

Constitutional Law and Public Administration in India

Prof. (Dr) Sairam Bhat

Centre for Environmental Law, Education, Research and Advocacy (CEERA)

National Law School of India University, Bengaluru

Week- 05

Lecture-04

Article 21

Article 21 of the Constitution of India is one of the most important Articles, apart from being the most important Article in part III of the Constitution relating to fundamental rights. Article 21 talks about protection of life and personal liberty. It says that no person shall be deprived of his life or personal liberty, except according to the procedure established by law. So, if one reads Article 21, it says that protection of life or personal liberty are the two components of it.

Personal liberties are slightly different from protection of life. Personal liberties are your freedoms, what human beings aspire in terms of liberty of thought, process, belief. And the second part is the right to life, which means every citizen has this kind of right which cannot be taken away by the state, however, except by the procedure established by law. Article 21 is the most important provision in terms of protection of citizens' rights. There are a lot of case laws and judicial reviews that have happened and what exactly is meant by what is stated in Article 21. In the 1950s, in a case called *A.K. Gopalan v. State of Madras*, the Supreme Court had taken a very narrow interpretation of Article 21 by holding that the protection that is available under Article 21 for right to life and personal liberty is only available against arbitrary executive action. This was a kind of limited interpretation, which meant that if your right to life is curtailed by legislative action, which is by a law, then you cannot approach the courts and you cannot claim that there is an infringement of Article 21. In *A.K. Gopalan*, the Supreme Court gave the legislature and the law that is made by the legislature, the right to decide the elements of life and liberty, and when such elements of life and liberty can be curtailed. However, when it came to 1978, in the Maneka Gandhi case, things changed as discussed in the chapter on Article 21, because of the 1975 emergency, wherein, the judiciary wanted to uphold constitutional values and constitutional freedoms. The judiciary was asserting itself from legislative and executive interference.

So, there was judicial activism at this point of time, in terms of very prominent processes that could have been laid down. Which means that when an emergency was imposed, a lot of people were arrested arbitrarily through an executive action. Emergency imposition

itself was a kind of a law-making power. To challenge the imposition of emergency and what were the rights available during emergency and how much of life and liberty were curtailed because people were arbitrarily arrested due to the emergency law many processes were laid down. Many of the writs were suspended, like writ of habeas corpus.

Whether the emergency was constitutional or not, could not have been tested going by the *A.K. Gopalan's* judgment. In the *Maneka Gandhi* case in 1978, the Supreme Court of India said that the *A.K. Gopalan* case is not a good law as they did not go in for a wider interpretation of Article 21. And it was ruled that the right to life and personal liberty of a person cannot be declared by any law unless that law is reasonable, fair, and just. So, the executive action is already to be tested on Article 21. However, the parliament or the legislative action will also be tested if it voids life and liberty of citizens.

So, if the law is just fair and reasonable, then to that extent, the procedure established under that law can, to some extent, curtail your life and liberty. And that's why Article 21 says you have the right to life and personal liberty. But they can be taken away by procedure established by law. The *Maneka Gandhi* case laid down a fact of what was very well understood in the American Constitution, which uses the word due process of law, which means that if the law establishes a just process, then life and liberty can be curtailed to some extent, they can be restricted or deprived, but not otherwise. And that due process of law means the law will be just fair and reasonable. Borrowing from the spirit of the American Constitution, the Indian court did lay down the emphasis on procedure established by law in one part of the *Maneka Gandhi* case. But however, due process and procedure established by law have some distinctions and broadly that was how this was laid down or brought into existence.

