



Constitutional Guarantees and Covid 19

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Abstract: *The outbreak of Covid 19 pandemic has impacted the Right to life of citizens in many aspects. This paper aims to present the current constitutional guarantees and the role of Judiciary in interpreting the Right to Life in a much wider sense.*

Key Words: *Covid 19, Right to Life, Pandemic*

As rightly observed *“the Indian Constitution is a living document because it is not static and ever developing and having persisted after 104 amendments and still moving ahead to match up with the welfare, needs and requirements of the society”*.

The Constitution of India guarantees to every citizen some basic fundamental rights. Part III of the Constitution of India gives us six basic and important fundamental rights. Fundamental rights are very essential to every person as it protects the rights and liberties against the infringement of powers given to them by government. The object behind the adding an exclusive chapter on Fundamental rights was to institute “a Government of law and not law of man”. In the case of *M.Nagraj vs Union of India*¹, the honorable Supreme Court has rightly noted that Fundamental rights are not a gift from state to its citizens. This rights are very important as they give protection against the arbitrary state action.

As rightly observed by Supreme Court in *Sunil Batra v. Delhi Administration*², the Supreme Court held that the right to life included Right to Live with Human Dignity, the right to live a healthy life so as to enjoy all facilities of the human body in their primary situations. It would include the right to protection of individual’s, traditions, beliefs, legacy and all that gives meaning to one’s life. It also includes the right to live in peace, to sleep in peace and the right to health. The word “life” is more than mere animal existence and it embraces within itself not only the physical existence but also the value of life and the term “**personal liberty**” not only means freedom from detention, arrest, and wrongful confinement but also covers rights and privileges that are essential to live with dignity. One of the very imperative fundamental right is article 21. This article consist of 18 words only, but it has covered a very wide scope of interpreting life and personal liberty. Article 21 of the Constitution says “no person shall be deprived of his life and personal liberty except according to the procedure established by law.” Judiciary have widen the expended the horizons of construing Right to life and personal liberty. The first case wherein the Supreme Court have contemplated the term personal liberty was in the *A.K Gopalan vs Union of India*³. (Preventive Detention Act, 1950). In *A.K. Gopalan* case, the Supreme Court lessened down the meaning and scope of “personal liberty” and said that “personal liberty” means only freedom of the physical body and that Articles 19 (1) (d) and Article 21 have to treated separately. Later on not agreeing with the ratio in *A.K. Gopalan* case, Supreme Court has extended the meaning as well as the expression of “personal liberty” in many cases to arrive at an interpretation that could best safeguard the liberty and freedom of person. In the landmark case of *Kharak Singh v. State of UP*⁴, Supreme Court considered the said regulation as ultra vires Article 21 and Article 19 (1) (d) of the Constitution and held that visits by the police every night to monitor and check the doings of *Kharak Singh* were breach of his right to personal liberty and right to freedom of movement as personal liberty meant much more than mere animal existence.

¹ AIR 2007 SC 71

² (1978) 4 SCC 409

³ AIR 1950 SC 27

⁴ AIR 1963 SC 129



In the case of *Maneka Gandhi vs Union of India*⁵, the Supreme Court overruled the judgment given in *Gopalan's case* but has interpreted personal liberty in enlarged form. It stand as a safeguard of the right to personal liberty. Justice Bhagwati observed, *"The attempt of the Court should be to expand, the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. The wavelength for comprehending the scope and ambit of the fundamental rights has been set by the Court in R.C. Cooper's case and the approach of the Court in, the interpretation of the fundamental rights must now be in tune with this wave length. The expression 'personal liberty' in Art. 21 is of the widest amplitude and covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental, rights and given additional protection under Art. 19(1)."*⁶ Many International conventions, declaration also emphasizes on the importance of right to life of Individuals. Article 6 of International Covenant on Civil and political rights, Art 4 of Charter on Human and People's rights, Article 2 and 3 of the Universal Declaration of Human Rights, 1948, Art 5 of African Charter on the rights and welfare of the Child, Art 4 of Protocol to the African Charter on human and people's right on the Rights of women in Africa, Art 5 and 6 of Arab Charter on Human Rights, Art 2 of European Convention for the protection of Human Rights and Fundamental freedoms, Art 1 of American Declaration of the Rights and Duties of Man, Art 4 of American Convention on Human Rights, articles 2 and 26 of the International Covenant on Civil and Political Rights, 1966, and pursuant to several other United Nations declarations and conventions, every individual is entitled to the protection of the right to life without distinction or discrimination of any kind, and that all persons shall be guaranteed equal and effective access to remedies for the violation of this basic right.

