

“Article 21 and Relationship between Dignified Life and Right to Privacy”

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Abstract:

Article 21 talks about right to life and personal liberty and says that the above rights can't be violated except by a procedure established by law. What is the meaning of the term procedure established by law? Can the procedure established by law be unfair, unjust and unreasonable? Can the law providing the procedure be unfair, unjust, unreasonable and non-arbitrary? Upon whom the restrictions of Article 21 apply? Is Social Justice implicit in Article 21 as in Article 14? What is the meaning of term life under Article 21 does it mean a dignified life? Has right to privacy evolved under the Article 21 an extension of right to dignified life? What is the relationship between dignified life and right to privacy? The author¹ aims to answer these questions. The author has relied on in-depth analysis of case laws, books and statutory materials for his research.

Key words: right to life, procedure established by law, dignity, privacy etc.

Introduction

The word ‘life’ in the Article 21² cannot be limited to only physically being alive or just vegetative state rather it has to have so many implied things within it. Life always means dignified life³ and it means anything and everything which is essential or which goes in the line with the dignified life all that will fall under the word ‘life’. In US the word ‘personnel’ has not been used for ‘liberty’ but in India we have qualified the word ‘liberty’ by the word ‘personal’. So does the word ‘personal liberty’ mean liberty to only arms and limbs? It is not so, personal liberty does not mean freedom or Liberty of just arms and legs it is much broader. When we interpret the word ‘life and personal liberty’ in broader sense to give it a real meaning to these terms and to serve the larger purpose of the Constitution then whatever things are implicit in them they will also become fundamental rights and those fundamental rights will be called implied fundamental right. Implied fundamental rights are those fundamental rights which are not explicitly provided in the text of the Constitution rather which are seen as being implicit in the express terminology used in the fundamental rights. Since they are part of these terms they will be called incidental or implied fundamental. They will be equally as important as terms which are explicitly used in the constitution.

Right to privacy is one of such implied rights which have been recently made explicit by Indian Judiciary in the evolutionary landmark milestone judgement.⁴ Right to privacy was for the first time recognised as fundamental right by the lone dissenting judge H.R. Khanna, j. in

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² Article 21, Constitution of India, 1950.

³ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, 1981 AIR 746, 1981 SCR (2) 516.

⁴ Justice K.S.Puttaswamy (Retired). vs Union of India And Ors., (2017) 10 SCC 1.

Habeas corpus case⁵ which was later reiterated in the privacy judgement⁶ after 40 years. “The right to life and liberty is not created by constitution rather it is only declared and protected by it. This right exist simply because a person exists. Every naturally existing person has a complete control over his own self and it is a part of Article 21. This complete control over oneself is what that guarantees his dignity and without privacy dignity cannot be guaranteed and therefore privacy is the fundamental right of an individual”.

Article 21⁷

Marginal heading of Article 21 says ‘protection of life *and* personal liberty, but the main section says ‘protection of life *or* personal liberty’. The use of word ‘or’ in the main Article which is the operative part means that a person shall neither be deprived of life nor of personal liberty thus the net effect is like ‘and’ only. Life and personal liberty in that sense will have to be read conjunctively (marginal heading is only an introduction but the operating part is the main provision therefore it will prevail⁸) and thus no person shall be deprived of his life or personal liberty. Here the word ‘person’ includes citizen and non-citizens as well therefore neither a citizen nor a non-citizen right to life and personal liberty can be defeated without the procedure established by law.

Upon whom does the restriction of Article 21⁹ apply?

This Article does not uses the word ‘state’ unlike Article 14¹⁰ still essentially this fundamental right will apply against state only but there is a twofold duty on the state.

1. State shall not by its actions deprive a person of his life and personal liberty.
2. The state shall also ensure that the private person do not deprive other private person of their life and personal liberty.

Therefore it does not directly apply to private individuals but to state only but it is implicit that the state itself does not violate and also ensure that other person also do not deprive other persons of life and personal liberty. The state therefore shall make laws to prevent any such depreciation by private person and through its executive access the states shall enforce these laws.

