



COMBATING AGAINST COVID-19 SHOULDN'T MEAN ABROGATION OF RIGHT TO LIFE AND PERSONAL LIBERTY IN INDIA

SHUNMUGA SUNDARAKUMAR. G

ABSTRACT

The right to life and personal liberty in India is guaranteed under Article 21 of the Constitution of India. The right to life includes a bundle of right which was guaranteed to any person living in India. The right to life and personal liberty can be deprived by the state only according to the procedure established by law. The deadly virus COVID-19 forced the Indian Government to announce nationwide lock down and which results in deprivation of certain rights implicit in right to life under Article 21 through notifications. This object of this study is to analyse the rights included in right to life and personal liberty, the restrictions imposed by the state upon various types of people and the role of judiciary in ensuring that combating against COVID-19 shouldn't mean abrogation of right to life and personal liberty in India with the help of the decided cases.

Keywords: Right to life, Personal Liberty, COVID-19





INTRODUCTION

Government of India on 24th March 2020 ordered a nationwide lockdown for 21 days, limiting movement of the entire 1.3 billion population of India as a preventive measure against the COVID-19 pandemic in India¹. The lockdown was extended subsequently in a phased manner to combat COVID-19. The lockdown had created unprecedented violation of rights of the people guaranteed by Indian Constitution and other laws prevailing in the country. In India right to life and liberty is guaranteed by the Constitution of India.

Article 21 reads as:

“No person shall be deprived of his life or personal liberty except according to a procedure established by law”².

Though the phraseology of Article 21 starts with negative word but the word “No” has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. If any act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person. Such violation would not fall under the parameters set for the Article 21. In such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21³.

RIGHT TO LIFE

Right to life is fundamental to our very existence without which we cannot live as a human being and includes all those aspects of life, which go to make a man’s life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21, so many rights have found shelter, growth, and nourishment. Thus, the bare necessities, minimum and basic requirements those are essential and unavoidable for a person is the core concept of the right to life⁴.

¹Jeffrey Gettleman and Kai Schultz, “Modi Orders 3-Week Total Lockdown for All 1.3 Billions Indians” *The New York Times*, Mar. 24, 2020.

²The Constitution of India, art. 21

³Vidhan Maheshwari, “Article 21 of the Constitution of India-The Expanding Horizons” *Available at* <http://www.legalserviceindia.com/articles/art222.htm> (Last Accessed on Mar. 02, 2020).

⁴Riya Jain, “Article 21 of the Constitution of India-Right to Life and Personal Liberty” *Available at* <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/> (Last Accessed on Mar. 02,2020).

The Supreme Court of India has given widest interpretation to right to life in Article 21 and enables the peoples with bundle of rights such as right to live with dignity, right to a decent environment and a reasonable accommodation, right to livelihood, right to health, Right to medical care.

RIGHT TO LIVE WITH DIGNITY

The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Then magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self⁵.

This right to live with human dignity, enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials⁶.

RIGHT TO A REASONABLE ACCOMODATION

Shelter for a human being, therefore, is not mere protection of his life and limb. It is however where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being⁷.

⁵Francis Coralie v. Union territory of Delhi, 1981 AIR SC 746.

⁶Bandhua Mukti Morcha v. Union of India, 1984 AIR SC 802.

⁷Chameli Singh v. State of UP (1996) 2 SCC 549.



RIGHT TO LIVELIHOOD

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 death sentence, except according to procedure established by law. That is but one aspect if the right to life. An equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood⁸.

RIGHT TO HEALTH

Social justice which is a device to ensure life to be meaningful and livable with human dignity requires the State to provide to workmen facilities and opportunities to reach at least minimum standard of health, economic security and civilized living. The health and strength of worker, the court said, was an important facet of right to life. Denial thereof denudes the workmen the finer facets of life violating Art. 21⁹.

RIGHT TO MEDICAL CARE

Art. 21 of the Constitution cast the obligation on the State to preserve life. The patient whether he be an innocent person or a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment¹⁰.

RIGHT TO LIBERTY

The Supreme Court of India has given widest interpretation to right to liberty in Article 21 and enables the peoples with bundle of rights such as right to privacy, right to travel abroad, Right against custodial torture and death.

RIGHT TO PRIVACY

The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a 'right to be let alone'. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None

⁸Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545.

⁹Consumer Education and Research Centre v. Union of India, AIR 1995 SC 922.

¹⁰Pt. parmananda katara v. Union of India, AIR 1989 SC 2039.

can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical¹¹.

RIGHT TO TRAVEL ABROAD

A person living in India has a fundamental right to travel abroad under Art.21 of the Constitution and cannot be denied a passport because, factually, a passport is a necessary condition for travel abroad and the Government, by withholding the passport, can effectively deprive him, of his right¹².

RIGHT AGAINST CUSTODIAL TORTURE AND DEATH

It is axiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law¹³.

The Supreme Court held that 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 satisfied¹⁴.

The rights under the Article 21 remains unaffected even during the emergency and pandemic situations under Article 359. If state violates the right to life and liberty of a person during the pandemic of COVID 19 the person can move application before the courts to protect their rights. Due to the continuous lockdown the above rights are at peril and the Supreme Court of India and other State High Courts also act as redeemer of the above rights.