Article 2 of Convention for the Protection of Human Rights and Fundamental Freedoms, guarantees Right to life includes:

1. Everyone's right to life shall be protected intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - a) In defence of any person from unlawful violence;
 - b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c) In action lawfully taken for the purpose of quelling a riot or insurrection.

An attempt is made by researcher to scrutinize the rudiments of Article 21 in the current scenario of Pandemic with comprehensive review of Right to life, personal liberty, right to health, right to medical assistance, Right to food, Right to privacy and right to work by Judiciary. With the beginning of pandemic, the fundamental rights of citizens have being affected in some ways. Below are some of the facets of Art 21 which are comparable to the present scenario and how judiciary have extended the scope of Article 21 passively. The fundamental right to life and personal liberty encompasses within itself the following rights as subheads:

Right to Life and Right to Health:

On the instigating of *Suo moto Writ Petition (Civil) No.3 of 2021*, the Court took note of the extraordinary philanthropic emergency in the current situation of Covid -19 pandemic. Many notices to the Central, State governments and Union territories to make necessary arrangements of Oxygen supply, Vaccination supply and methods of vaccinations, supply of essential drugs and in all hospitals.

Right To Health Cannot Be Obstructed By Those Who Don't Bother To Wear Masks, Maintain Social Distancing. Karnataka High Court has said Right to lead a healthy life is an integral part of Article 21 of the Constitution of India. *"Right to lead a healthy life is an integral part of Indian Constitution. Right to lead a healthy life cannot be obstructed by individuals who do not bother to follow the rules regarding mask, social distancing etc."* the Court said.⁷

The Patna High Court remarks the State's incapacity in providing basic health facilities violates of Art 21 of Constitution. The Court said, *"At this stage, we express our strong displeasure over absence of any comprehensive action plan of the State Government, formulated for meeting the present surge of COVID cases, which was directed to be placed before this Bench. Learned Advocate General Mr. Lalit Kishore, has assured this Court that all necessary steps shall be taken on urgent basis by Patna High Court CWJC No.353 of 2021(7) dt.19-04-2021 10/13 for preparing and presenting a comprehensive action plan to meet the challenge which the State is facing because of COVID-19 pandemic. Mr. Manoj Kumar, the Executive Director, State Health Society, said regarding availability of Oxygen in different hospitals, has informed this Court that in Patna Medical College and Hospital and Nalanda Medical College*

⁵ AIR 1978 SC 597

⁶ <https://indiankanoon.org/doc/1766147/>

⁷ <https://www.livelaw.in/news-updates/karnataka-high-court-covid-19-protocol-violation-of-rules-article-21-172625>



and Hospital, oxygen generating plants are functional and in DMCH process of purity check is in progress and the plant is likely to become functional soon. He has further informed that in several other hospitals, installation of oxygen generating plants is in progress.”⁸

On 12th May, 2021, in PUBLIC INTEREST LITIGATION WP NOS.1172 OF 2021, 1173 OF 2021 & 1174 OF 2021 (Filing) And MISCELLANEOUS CIVIL APPLICATION NO.1196/2021 & 1197/2021 (F) in PUBLIC INTEREST LITIGATION WP NO.1173 OF 2021(F), the Bombay High Court (Goa Bench) said that “Today is the TEST NIGHT ensure that no one dies because of lack of Oxygen as it is violation of Art 21 of Constitution. A bench of Justice M.S Shonak and Justice N. W Sambre remarked that “The Constitution says that no one should be lost, if death occurs due to death of Oxygen, then it is a clear case of violating the fundamental right to life, and it is not acceptable.”