It means that, the expression procedure established by law, though is quite differently used under the Indian Constitution, it only means that you not only have liberty of the body of the individual, but also of the person's thought and processes which is quite relevant and important in understanding the ambit of right to life under Article 21. Further, the court also defined the meaning and purpose of the right to life as the right to life with human dignity. It's a life that is meaningful, complete, and worth living which is what life would normally mean. So having the widest expression and widest implication of both life and liberty, the Supreme Court, gives a new dimension to the reading of Article 21 in the *Maneka Gandhi* case. Today the right to life and personal liberty has been discussed by the Supreme Court in a lot of cases, in understanding what meaningful life is and what is life with dignity or a life that is complete and worth living. It is also discussed as to when can state actions, which deprive a meaningful, dignified, complete and worthy life be interfered with and when it should not be interfered with? The courts have said, for example, in the state of *Subash Kumar v. State of Bihar*, that the right to environment had qualified this. Later it was expanded as the right to a clean and healthy environment being a fundamental right under Article 21.

So, life includes a decent environment, pollution, free water, and air. It also means protection against hazardous industries and activities. This was the case of *Mr. X v. ZY* of 1997, where a person cannot be regarded as medically unfit and cannot be denied employment, merely on the ground that he was found to be HIV positive. Any kind of discrimination of employment affects right to life is what the court held in this case which means livelihood is the most important aspect of life and a person must be entitled to gain gainful employment and take his livelihood as a matter of right to life. In cases of the violation of right to livelihood, a lot of people have been ignored of their contractual rights where their contractual employment has been terminated unreasonably and unfairly which in turn affects livelihood.

A lot of people have been displaced due to land acquisition that happened due to the land acquisition act of 1894 and without any compensation, resettlement, or rehabilitation. Now whether it affects the right to livelihood? In the *Narmada Bachao Andolan v. State of Madhya Pradesh* 2011, by the Supreme Court, the court held that, if someone is displaced and the state is not sensitive enough in providing compensation, rehabilitation, and resettlement, it amounts to violation of livelihood of individuals. The courts in terms of livelihood have come up with a lot of interpretation under Article 21.

Right to privacy, in current times, has gained a lot of significance. The parliament recently passed the Personal Data Protection Act. The Supreme Court has also decided that the right to privacy is integral to the right to life. It is integral to Article 19, which ensures your freedom. Right to livelihood is a very positive right, that you can claim from the state. that it should not be infringed and you are entitled to livelihood. Right to privacy can be inferred as a negative right. It is sometimes called the right to be left alone. It is the right in which you do not want the state to intervene. The first among the cases in which right to privacy was brought into highlight happens to be the case of *Kharak Singh v. State of UP* in 1964. In this case, the petitioner was accused of dacoity. But later, he was acquitted because of lack of evidence. However, the Uttar Pradesh police insisted on surveillance of the petitioner and this would mean that he, his house would be visited by the police in the night. And he was asked to periodically come and mark his attendance in the police station. His movements were tracked, and so on and so forth. So, the UP police, despite that he was acquitted and there was lack of evidence of his involvement in dacoity, continued to do surveillance of the petitioner. The petitioner filed a case challenging the constitutional validity of the state action. And the court in this case, holding that there is something called right to personal liberty and there is a right to privacy held that, restrictions on one's movement can be only placed in the rest of their circumstances, if it's so necessary for the security and interest of the state. If not, any such actions of the police would encroach on one's private life. Visiting someone's house at night is a violation of privacy.

Personal liberty is something that must be protected at all circumstances at all levels. So the right to privacy has gained a lot of significance and attraction. Recently, a nine-judge

bench of the Supreme Court, Justice Puttaswamy's case, again reiterated that there is right to privacy as a fundamental right under the Constitution of India. *Justice Puttaswamy's* case is important and interesting for the simple reason that today we are in the era of digital information, or the internet which tends to invade a lot of privacy. This kind of invasion of privacy can happen not only by the government, but also by the private sector. Hence, the issue about what is the scope, extent, and definition of privacy in the internet world was discussed by the Supreme Court in *Justice Puttaswamy's* case. And they did hold and reiterate once again that this was an essential part of the freedom of liberty, personal liberty and went on to state that, it is the duty of the state to protect privacy. It is the duty of the state to also provide for a law for the protection of data that is personal in character and nature.

