



ARTICLE 21 OF CONSTITUTION OF INDIA AND RIGHT TO LIVELIHOOD

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Abstract

In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. The word 'life' as employed by Article 21 takes in its sweep not only the concept of mere physical existence but also all finer values of life including the right to work and right to livelihood. This right is a fundamental right guaranteed to all persons residing in India, citizens and non-citizens alike. Right to life including right to livelihood and work as guaranteed by Article 21 is not reduced to a mere paper platitude but is kept alive, vibrant and pulsating so that the country can effectively march towards the avowed goal of establishment of an egalitarian society as envisaged by the founding fathers while enacting the Constitution of India along with its Preamble.

Keywords: Article 21, constitution of India, right to livelihood

Article 21 is one of the prime Articles comprised in Part III of the Constitution of India dealing with fundamental rights. Fundamental rights listed in Part III are enforceable against State as defined by Article 12 of the Constitution of India. State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the government of India. As laid down by Article 13 laws inconsistent with or in derogation of fundamental rights to the extent of such inconsistency or derogation are treated to be void. The State is also enjoined not to make any law which takes away or abridges the rights conferred by Part III of the Constitution of India and any law made in contravention of Article 13 shall, to the extent of the contravention, be void. So far as Article 21 is concerned it lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law. The moot question is what is the correct connotation of the word 'life' as encompassed by the said Article. Will it include right to livelihood or right to work or will it connote only bare physical existence? In this connection it is profitable to keep in view the pertinent observations made by learned author Justice B. L. Hansaria in the Introduction to his book:¹

“The fundamental right to life which Article 21 deals with is the most precious human right and ‘forms the arc of all other rights’. What is more, this Article has given to the people of India as much they have wanted from it. We are sure, it is capable of giving more, if they would so want in future. The founding fathers has perhaps not visualized

that a short provision they were embodying in the Constitution has so much potentiality. Hardly ever such a provision has made so long strides as this Article. Dr. Ambedkar and a large part of the Constituent Assembly who has ‘felt dissatisfied’ with the reach of Article 15, as was Article 21 numbered in the draft constitution, to ‘compensate’ which Article 15A was inserted, must be feeling happy in the heaven because of the immense content poured in Article 21 by lesser mortals. The journey is continuing in all its majesty. Law is never still; it cannot be. It has also to be moulded by deft hands to meet the challenge of time, as, it has been well said that life of law is not logic, it is experience.”

Article 21 in Constitutional Settings: This Article is couched in a negative form and enjoins the State not to deprive any person not necessarily only a citizen, of his life or personal liberty except according to procedure established by law. It is axiomatic that the State can deprive any person of his life or personal liberty only through the medium of operation of any law which is a valid law. If any procedural law can validly deprive any person of his life or personal liberty it should comply with the requirements such: The procedure laid down by the said law should be as a result of valid exercise of legislative power by the concerned law making authority. In other words only a competent legislature can enact such law. If the procedure laid down by such law is found to be established by an incompetent legislature such law would be a still-born one or an incompetent one and *ultra vires* the powers of the concerned legislature. Result would be that such a procedure flowing from such invalid law will have no effect on the life or personal liberty of any person governed by the sweep of Article 21; and Even though the procedure established by law is found to have been laid down by a legislature which is competent to

¹ Right to Life and Liberty under the Constitution, Ed. 1993 published by N. M. Tripathi Pvt. Ltd., Bombay.

enact such a law, if such law is found to conflict with any of the fundamental rights guaranteed by Part III of the Constitution then such law would become void and in that eventuality such law enacted by competent legislature would yet be invalid and would be treated as still-born having no impact on the deprivation of life and liberty of the deprivation of life and liberty of the concerned person and Article 21 would fully protect such life and personal liberty of that person.

So far as this second type of infirmity is concerned the relevant Articles which would govern such law as contemplated by Article 21 and in whose light such law will have to be tested are Articles 14, 19 and 22 of the Constitution of India. Article 14 guarantees equality before law or equal protection of law to every person in India. If the procedure laid down by the concerned law does not stand the test of Article 14 such law will not be of any avail to the State for depriving the person concerned of his life or personal liberty as guaranteed under Article 21. Similarly under Article 19(1)(g) all citizens of India amongst others have a right to practice any profession or carry on any occupation, trade or business. Of course, such a right is subject to Sub-article (6) of Article 19 which lays down that nothing in the said sub-clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it related to, or prevent the State from making any law relating to – the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Similarly Article 22 lays down the procedure which should be followed before any arrest or detention of any person is to be effected. If the procedure laid down by any law enacted by the competent legislature falls short of the requirements of Article 22 it will have no effect so far as the deprivation of life and personal liberty of the person concerned is on the anvil. In short in such a case the fundamental right guaranteed under Article 21 will stand untouched so far as such person is concerned. Article 21 also will have to be read in the light of relevant directive principles of State Policy found in Part IV of the constitution of India. As laid down by Article 37 the provisions contained in Part IV shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these