¹¹R. Rajagopalan v. State of Tamilnadu, AIR 1995 SC 264.

¹²Satwant singh Sawhney v. Assistant Passport officer, New Delhi, AIR 1967 SC 1836.

¹³Smt. Nilabati Behera v. state of orissa, AIR 1993 SC 1960.

¹⁴Maneka Gandhi v. Union of India, AIR 1978 SC 597.

During this pandemic situation the Supreme Court of India take cognizance of the Public Interest Litigation filed by an Advocate for the protection of rights of the migrant workers and directed as follows “The directions issued by the Union of India and the State Governments/Union Territories to provide all basic amenities like food, drinking water, medicines, etc. to the migrants are being complied with by the concerned District Collectors/Magistrates”. Further the Court held “the anxiety and fear of the migrants should be understood by the Police and other authorities. As directed by the Union of India, they should deal with the migrants in a humane manner. Considering the situation, we are of the opinion that the State Governments/Union Territories should endeavour to engage volunteers along with the police to supervise the welfare activities of the migrants. We expect those concerned to appreciate the trepidation of the poor men, women and children and treat them with kindness”¹⁵.

The Supreme Court of India to protect the poor and economically weaker section from COVID 19 ordered for free testing should be afforded to them and passed order as follows:

- i. “Free testing for COVID-19 shall be available to persons eligible under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana as already implemented by the Government of India, and any other category of economically weaker sections of the society as notified by the Government for free testing for COVID-19, hereinafter.
- ii. The Government of India, Ministry of Health and Family Welfare may consider as to whether any other categories of the weaker sections of the society e.g. workers belonging to low income groups in the informal sectors, beneficiaries of Direct Benefit Transfer, etc. apart from those covered under Ayushman Bharat Pradhan Mantri Jan Aarogya Yojana are also eligible for the benefit of free testing and issue appropriate guidelines in the above regard also within a period of one week.
- iii. The private Labs can continue to charge the payment for testing of COVID-19 from persons who are able to make payment of testing fee as fixed by ICMR.
- iv. The Government of India, Ministry of Health and Family Welfare may issue necessary guidelines for reimbursement of cost of free testing of COVID-19 undertaken by private Labs and necessary mechanism to defray expenses and reimbursement to the private Labs”¹⁶.

¹⁵Alakh Alok Srivatsava v. Union of India Writ Petition (civil) No. 468/2020 dated 31.04.2020.

¹⁶Shashank Deo sudhi v. Union of India Writ Petition D.no. 10816/2020 dated 13.05.2020.

A three-judge bench comprising Lordship, Hon'ble Mr. Justice Sanjay Kishan Kaul Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice Ashok Bhushan taken suo motu cognizance of the migrant worker's exodus and pronounced the reportable order of the suo motu Writ Petition by issuing following directions to the Central Government, all States and Union Territories:

1. "All the States/Union Territories shall take all necessary steps regarding identification of stranded migrant workers in their State which are willing to return to their native places and take steps for their return journey by train/bus which process may be completed within a period of 15 days from today.
2. In event of any additional demand, in addition to demand of 171 Shramik trains, as noticed above, railway shall provide Shramik trains within a period of 24 hours as submitted by learned Solicitor General to facilitate the return journey of migrant workers.
3. The Central Government may give details of all schemes which can be availed by migrant workers who have returned to their native places.
4. All States and Union Territories shall also give details of all schemes which are current in the State, benefit of which can be taken by the migrant labourers including different schemes for providing employment.
5. The State shall establish counseling centre's, help desk at block and district level to provide all necessary information regarding schemes of the Government and to extend helping hand to migrant labourers to identify avenues of employment and benefits which can be availed by them under the different schemes.
6. The details of all migrant labourers, who have reached their native places, shall be maintained with details of their skill, nature of employment, earlier place of employment. The list of migrant labourers shall be maintained village wise, block wise and district wise to facilitate the administration to extend benefit of different schemes which may be applicable to such migrant workers.
7. The counseling centre's, established, as directed above, shall also provide necessary information by extending helping hand to those migrant workers who have returned to their native places and who want to return to their places of employment.
8. All concerned States/UTs to consider withdrawal of prosecution/complaints under Section 51 of Disaster Management Act and other related offences lodged against the migrant



labourers who alleged to have violated measures of Lockdown by moving on roads during the period of Lockdown enforced under Disaster Management Act, 2005¹⁷.

CONCLUSION

The Government of India and State Governments came up with severe restrictions on the movement of the people to control the pandemic. The restrictions even encroach upon the fundamental rights granted under Constitution of India. Whenever there is an encroachment on the rights of the people the Judiciary never hesitated to step up to protect the people. It is evident that Indian Judiciary plays a proactive role in protecting right to life and personal liberty to all persons living in this country even during the pandemic times. The Court also extended its arm by way of judicial activism to take suo motu cognizance of the cases where the rights of the common persons were abrogated by the measures taken by the Government to combat against COVID-19 and provided them with appropriate remedies to restore their rights. Thus Supreme Court of India ensured that combating against COVID 19 shouldn't mean abrogation of right to life and liberty in India.



¹⁷ In Re: Problems and Miseries of Migrant labourers Suo Motu Writ Petition (Civil) Nos. 6/2020 dated 09.06.2020.