Privacy of an individual and privacy of an institution can be two categories of privacy. But nevertheless, privacy is now enshrined in the Constitution. Globally, the European Union passed a law called the General Data Protection Act, or the GDPR legislation. Globally, the discussion on privacy has taken a lot of attraction. And in India as well, it is found that the law casts a duty on anyone who collects personal information to keep that information in a fiduciary capacity, with trust and confidence, not to divulge this personal information to any third parties and not to use data as a commercial kind of a property and venture.

So, when you collect personal data, you have to protect it, you have to have enough cybersecurity measures so that it is not breached or leaked, and someone does not misuse the same. That kind of right to privacy is also something that is brought about under Article 21 of the Constitution. The next right is right to shelter and is important. Shelter is important because if your life must be meaningful, you need shelter, you need a roof above your head. The right to shelter was enshrined in a case called the *Uttar Pradesh Avas Evam Vikas Parishad v. Friends Corporation Housing Society*. It is a 1996 judgment of the Supreme Court. Tenants are dislodged or displaced immediately on notice of the landlord without having an alternate place to live. So all of these become critical issues. And there are various aspects of your life like personal liberty, and one will have to take due care while deciding right to housing, right to shelter.

Right to health is also very critical and important under right to life. You need a healthy life, and the state has the duty to provide your health so that your life is meaningful, it is dignified, and it is healthy, but it is not only the state. The courts have extended the right to health to say and suggest that such a right must be protected even by private medical institutions and must be respected by doctors who are duty bound to give you emergency medical treatment or medical aid without any kind of expectation of consideration or commercial price.

A doctor will have taken Socrates' oath, which is important to save lives. So, doctors, the government and institutions have a duty to ensure that the right to health of citizens are

adequately protected and they are not influenced in any adverse or other manner. In cases like the *Paramanand Katara* case, it so happened that because of these kinds of accident cases, hospitals were very hesitant to admit patients because it became a medico-legal case. You must call the police and unless you call the police you cannot start the emergency treatment of the patients. In some cases, hospitals reject accident cases and do not give first aid, or emergency care because they fear police action, and they fear that they will be called to the court to be posed as witnesses. So, there is a lot of harassment that the doctors and hospitals face due to which they hesitate in admitting patients and giving them first aid. The Supreme Court changed this whole scenario, declaring the right to health as a fundamental right against both state and non-state actors. It ensures that hospitals will not reject patients, especially if they stabilize and give them fair treatment of emergency and first aid. So, the court comes to that kind of a level to elevate the sufferings that people have done due to accident or due to emergency medical treatment and right to health was declared as a fundamental right under Article 21 of the Constitution.

What is critical here is also to understand whether the right to life includes the right to die. This was a very interesting question that was laid down in a lot of cases like the *Rathinam* case and most importantly in *Gian Kaur v. The state of Punjab* case was decided in 1996. Committing suicide is taking one's own life. There are various means in which it can be done. You take your own life, or you ask the doctors to do it; it is called euthanasia. And whether the right to life can include the right to die. So initially the courts did say that the right to life can include the right to die. So, if you want to take a Samadhi, you want to sacrifice your own life in terms of walking yourself and not eating food or going on a hunger strike maybe. According to the court, the right to life can also be negatively inferred, meaning the right to die. But in *Gian Kaur v. The state of Punjab*, the court had a concern that the state has an interest in your life. There are families that are dependent upon your life. Saying that the right to life also includes the right to die, then that would result in a negative understanding of the concept. Life is to believe, life is positive, life is about gaining and fulfilling the expectations of life. There should be a positive thought and mindset when it comes to the constitutional dimension of life and personal liberty. So, giving someone the right to suicide as a part of Article 21, the courts did not agree with that. However, the courts in cases like the *Aruna Shanbaug* case have said that euthanasia is possible in critical illnesses, where someone is in a vegetative state and is unable to recoup or come back, and the doctors can decide to do what they would like to prefer.

