Concept Of Life And Personal Liberty Under Indian Constitution At Present Time

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Abstract-
According to Article 21 of the Indian Constitution “No person shall be deprived of his life or personal liberty except according to procedure established by Law”. Right of Life and personal liberty is not limited to physical existence, it also includes the right to live, while maintaining human dignity. It is a matter of great pleasure that the decision given by supreme court in the case of A K. Gopalan has been superseded by the supreme court in Menaka Gandhi case. The scope of Article 21 is increasing day by day, in which it seems that all those rights which have already been declared as rights at the international level. All the rights mentioned in the International Convention on civil and Political rights,1966 and International convention on economic, social and cultural rights, 1966 and in the Universal Declaration on human rights, 1948 are being subsumed under Article 21. In India, Many of the things that were immoral in the past have become moral in the Present, an example of this is homosexuality, Mob Lynching, etc. In Independent thought Vs. Union of India case supreme court held that Sexual intercourse by a man with his wife age under 18 years is. Indian Supreme Court focus more on individual liberty. Many things that are moral in Western countries are now taking the form of morality in India too. This is also a major reason for expanding the scope of life and personal liberty in India.

Keywords- Life, personal liberty, Morality, International convention, Universal Declaration.

Introduction-
Article 21 has 2 terms, one life and other is Personal liberty. First of all we understand about life, when does it start and when does life end.

Is it When the child comes into this world? or when? Life begins when the unborn child heart beat hits the mother’s stomach for the first time.
Now We have got the answer that, when does life begin but we have not got the answer of when does life end? As long as the last rites (funeral) of a person are not done according to his religion, Till then he will get the benefit of Article 21.

According to section 302 of IPC, when we hang a person, we take away or snatched his life, But before we do so, we follow the procedure established by law. We provide him the full opportunity to put his matter and trial it. We give him full opportunity to speak in his own favour. Provisions has been made for trial under CrPC 1973, he can present his case in his own favour. here Law is 300 and 302 of IPC, 1860 and procedure is given in section 225 to 237 of Cr.P.C., 1973.

In this manner we took the life of a person (Accused) but for this we followed the procedure established by law which is given in article 21 of the Constitution. In this way We haven't done anything arbitrarily.

In the same way, if a person steals, then we pick him up and put him in jail for Maximum 3 years under section 379 of IPC, 1860, so that his personal liberty is lost or taking away.

Here the law is in IPC, 1860 i.e. 379 and the procedure is given in section 238 to 250 of CR.P.C, 1973. It is a matter of great pleasure that the decision given by supreme court in the case of A K. Gopalan has been superseded by the supreme court in Menaka Gandhi case.

Prior to Menaka Gandhi Vs. Union of India¹ judgement article 21 guaranteed the right to life and personal liberty to person against the arbitrary function of the executive only not from legislative function. The State (defined in article 12 of Indian Constitution) could interfere with the liberty of person if it could support its function by a valid Law. But after Menaka Gandhi vs. Union of India case, article 21 of the Indian Constitution, Now protects the right of Life and personal liberty of every person not only from the executive function but from the Legislative function also.

Now at present, for the implementation of article 21 of the Indian Constitution, it is necessary to fulfill the following Conditions, which are as follows –

1. There must be a valid Law,
2. There must be a Procedure prescribed by that Law.
3. The law must also satisfy the requirements of Article 14 and Article 19 of the Indian constitution.
4. Procedure must be fair, just and reasonable.
   According to the Fifth amendment of the USA Constitution fifth amendment says to the federal government that No one shall be deprived of his life liberty or Property except According to due process of Law”.
   - It’s also requires that “due process of Law” be a part of any proceedings that ignore a citizens life, Liberty or Property” and needs the government to restitute citizens when it takes private property for public use.
The 14th amendment of the USA Constitution imposes a similar restrictions on the state authorities.

Fundamental rights under article 21 of the Indian constitution are available to citizens as well as non-citizens, before Menaka Gandhi vs. Union of India case, For the first time, the word Personal liberty was interpreted in A.K. gopalan case. In that case petitioner is a communist leader. He was detained under Preventive Detention Act, 1950. The detention was challenged by Gopalan on the following grounds:

1. He has the right to movement in all over India. Therefore, it violates his right to travel throughout India, which is in the violation of Article 19(5) constitution of India.
2. He also argued that the personal liberty under article 21 of a person shall be deprived only according to procedure established by law and not otherwise and the law also includes the principal of natural justice. He also argued that the word “law” includes principles of natural justice and does not contain such principles, such law would be considered invalid.
3. He also argued that the phraseology “procedure established by law” is used in the same sense as the “due process of law” is used in American Constitution. In short, he argued that the procedure established by law should conform to the principal of natural justice. He challenged the validity of his arrest on the basis of, that it was in the violation of his right to freedom of movement under the article 19(1)(d) of the Indian constitution, which is the Very essential part of personal liberty under article 21 of the Indian Constitution. A.K. Gopalan argued in the Supreme court that, the ban against A.K. gopalan apply by prevention of detection act, 1950. on the freedom of movement must be proper under article 19 (5) of the Indian Constitution. He argued that Articles 19 and 21 should be read together because, article 19 deals with substantive fundamental rights and article 21 deals with procedural fundamental rights. He also argued that, The word which appears in article 21 of the Indian constitution i.e. ‘procedure established by Law’ meaning is equivalent to ‘due process of Law’, which is the concept of USA Constitution. He also said that in USA Constitution “due process of Law” includes the doctrine of natural justice but in article 21, the principles of natural justice have not been included in the “procedure established by law”.

After hearing the both sides, the Supreme Court held that by the majority that in article 21 of the Indian constitution, meaning of Personal liberty is nothing more than the liberty of physical body, that is only freedom from arrest and detention without the authority. it is based on the definition of personal liberty given by Professor A.V. Dicey. According to him, meaning of personal liberty is Freedom from bodily soberity and compulsion which is not sanction by law. The word “Liberty” is very exhaustive and if make sense it is able to counting the fundamental rights introduce in article 19, but by be allowed the word liberty, the supreme court said that the importing of the word “personal liberty is reduced down to the sense given in british Law to the appearance “ liberty of the person”. Article
19 and Article 21 both deal with different aspects and there is no similarity between them. Article 21 deals with full restraints on personal liberty and Article 19 of the Indian constitution deals with partial restraints (Unreasonable restrictions) on the right of movement. A person can take benefit of the freedom given in Article 19 as long as he is freeman but not, if personal liberty of any person is deprived under a reasonable valid law. In A.K. Gopalan case the Supreme Court of India interpreted and clarified that the ‘law’ as “Law made by state or sovereign “ and rejected the plea of gopalan that by the term ‘law ‘ in Art. 21 meant not the state made law but jus naturale or the doctrine of natural justice. but according to Justice Fazal Ali, however, in his dissenting decision held that the Act was liable to be challenged as violating article 19 of the Indian constitution. In A.K. Gopalan case the Supreme Court of India interpreted and clarified that the ‘law’ as “Law made by state or sovereign “ and rejected the plea of gopalan that by the term ‘law ‘ in article 21 meant not the state made law but jus naturale or the doctrine of natural justice.

but according to Justice Fazal Ali, however, in his dissenting decision held that Article 19 of the constitution of India was being violated by the actions of the state. Honorable justice Fazal Ali gave a open and extensive sense to the words ‘personal liberty’ as contains of liberty of movement and locomotion. Therefore, any law which divest a person of his personal liberty must assure the fulfillment of needs of both articles 21 and 19 of the constitution.

The “personal liberty” that the Supreme Court had exercised in the A.K. Gopalan case did not do so in subsequent cases and overturned its decision. In the case of Kharak Singh vs. state of U.P., the Supreme Court held that personal liberty does not mean only physical restraint but also includes many rights and freedoms. The freedom given in Article 19(1) is related to some one species but many rights and freedoms come in the article 21. Many residuary rights have been included in personal liberty under Article 21 of the constitution. The term ”personal liberty” was given a much wider meaning in Maneka Gandhi’s case, setting aside the judgment of A.K. Gopalan’s case. In Maneka Gandhi’s case, chief Justice PN Bhagwati said that “personal liberty’ has a very wide dimension and includes article 19 and article 14 in article 21 of the Indian Constitution.

Personal liberty refers to personal liberty of an individual. When a person is imprisoned or detained, his personal liberty right is violate, personal liberty under article 21 is violated if the person is restricted not in accordance with procedure established by law.

In Menaka Gandhi Vs. Union of India case the passport was confiscated and no reason was given by passport authority to the petitioner and he was also denied the right to be heard. When the petitioner asked the reasons for the confiscation of password but the government refused to give reasons for confiscation of passport in public interest. In this case, the petitioner had the right to go abroad under Section 10(C) of Passport Act, 1967. but the government took action to return passport within 7 days. The confiscation of validity of passport was challenged by petitioner on the following grounds:
1. Section 10(C) of Passport Act, 1967 is encroaching Article 14 of Indian Constitution, as here it gives ambiguous and unrestricted rights to the passport officer.