Social justice and Article 21

In spite of the above two duties there is also a third duty upon the state. The state shall ameliorate automatically existing circumstances such as a person is in geographically secluded or backward area where in an individual or any group is automatically discriminated

⁵ ADM Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207.

⁶ *Supra*.

⁷ Article 21, Constitution of India, 1950.

⁸ Rule of Interpretation.

⁹ Article 21, Constitution of India, 1950.

¹⁰ Article 14, Constitution of India, 1950.

against or his dignity of life is lost. The state has a duty to remove such circumstances also and similarly it has the duty to prevent any man made adverse effect on the dignity of life for example discrimination on the basis of caste, on the basis of sex, child labour etc. These are examples of Social Justice at the same time these are examples of loss of dignity by an individual. Broadly, it can be said that the third duty is implicit in the second duty of the state. It is here that it can be concluded that Social Justice is implicit in Article 14 as well as Article 21 as state has to play a proactive role to remove those circumstances and promote fraternity which in turn integrity of nation and dignity of the individual. The state has to be proactive not only in Article 14 it has to be proactive even under Article 21. It is here where the concept of dignity and Social Justice is overlapping each other and we find that Social Justice is not only implicit in Article 14 but also in Article 21 in the term dignified life.

Evolution of Concept of Due Process in India

Due process means requirement for a process to be just, fair, reasonable and non-arbitrary for deprivation of life and personal liberty of a person. It also means fairness and reasonableness in every state action. Due process Clause is the affirmation of constitutional spirit and the constitutional morality principle. In the US Constitution due process was added by the Eighth amendment¹¹ and on the similar lines in India also at the time of framing of constitution it was proposed to add the due process clause but due to the experiences in the US Constitution the framers of the Indian Constitution rejected the proposal and did not add the due process clause to the constitution of India. Instead in Article 21¹² they added a phrase 'procedure established by law' and before the word 'liberty' the word 'personal' was added. In the US Constitution due to the phrase 'due process' the Supreme Court of United States had acquired immense power and started making excessive interference in the executive and legislative functions of the state. Several welfare related laws had been set aside by the supreme court of United States of America due to the phrase 'due process' and also the liberty of the people to freely enter into contractual relations in a free market was curtailed by the US Supreme Court. In India the framers wanted to avoid such circumstances and therefore they did not include the phrase 'due process'. Earlier the phrase 'except according to the established by law' meant that if there is a procedure established by law then as per that procedure a person can be deprived of his life and personal liberty but now after the introduction of due process clause by the Indian judiciary even the quality of procedure that is the procedure now has to be fair, just, reasonable and non-arbitrary. It is true that our constitution does not have any due process clause as in the 8th Amendment of the US Constitution but with the *RC Cooper*¹³ and *Maneka Gandhi*¹⁴ judgement, consequences are the same¹⁵.

¹¹ U. S. Const. amend. VIII.

¹² *Supra*.

¹³ *Rustom Cavasjee Cooper v. Union of India*, AIR 1970 SC 564; 1970 SCR (3) 530.

¹⁴ *Maneka Gandhi v. Union of India*, 1978 AIR 597 1978 SCR (2) 621 197.

¹⁵ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 409.

Procedural Fairness

In the case of *Rustom Cavasjee Cooper v. Union of India*¹⁶ two major aspects were emphasized:

1. Various fundamental rights are not mutually exclusive and therefore Article 14 has to be read together with Article 21 and if any violation of Article 14 is Article 21 shall also be examined.
2. The word procedure established by law is no more just a formality requirement rather now the focus should be on the quality of procedure that is a procedure has now to be fair, just and reasonable.

Procedure cannot be seen as inert now or only in bookish terms, procedure has to have its own constitutional quality that is it should adhere to the basic structure of constitution. Thereafter in the case of *Maneka Gandhi v. Union of India*¹⁷ PN Bhagwati, j. on behalf of the seven judge bench held that the procedure of deprivation of life and personal liberty of an individual has to be reasonable, just, fair and non-arbitrary procedure and also that the fundamental rights are not mutually exclusive. With judgement the due process clause which was otherwise rejected by the framers of Constitution was brought into the constitution through judicial interpretation. Due process for Indian constitution would mean procedural fairness and non-arbitrariness this is a same meaning as due process has in the US.