principles are beckon lights for the State both in its executive as well as legislative capacity to be guided by them and these functions of the State have to be monitored in the light of these directive principles. The relevant directive principles for our purpose are found in Articles 39(a) and 41. Article 39(a) lays down that State shall, in particular, direct its policy towards securing, (a) that the citizens, men or women equally, have the right to an adequate means of livelihood; while Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. We have to cull out the correct connotation of the term 'life' as employed by Article 21 keeping in view the constitutional duty of the State as flowing from the aforesaid directive principles of State Policy under Articles 39(a) and 41. A conjoint reading of these provisions, therefore, clearly indicates that it is the obligation of the State while enacting laws in connection with deprivation of life of any person which is protected by Article 21 to see to it that it does not falter in its constitutional obligation of making effective provisions for securing right to work and also for providing adequate means of livelihood to its citizens. It is in the background of the aforesaid constitutional scheme that we now turn to tackle the moot question as to whether right to livelihood or work is covered by the sweep of Article 21 or not.

Salient Features of Article 21: It is true that originally when this Article was cleared by the Constituent Assembly for its inclusion in the Constitution the founding fathers emphasized the term 'life' or the term 'personal liberty' with special reference to incarceration as per the established procedure under any legal and valid law. But the term 'deprivation of life' as employed by Article 21 in its present form cannot necessarily mean total extinction of only physical existence. The term 'life' as employed by Article 21 has received an expanded meaning in the light of a series of decisions of Supreme Court. Life can be extinguished or become worthless for anyone who cannot have adequate monetary support or economic sustenance. If a person is hungry and starving life for him is not worth living. He may be only 'breathing' but he would not be 'living life'. Such hungry people are prone to commit any type of misdeed for eking out their miserable existence. It is with a view to avoid such hunger of persons residing in India that the founding fathers can be said to have enacted Article 21 enjoining upon the State not to deprive any person of his 'life' except by procedure established by law. Therefore, the term 'life' as found in Article 21 must necessarily encompass with its fold right to adequate livelihood and work so that the concerned



person is not reduced to the shadow of his real self and does not merely remain a breathing skeleton. It is of course true that Article 21 is couched in a negative term as contrasted with Article 19(1)(g) which is in positive terms. However that would not whittle down the efficacy and the parameters of Article 21 which guarantees by way of fundamental right to every person residing in India the right to effective and dignified existence with a view to leading a happy and a healthy life. This in its turn would necessarily imply the guarantee of being ensured adequate means of livelihood and work. As Article 21 itself includes a mandate to the State not to tinker with the fundamental rights of persons entitled to lead a healthy life except by enacting valid laws, the directive principles as enshrined in the aforesaid Articles which also operate in the very same field of legislative exercise by the State must necessarily have to be read in conjunction with the mandate of Article 21 and not *dehors* it. When so read it becomes obvious that it will be the duty of the State to see to it that every person residing in India is enabled to enjoy a healthy life by being provided with adequate means of livelihood and right to work. It is of course true that such right to work and guarantee of adequate means of livelihood as enjoined by Article 21 cannot permit any citizen to insist on carrying of any work which is obnoxious by itself or which is illegal as that would cut across Article 19(1)(g) read with Article 19 sub-clause 6 and also Article 14 of the Constitution of India which covers non-citizens as well. Right to work and to carry on any legally permissible occupation or avocation in life with a view to enjoy adequate means of livelihood for leading a healthy and meaningful life would remain well sustained on the combined operation of Articles 14, 19(1)(g) and 21. It is also trite to say that the procedure established by law for cutting across the right of any person to be supplied adequate means of livelihood or adequate opportunities for work by the State also cannot be a procedure which falls foul on the altar of Article 14. Thus before a person can be deprived of his life and personal liberty as guaranteed by Article 21 by any procedure established by law, such law must steer clear of all the restrictions imposed by Articles 14 and 19(1)(g) on the power of the concerned Legislature to enact such laws. If there is any head-of collision of such procedural law with any of the aforesaid fundamental rights Article 13 would start clicking and would invalidate such procedural law.

