial for the determination of the guilt of the person deprived of his liberty. The Court referred to the 6th Amendment to the United State Constitution 1791 which provides "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial".³⁴ Everyone arrested or detained shall be entitled to trial within a reasonable time or a release pending trial.³⁵

Right against public hanging

Although the crime of the accused is very barbaric and shameful against the civilized society which no society can tolerate but a barbaric crime should not have to be visited with a barbaric penalty. Death by public hanging would be a barbaric practice even jail manual of no country makes no provision for execution of death sentence by public hanging.³⁶

CONCLUSION

Indian Judiciary provided excellent interpretation to right to life and personal liberty under Article 21 of the Constitution. The Supreme Court not only explored the instinctive humane qualities of the Article 21 but also established certain procedure to implement them. This makes "Rule of Law" magnificent and meaningful. Each interpretation or the procedure laid down with regard to Article 21 is particularly aimed to achieve justice mentioned in the Preamble through all-round development of the citizens. It is difficult to find such noble, lofty, dignified illustrations and interpretations as provided by the Supreme Court of India to the concept of right to life and personal liberty elsewhere in the world. In this way we can say that the Indian judiciary has played great role while interpreting the right to life and personal liberty by considering the basic and inherent rights for the progress of the society and human being.

END NOTES

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³⁴ Article 3 of the European convention on human rights

³⁵ *Hussainara Khatoon (No. 1) v. Home Secretary, State of Bihar*, (AIR 1979 SC 1360)

³⁶ *Attorney General V. Lachma Devi*, AIR 1986 SC 467

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18. (1877) 94 US 113.
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28. *Samatha v. State A.P.* AIR 1997 SC 3297.
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31. *Re: Noise Pollution*, AIR 2005 SC 3136.
32. *Vellore Citizens Welfare Forum v. Union of India & Others*, 2002 (4) SCC 353.
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38. See 26 *Standford Law Rev.* 1161 at 1187. 955.
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