Substantive Fairness

In *Maneka Gandhi case*¹⁸ essentially it was procedural protection which was guaranteed in the sense that there has to be reasonable, fair, just and non-arbitrary procedure. Basically it was procedural fairness which was talked about in the case. But with the subsequent interpretational and perceptual changes towards the constitution Supreme Court extended the procedural fairness to substantive fairness and it is not only that the procedure has to be reasonable, just and fair now the substantive law also has to be reasonable, just, fair and non-arbitrary. Principle of substantive fairness was for the first time recognised by Y.V Chandrachud .cj, in the case of *Mithu v. State of Punjab*¹⁹ and held that Section 303 of IPC²⁰ is arbitrary, unjust, unreasonable and unfair and hence it is unconstitutional. Substantive fairness means that the quality of reasonableness does not attack only to the procedure established by law rather also to the content of the law²¹. Law depriving a person right to life and liberty cannot be any law it has to be jus, fair, reasonable, non-arbitrary and it should not violate constitutional spirit or morality.

¹⁶ *Rustom Cavasjee Cooper v. Union of India*, AIR 1970 SC 564; 1970 SCR (3) 530.

¹⁷ *Maneka Gandhi v. Union of India*, 1978 AIR 597 1978 SCR (2) 621 197.

¹⁸ *Supra*.

¹⁹ *Mithu v. State of Punjab*, AIR 1983 SC 473.

²⁰ § 303, Indian Penal Code, 1860.

²¹ *Supra*.

Dignified Life and Privacy

The importance of privacy particularly lies in the light of the recent social media and technological development. The word 'life' in Article 21²² essentially means dignified life²³ and anything and everything which goes with the word dignified is included in the word life. Dignified life is a naturally guaranteed life and it is a natural life and is inseparable from individual personality, it is there simply because a person exists. Dignified life means right to have such a life which is worth living according to the standard of the society. Dignified life is also a dimension of concept of rule of law. Preamble clearly mentioned that the ultimate purpose of justice, equality and liberty is to promote fraternity and the fraternity will ultimately assure dignified life. Thus dignified life is a Preambular goal hence it is also a constitutional goal and it is dimension of individual justice. If justice, Liberty and equality of various kinds are denied to an individual the fraternity will get adversely affected and when fraternity gets adversely affected then the dignity will certainly get denied to an individual. Dignity cuts across every fundamental right and it lies at the core of every fundamental right. Fairness and non-discrimination is implicit in every fundamental right and it animates both substantive and procedural laws.

Privacy is an essential facet of dignified life and without privacy dignified life would be incomplete. Privacy is a guarantee against arbitrary state action and it cut across the various fundamental rights same like the concept of dignity. Privacy and dignity are inseparable and it cannot be said that dignity is limited only to Article 21 rather it is to be found in all the fundamental rights the same is the rule with respect to the privacy²⁴. Life and personally liberty isn't something which is created or conferred by the state or by the constitution rather it always existed even before the constitution was framed. Life and personal liberty exist per se as a person exists. Upon the commencement of the constitution as per Article 372²⁵ pre-existing laws and rights continue to remain in the force. Constitution merely acknowledges, declares and protects life and personal liberty²⁶.

Privacy and dignity is about individual autonomy that is freedom of an individual upon his own self. The individual being a natural being carries with himself a full control upon his own self that is upon private, personal, mental or physical space this is what makes him realise life to its fullest that is the best utility of the life. Dignity has both intrinsic and instrumental value, intrinsic value lies in the fact that human dignity exist per se because a person exist. Instrumental value because dignity and freedom are inseparable intertwined and each of them is facilitative tool for the other²⁷.

²² *Supra*.

²³ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, 1981 AIR 746, 1981 SCR (2) 516.

²⁴ Justice K.S.Puttaswamy (Retired). v. Union of India And Ors., (2017) 10 SCC 1.

²⁵ Article 372, Constitution of India, 1950.