Article 21 has one more salient feature, namely, Article 21 is available to all persons residing in India whether citizens or not while the positive right guaranteed under Article 19(1)(g) is only available to citizens of India and not to outsiders. In other words the negative injunction contained in Article 21 has a wider field to operate upon and it takes in its sweep even non-citizens while the

positive mandate of Article 19(1)(g) caters to a smaller section of the residents in India. Article 21 knows of no exceptions and is not subject to any proviso unlike Article 19. It takes care of every person living in India, no matter he is a citizen of India unlike Article 19. It opened with an emphatic *not*. Use of the words 'shall' and 'except' makes the command of the people of India the sovereign absolute.

Judicial Review on Article 21: In the case of *Kharak Singh v. State of U.P.*² a Constitutional Bench of the Supreme Court observed "We shall now proceed with the examination of the width, scope and content of the expression "personal liberty" in Art. 21. Having regard to the terms of Art. 19 (1) (d), we must take it that that expression is used as not to include the right to move about or rather of locomotion. The right to move about being excluded its narrowest interpretation would be that it comprehends, nothing more than freedom from physical restraint or freedom from confinement within the bounds of a prison; in other words, freedom from arrest and detention, from false imprisonment or wrongful confinement. We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that "personal liberty" is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the "personal liberties" of man other than those dealt with in the several clauses of Art. 19 (1). In other words, while Art. 19 (1) deals with particular species or attributes of that freedom, "personal liberty" in Art. 21 takes in and comprises the residue. We have already extracted a passage from the judgment of Field, J. in *Munn v. Illinois*,³ where the learned Judge pointed out that "life" in the 5th and 14th amendments of the U.S. Constitution corresponding to Art. 2, means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs - his arms and legs etc. We do not entertain any doubt that the word "life" in Art 21 bears the same signification....." and in this way Supreme Court earmarked a very wide field for the operation of Article 21 for the concept of life and liberty as enshrined therein.

While giving an answer to the question that whether the term 'life' as found in Article 21 would include right to work or right to be assured of adequate means of livelihood Supreme Court in the case of *Olga Tellis and others v. Bombay Municipal Corporation and others*⁴ reiterated that, "As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Art. 21 includes the right to livelihood and since, they will be deprived of their

² AIR 1963 SC 1295 para 17

³ (1876) 94 US 113 at p.142

⁴ AIR 1986 SC 180 para 32-33

livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Art. 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of 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 him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in *Baksey*⁵, that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois*⁶, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh v.*

State of U.P.⁷

33. Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Art. 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The Principles contained in Arts. 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right, to life conferred by Art. 21."

The same view was taken by the Supreme Court while rendering decision in the case of *Delhi Transport Corporation D.T.C v. Mazdoor Congress and Others*⁸ as "The right to life includes right to livelihood, The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them. Both the society and the individual employees, therefore, have an anxious interest in service conditions being well-defined and explicit to the extent possible. The arbitrary rules, such as the one under discussion, which are also sometimes described as Henry VIII Rules, can have no place in any service conditions."

K. Ramaswamy J. in his concurring judgment in the very same case laid down in para 267 that "Before depriving an employee of the means of livelihood to himself and his dependents, i.e. job, the procedure prescribed for such deprivation must, therefore, be just, fair and reasonable tinder Arts. 21 and 14 and when infringes Art. 19(1)(g)

5 (1954) 347 M.D. 442

6 *Supra*

7 *Supra*

8 AIR 1991 SC 101 para 223

9 AIR 1963 SC 109 Para 13



must be subject to imposing reasonable restrictions under Art. 19(5). Conferment of power on a high rank officer is not always an assurance, in particular when the moral standards are generally degenerated that the power would be exercised objectively, reasonably, conscientiously, fairly and justly without inbuilt protection to an employee. Even officers who do their duty honestly and conscientiously are subject to great pressures and pulls. Therefore, the competing claims of the “public interest” as against “individual interest” of the employees are to be harmoniously blended so as to serve the societal need consistent with the constitutional scheme.”

In this connection a judgment rendered by the Supreme Court in the case of *The Board of Trustees of the Port of Bombay v. Dilipkumar R. Nadkaarni and ors.*⁹ must be referred which has been made in connection with Article 21: “...Article 21 mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed bylaw. The expression ‘life’ has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardized and the same can be put in jeopardy only by law which inheres fair procedures.”

