

*Law*

Article 21 of Indian Constitution with respect to Women and Children's Security

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Introduction:

"Equality is the soul of liberty; there is, in fact, no liberty without it." ~ Frances Wright The constitutional command of right to life and personal liberty under Article 21 the Indian Constitution pervades not only Part III which encompasses the fundamental rights but it transcends Part IV¹². This all pervasiveness of right of life has been occurred and occupied a prominent place during last two decades in India. The total transformation witnessed by this, was a result of several challenges and hazards faced by it. The horizons of right to life have been broadened to the extent that other fundamental rights are not only linked or forged with it, but at the same time new brand or variety of rights have been read into it. The Supreme Court in India has fashioned a lip service but it has become a forum of articulating, remoulding and reinventing the mechanism and the right to deliver justice to millions of starved and shackled Indians.

As we know, Article 21 deals with one of the fundamental rights guaranteed by the Indian Constitution, i.e. "Right to life and Personal Liberty". This right is available against the State action as distinguished from violation of such right by private individuals.

It says that **"No person shall be deprived of his life or personal liberty except according to procedure established by law"**. In case of violation of such rights guaranteed by the Indian Constitution, the aggrieved person must seek remedies under the general law.

It has also been held by Hon'ble Supreme Court in **Behram V/s State of Bombay (1995(1) SCR 613)** that fundamental rights have been put into on grounds of public policy and in pursuance of the object declared in the Preamble; though these rights are primarily for the benefit of individual and hence there can be no question of these rights being waived. Important features of Article 21

- (1) **Person:** - It is clear that all persons included Masculine gender, feminine gender and neuter gender both and also extends to every persons regardless of nationality or the circumstances in which a person is placed. This right is also available to undergoing prisoners.
- (2) **Deprived:** - The second significant feature is deprivation of life or personal liberty of a person. The term deprived came for consideration in the famous case of A.K. Gopalan V/s State of Madras (AIR 1950 SC 27). The validity of his detention challenged on the ground of violation of his right to freedom of movement U/Art.,

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19 (1) (d) which is very essence of liberty guaranteed by Art., 21 of the Constitution.

The majority took the view that total loss of personal liberty which Art. 19 affords protection against freedom guaranteed can be enjoyed by a citizen of India. Deprived does not mean that the court is powerless to interfere when there is threat to the freedom of life of personal liberty.¹

(3) **Life :-** The another important feature is expression 'life'. Right to life under Art., 21 is something more than mere survival or existence. It is something more than mere breathing. In Francis V/s Union Territory (AIR 1981 SC 746) that right to life would include the right to live with human dignity (Chandra Raja Kumari V/s Police Commissioner Hyderabad AIR 1998 AP 302). It includes various kinds of rights like

1. Right against exploitation i.e. a person is not subject to bonded labour, unfair labour conditions. (People's Union V/s Union of India AIR 1983 SC 803)
2. Right to livelihood by legal moral and not oppose to public policy means
3. **Natural justice (A.K. Gopalan's Case and Menka Gandhi Case.)**
4. Right to life with human dignity, (Menka Ganhdi V/ s Union of India AIR)
5. Right of Privacy.
6. Right to shelter.
7. Right to health and medical Assistance.
8. Freedom from Noise.
9. Right to Education.
10. Right to free legal aid.
11. Right against solitary confinement.
12. Right to speedy trial
13. Right against handcuffing.
14. Right against inhuman treatment.
15. Right against delayed execution.
16. Right of fair Trial and investigation.
17. Right to food - Starvation Death.
18. Right to get better environment i.e. Ban on smoking in public places.
19. Protection against illegal arrest.
20. Protection against police atrocities and custodial death.
21. Protections from "Fake Encounter".
22. Compensation for Gang Rape.
23. Prevention of sexual harassment of working women.
24. Living of children with prisoner mother.
25. Overloading school bus violative Article 21.
26. Organ transplantation with consent violative of Article 21.
27. Right to Electricity.²

(4) **Personal Liberty:** - The next important feature is the expression 'Personal Liberty'. It is the widest amplitude and it includes various kinds of rights like



**1. Right of Prisoners****Right to speedy trial (Hussainara Khatoon V/s Home Secretary AIR 1979 SC 1360.)****3. Right of an employment (Board of Trustees V/s Adkarni AIR 1983 SC 109).**

In the light of the decisions of Supreme Court, the word Life Liberty is liberally interpreted. Expansion of Article 21 has led to many of the directive principles, being enforced as fundamental rights. Though it is not in positive form but many decision of Supreme Court have imposed positive impact on the State to take various steps for ensuring enjoyment of life of individual with human dignity.

Article 21 plays a pivotal role in the Indian constitution and the Supreme Court safeguarded to this Article very sincerely and cautiously. But can it is sufficient for offences against women. We have seen that black day of rape of Aruna Shabdag in which she is unconscious since last 35 years can it repay by anyone no, again we are victim of Delhi Gang Rape for which the sole Indian pleaded for positive justice and fighting for it by way of movement against Government, which is too shameful for our country, where a women is worshiped.

This case focuses on the world criminal justice system and definition of such crime and the worldwide people suggested reforming it and providing rigorous punishment to the offenders. The first basic question that whether Article 21 fulfilling the interpretation of human dignity of women's which is part and parcel of the society? It is the Second question that whether a State is responsible for it for violation of directive principle of State policy?

Suggestion: -

1. The women are different from men so it must be need to amend the interpretation of Article 21 i.e. Protection of life included "Secure life" of every person who is in Indian Territory.
2. Life included human dignity and dignity of women is belongs from protection against sexual harassment.
3. Women also have right to move freely it should make possible by providing her facilities by the State as per the direction of State Policy.
4. The Preamble of Indian Constitution declares:

We the People of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens: Justice - Social, economic, Political:

Liberty - thought, expression, belief faith and worship: Equality of status and opportunity: and to promote among them all:

Fraternity assuring the dignity of the Individual and the Unity and the integrity of the Nation.

Secure to all its citizens - indicates the security of all its citizens, whether these objectives fulfilling the intention of the Constituent Assembly in present scenario. So it is need to amend the declaration of Preamble i.e. security of women and children especially should include in the objective resolution of the constitution it can be





helpful for prevention of such inhuman crimes. Even though the Supreme Court interpreted that compensation for sexual harassment is under the purview of Article 21 but compensation is not enough solution for victims it cannot repay the loss of human dignity. So the security should be including in basic structure of the Indian Constitution.

Fundamental Rights add new dimensions to the significance of the judicial role of constitutional interpretation. In the absence of effective enforcement machinery, the fundamental rights will be reduced to mere platitudes. So, the Supreme Court is considered as watch dog of people's fundamental rights and it is a most assertive organ in a democratic system. The interpretation given by the Supreme Court with regard to Article 21 over the years, right from A.K. Gopalan's case would go to show that our Supreme Court through several landmark judgments, has, in a remarkable and extraordinary manner, brought within the ambit of Article 21 of the Constitution several other rights including directive principles of the Constitution and the people of this country owe a great debt to the Apex Court for coming to rescue of every person in so far as protection of 'life' and 'liberty' is concerned.

Reference

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- [2] Dr. Kailash Rai 7th Edition Constitutional Law of India.
- [3] M.P. Jain 9th Edition Indian Constitution.
- [4] Article -21 of the Indian Constitution by Justice N.K.Jain P.N. 2-5 www. Legal India .com from internet