Doctors like the word end of life care. So, taking away their life support system and taking a call on someone's life at such critical junctures, can the doctors and the hospitals take due care of the same. The *Aruna Shanbaug* judgment and the subsequent judgment has said that in India, it is possible to do passive euthanasia, but not active euthanasia. Active euthanasia involves someone being injected with something so that he dies, or someone being given a drug so that his life is taken out. That's an active euthanasia. So, the doctors

assist in your death, and they do an active assistance in your death. That kind of euthanasia, the courts have said, is not something that is permissible and should not be encouraged at all. Because in the legal system that we are currently in, we are not so mature enough, or so advanced that this can be provided for and this could amount to a lot of misuse and abuse, not only by the citizens who wish to take their life, but also by the hospitals and institutions. So the checks and balances will be absent in those cases. However, in passive euthanasia, a team of doctors and if the judiciary through a judge, decides that this is a fit case for committing euthanasia, or as end-of-life care, then a team of three doctors along with the judge can come to this rightful conclusion and the person can be relieved of his final journey. And passive, removal of the life support system may be done. However, again, while this is a judgment, the cases where such a euthanasia has been committed are not so very common for us to discuss or understand, but it is constitutionally recognized.

Right to free legal aid is an essential part of the right to life and personal liberty of the accused. Legal aid is something that every person who is unable to access justice is entitled to. The judiciary has stepped up this kind of a right of free legal aid by establishing the Legal Services Authority, at the state level, at the district level, and then finally at the national level. This authority is usually headed by a very senior judge, and a list of those people who want to be represented in the court as they cannot access the court and the justice delivery system for many reasons. The reasons could be financial or otherwise. Then the Legal Services Authority will appoint lawyers as defense counsels who will represent the accused and they will take their case and costs before the court of law. This also becomes an essential part of the right to life of an accused because an accused should not languish in the jail as an under trial, he has the right to come out on either bail or get a speedy trial. So, the right of both speedy and fair trial is also the right of life. That can only be ensured if legal aid reaches those marginalized sections of the people who have wronged the law, nevertheless, who have the right to get or seek justice from the court of law.

Right against solitary confinement was a kind of a colonial punishment that the jailers were used to. Just because you have been a convict doesn't mean you should be in solitary confinement, which means you don't have the right to socialize, talk. The very basic aspect that even a convict has rights and the convict has the ability to socialize was recognized in this case. And such treatments of solitary confinement in jails was abandoned, the court intervened and said this is something that must be stopped. In the criminal justice system, some of these reforms have helped establish the dimension of human dignity, even to a convict, even to an accused.

Right against handcuffing. Unless there is a threat that the accused is going to escape or if the accused causes any danger to public life, he shall not be handcuffed. Handcuffing was a common practice for every kind of accused. But the court said that is totally unnecessary because it is not a dignified way of treating an individual. And all individuals just because they have been accused does not mean they are hardcore criminals or a threat to society.

So, the right against handcuffing was also something that was pronounced by the courts on the right to life.

Right against inhuman treatment, in which there are so many degrees like, first-degree, second-degree tortures, which are done by the police and by the jailers at time in the prison and in custody. They have this tendency of misusing the power because they are within the four walls of the police station. So, any kind of inhuman treatment, which results in any kind of an injury to an individual in custody would entitle him to get rights. And this is a violation of his right to life. Because inhuman treatment cannot be administered in any democratic society. But the democratic value is that you have dignity even in death, and if anyone infringes the same, especially the state of the police, they are entitled to be punished for the infringement of the right to life.

The sanitation workers are called manual scavengers. Manual scavenging is a prohibited activity, namely, employing people to clean your toilets or toilet drains is completely now prohibited by law wherein you can only use mechanized systems, because a lot of lives were lost. A particular section or caste in the society were working as manual scavengers. Treating them in such a kind of inhuman manner has been now prohibited by law, employing these individuals for such manual work is considered as inhuman treatment and hence, that is also an activity that India and the Indian Constitution does not encourage. Rather for the employing of such manual scavengers, there is a punishment that is prescribed by law and it is a criminal punishment. It is a criminal offense because you are mistreating human beings and employing them for such kinds of jobs.