²⁶ Smt. Gian Kaur v. The State Of Punjab, 1996 AIR 946, 1996 SCC (2) 648.

²⁷ *Ibid*.

Liberty is broader and privacy is a subset. Privacy has a functional relationship with dignity, privacy promotes and guarantees dignity. Privacy is what that guarantees personal space to individual and the personal space enables an individual to enjoy his life to the fullest and that is what guarantee is a dignity of the individual. Privacy ensures that a person can create a life of dignity to fulfil his desire and aspirations and live a particular life without any intrusion. Privacy is the constitutional Core of all the liberties and it is a foundation of human dignity in Article 21²⁸. A person cannot have a dignified life without privacy being guaranteed to him. Privacy has positive as well as negative components, positive components because there shall not be any unnecessary intrusion into one's privacy and positive concept because it imposes a duty upon the state to ensure that individual privacy is protected.

Dr. D Y Chandrachud, j. in his conquering opinion in the *Sabrimala temple case*²⁹ gives an excellent explanation of privacy and dignity and that the women have their own individual autonomy. Women have the right to control their body. Mensuration is a biological process of the human and it is a part of right to privacy of women. The Mensuration of women is essentially her dignity and excluding women on the ground of purity and pollution is derogatory to her dignity and is violative of right to life and personal liberty under Article 21³⁰. It is also against the principle of natural justice, equity and good conscience and it can always be restricted on the ground of constitutional spirit nothing which is derogatory for a person's basic dignity can be allowed to prevail in society which is based upon the constitutional doctrine which aims at doing away with all forms of injustice. The concept of purity and pollution in reference to a women's natural biological process does not find any place in the constitutional order. Constitutional morality will prevail over any kind of social morality. Constitution is an ever evolving document and the constitutional concepts have to be read in wide and flexible manner so as to reach all forms of injustices. The purpose of constitution of India is to create a compassionate and humane society where in dignity of an individual is of Paramount importance and derogation from that is not at all possible. The Constitution envisages a society where all groups are completely empowered and there is a complete equality of status and opportunity.

Section 479 IPC³¹ (adultery) and Section 377 of IPC³²(unnatural offences) were declared unconstitutional on the same line, every person has individual autonomy and also sexual economy that is every person has right to decide for oneself the person with whom he/she would indulge into sexual activity. Simply because the woman has got married she does not lose a sexual autonomy as she still has a choice to decide upon the person with whom she will get into sexual intercourse whether it is within the marriage or outside the marriage³³. Under Article 21 every person has his or her own individual autonomy. Dignity and privacy is

²⁸ *Supra*.

²⁹ Indian Young Lawyers Association v. The State Of Kerala, 2018 SCC OnLine SC 1690.

³⁰ Article 21, Constitution of India, 1950.

³¹ § 479, Indian Penal Code, 1860.

³² § 377, Indian Penal Code, 1860.

³³ Joseph Shine v. Union of India, 2018 SCC OnLine SC 1676.

essential to individual autonomy and autonomy includes one sexual preferences.³⁴ Thus from the above discussion it can be said that privacy is an extension and part of dignified life.

Conclusion

If a very broad interpretation is given to Article 21 it would have included most of the other explicit fundamental rights for example equality, freedom of speech and expression, freedom of movement, freedom to form unions and associations, educational and cultural rights etc. However framers of the Constitution wrote these fundamental rights separately and expressly in the constitution just in order to make them explicit so that people faith in the constitution and the governance system can we developed, as these fundamental rights were the express demands in the freedom struggle.

The word 'life' in Article 21 relates to dignified life this dignity is only enumerated in Article 21 but also in Articles such as 14,19 etc. Dignity is related to individual autonomy, individual autonomy means and individual has complete control over himself. Absence of self-control within the domain of law cannot amount to dignified life. Life has to be meaningful, purposeful life in this sense life is talked about in the Indian constitution. Dignity and individual autonomy of an individual cannot be there without privacy and therefore if dignity and individual autonomy is essential to Article 21 then right to privacy is also essential to Article 21. Thus right to privacy is one of the essence of dignified life without which life cannot be imagined under Indian constitution.

³⁴ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.