Right to Environment: In the case of Association for Protection of Democratic Rights Vs. State of West Bengal ⁹ [Special Leave Petition (Civil) No. 25047 of 2018], The issue before Court in SLP (C) 25047/2018 was whether Court should allow the Government of West Bengal to cut the trees, in order to construct Road Over Bridges (ROBs) and widen the Roads. It was been inform to Court that ROBs are required to prevent accidents, which are several, over the past few years. As it is a human development concern that has been expressed by the State of West Bengal. It is, however, undisputed that the ROBs can only be constructed after felling of several trees, ages of which are said to be up to 150 years. As per the Report of the Expert Committee submitted before us, primarily, about 50 trees have already been felled and potentially another 306 trees are to be felled. As per the Report, many of the trees can be called 'historical trees', which have 'irreplaceable value' and compensatory afforestation cannot replace trees of this value. It is common ground that the trees cannot be transplanted at some other location.¹⁰

The right to clean and healthy environment has been recognized as the fundamental right under Article 21 of the Constitution of India. Article 48-A imposes duty upon the State to endeavour to protect and improve the environment and safeguard the forests and wildlife of the Country. In addition to this, India is also a party to international treaties, agreements and conferences and has committed itself to sustainable development and growth. This legal framework indicates that sustainable development must remain at the heart of any development policy implemented by the state.

Right to Education: In the case of **Rachna & Ors. v. Union of India & Anr**, the case involved a writ petition filed by various candidates for the Civil Services Examination (CSE), 2020. Because of the onset of the COVID-19 pandemic, the candidates were looking for an additional attempt because many candidates' attempts were exhausted either due to their attempt limits or due to their upper age limit. After examining the Rules 4 and 6 of the Competitive Examination, 2020, the Rules clearly stated the maximum number of attempts along with the age limit, with the exception of certain classes that have been specifically reserved for. It was held by Court that the Central Government does not hold any power to amend the Rules with regard to providing any relaxation in either the number of attempts or upper age limit. It was held that the Rules 2020 does not provide any discretion to Central government for making any such relaxations. It was also cleared by the court that any relaxation if any granted cannot be taken as a precedent for future. The Court relied on the judgment of *M. Selvakumar (2017) 3 SCC 504*, and observed that policy decisions are open for Judicial review if there is use of any arbitrary power or any decision taken against the interest of citizens. It held that judicial review of any policy decision is totally different from issuing a Writ of Mandamus to executive for framing policy and it is within the ambit of the Administrative to make policy decisions based on current situation for smooth functioning of Administration.¹¹

Right to Education and Right to Food: It is the duty of State Government to make endeavour to provide for educational facilities at all levels and also in all situations. Though during the Pandemic situation, the Government have suspended educational institutions to function in Offline mode. All the educational institutions were conducting lectures/periods in online mode. In India, some mass of population is living in rural area, hardly able to manage bread butter for a day, their children suffered during this pandemic period. Because they cannot afford to pay for the basic technology. This has deprived them from their rightful education. Also, through the mid-day meal programme,

⁸ https://www.livewlaw.in/news-updates/corpses-floating-in-ganga-patna-high-court-buxar-kaimur-district-commissioners-disposal-bodies-174059?infinite_scroll=1

⁹ 2021 Latest Case law 162 SC , Judgment Date : 25 Mar 2021

¹⁰ <https://www.latestlaws.com/latest-caselaw/2021/march/2021-latest-caselaw-162-sc/>

¹¹ <https://www.barandbench.com/columns/the-lawyers-digest-supreme-court-judgments-passed-in-february-2021>



children in Government schools were getting necessary nourishment from the meal, but unfortunately it has taken a setback due to Pandemic.

CONCLUSION:

To conclude, a plentiful developments were made to the ambit of Right to Life by Honorable Supreme Court which has meaningfully broadened the scope of this right by adding in its scope important aspects of life which may include shelter, health, education, food, healthy environment and many other such rights. This Pandemic have been an alarm for the legislature to enactment for provisions for Health Emergency in the Indian Constitution.

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