As laid down by Bhagawati, J. in the case of *Smt. Maneka Gandhi v. Union of India & Anr.*¹⁰ the law envisaged by Article 21 must stand the test of Article 14 and procedure laid down by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be right and just and fair and not arbitrary, fanciful or oppressive, otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied.

In case of *LIC of India and another v. Consumer Education & Research Centre and others*¹¹ Supreme Court again reiterated the very same principle and observed in para 14 the Article 19 assures freedoms with right to residence and settlement in any part of the country and At 21 by receiving expansive interpretation of right to life extends to right to livelihood. In the case of *M.J. Sivani & Ors. v. State of Karnataka & Ors.*¹² Court held that right to life under Article 21 does protect livelihood but added a rider that its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public moral or public order. It was, therefore, held that regulation of video games or prohibition of some video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair, or unjust. A Bench

of three learned Judges of the Supreme Court in the case of *Chameli Singh & Ors. v. State of U.P. and Anr.*¹³ had to examine the question whether the term ‘life’ as found in Article 21 would include all the components of right to life. Answering the question in the affirmative the following pertinent observations were made in para 8 of the judgment:

“In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter....”

The same view was reflected while delivering the judgment by the Supreme Court in *Dr. Haniraj J. Chulani v. Bar Council of Maharashtra & Goa*¹⁴ that right to live as mentioned in Article 21 includes right to livelihood. However on facts it was in that case that the said right is not denied to a person who is already carrying on a profession of a medical practitioner and who is not permitted to simultaneously practice law. This discussion may be closed by citing a decision of the Apex Court in *Narendra v State of Haryana*¹⁵ wherein the similar view has been taken. It, therefore, must be taken as a settled legal position that Article 21 guarantees to all persons residing in India right to lead dignified life which would include right get adequate livelihood and work and no procedural law can deprive them of this right unless such a law is enacted by competent legislature and is not violative of any the other fundamental rights especially Article 14 and 19(1)(g) of the Constitution of India. Article 21 along with Article 14 and 19, therefore, must be treated as a trinity of rights projecting a golden triangle ensuring a healthy and effective life to all the residents in India including its citizens. These three Articles project an assurance that the promise held forth by the Preamble will be performed by ensuring an egalitarian era within the discipline of fundamental rights.

Conclusions: Now is the time to take stock of the situation for bringing down the curtain. As seen above by a catena of decisions of the Supreme Court spread over decades it is now well settled that the word ‘life’ as employed by Article 21 takes in its sweep not only the concept of mere physical existence by also all finer values of life including the right to work and right to livelihood. This right is a fundamental right guaranteed to all persons residing in India as contradistinguished with only citizens covered by the sweep of Article 19(1)(g). This right cannot be interfered with by the State save and except by a

14 (1996)3 SCC 342

15 AIR 1995 SC 519

10 AIR 1978 SC 597

11 (1995) 5 SCC 482

12 (1995)6 SCC 289

13 (1996)2 SCC 549

procedure emanating from a valid law which should be passed by a competent legislature and which should not come in conflict in any of the other fundamental rights especially those guaranteed under Article 14 and 19(1)(g) in so far as they are available to concerned person invoking such a fundamental right. Though Article 19(1)(g) caters to the needs of only citizens, Article 14 is available to all persons and not necessarily only to citizens. Therefore, Article 21 goes hand in hand with Article 14 and both of them serve the same class of humanity residing in India both citizens and non-citizens. It is of course true that Article 21 is couched in a negative form and cannot be enforced in absolute terms by way of a substantive provision as is the case with the fundamental right under Article 19(1)(g) available to citizens of India. Still, however, the fact remains that the State is prohibited from tinkering with right to work or right to livelihood guaranteed under Article 21 to all residents of India, citizens and non-citizens alike save and except by enacting a procedural law which stands the test of Part III of the Constitution of India and the State has also a positive duty to be guided by the provisions of Articles 39(a) and 41 for making the right to life as envisaged by Article 21 more effective and kicking. It has also to be kept in view that Article 21 is neither suspendable during emergency nor capable of being abrogated or amended and, therefore, the State being governed and guided by the provisions of Article 21 in Part III and the Directive Principles in Part IV in this connection has to see to it that right to life including right to livelihood and work as guaranteed by Article 21 is not

reduced to a mere paper platitude but is kept alive, vibrant and pulsating so that the country can effectively march towards the avowed goal of establishment of an egalitarian society as envisaged by the founding fathers while enacting the Constitution of India along with its Preamble.

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