2. Section 10(C) of Passport act, 1967 confers arbitrary power on the passport authority concerned as it empowers the passport holder to deprive him of his passport without giving him an opportunity of being heard.

3. Section 10(C) violates Article 21 of the Indian Constitution as it deprives him of his right by means of arbitrariness and unreasonable procedure.

4. Section 10(C) of passport act, 1967 violates Article 19(1)(a) because it does not impose reasonable restrictions as per Article 19(2)(6) and hence it is illegal.

At the time of hearing in the Supreme Court, it was stated on behalf of the government that this was done because the presence of the petitioner was necessary to give the Evidence infront of a commission of inquiry. During the hearing of the case, the Attorney General agreed to the latter that he would grant the right of hearing to petitioner and the reason for confiscation of the passport was also given. The Supreme Court held that the procedure used in article 21 means that the procedure which is fair, just and reasonable and The principle of rationality is an essential element of Article 14 of the Indian Constitution, that the procedure must be reasonable to deprive any person of his fundamental rights. Any procedure will be justified only when the principles of natural justice are followed. The principle of natural justice gives humanistic view to law and makes it just. Giving an opportunity of being heard to a person before taking back his passport is an essential element of principle of natural justice.

The scope of Article 21 has been extended by the Supreme Court itself, on the basis of the earlier announcements under Article 21 of the Indian Constitution, the list of some fundamental rights is being given as follows:

1. The right to go abroad.
2. The right to privacy.
3. The right against solitary confinement.
4. The right against handcuffing.
5. The right against delayed execution.
6. The right to shelter.
7. The right against custodial death.
8. The right against public hanging.
9. Right to pollution free water and air.
10. COMPENSATION TO RAPE VICTIMS.
11. COMPENSATION TO PERSONS KILLED IN “FAKE INCOUNTER.(P.U.C.L. Vs.UNION OF INDIA )
12. RIGHT TO SPEEDY TRIAL .
13. RIGHT TO FREE LEGAL AID.,(M.H. HOSKAT Vs. STATE OF MAHARASHTRA)
14. RIGHT TO EDUCATION
15. RIGHT TO DIE IS NOT A F.R.
16. PREVENTION OF SEXUAL HARASSMENT
OF WORKING WOMEN.
17. INTERIM COMPENSATION TO RAPE VICTIM.
18. COMPENSATION TO RAPE VICTIM ( DELHI DOMESTIC WORKING WOMEN’S FORUM Vs. UNION OF INDIA)
19. COMPENSATION FOR VIOLATION OF ARTICLE 21.
GANG RAPE – COMPENSATION CAN BE GIVEN UNDER PUBLIC LAW (CONSTITUTION) (CHAIRMAN RAILWAY BOARD Vs.CHANDRIKA DAS 2000)
20. Right to Privacy ( Justice K.S. Puttaswamy (Retd.) and Anr. v Union of India and Ors 2018.)
22. Right to Sleep ( Ramlila Maidan Vs.Home Secretary, Union of India)
23. Euthanasia ( Aruna Ramchandra Shanbaugh Vs. Union of India)
24. Speedy Trial is Need of in-house Mechanism ( Dilawar Vs. State of Haryana)
25. Mob Lynching ( Tehseen S. Poonawala Vs. Union of India)
27. Eve-teasing ( Dy. Inspector General of Police Vs. S. Samuthiram)
28. Holding hostage of Indians (Gaurav Kumar Bansal Vs. Union of India)
29. Sexual intercourse by a man with his wife age under 18 years is rape( Independent thought Vs. Union of India)
30. Right of women to produce child or refuse to participate in sexual activity ( Suchitra Srivastava Vs. Chandigarh Administration)
31. Right to electricity is right to life ( M.K. Acharya Vs. CMD,WBSE Distribution Company Limited)

In S. Krishna Sradha v. State of Andhra Pradesh the Supreme Court Cancelled Chandigarh Administration Vs. Jasmine Kaur and said that rejection of admission in Medical ( M.B.B.S.) course to a Seeker without any mistake and If a Candidate reaches the Supreme court on time and
does not commit any mistake, he will get the remedy under article 14, 19 and 21 of the Indian Constitution. Only Compensation to such candidates does not fulfill the restitutitional remedies. Compensating such a candidate may be an additional remedy. The list of Cae Laws given above is very small, Scope of life and personal liberty is increasing day by day.

**Conclusion:** The list of case Laws given above is very small, Scope of life and personal liberty is increasing day by day. fundamental rights under Article 21 is increasing continuously, it is impossible to know when it will end. As the society progresses, the scope of rights under Article 21 will also increase. Which is in welfare to the society, that all those rights come under it which are not available anywhere else.

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