

THE ROLE OF JUDICIARY TO THE INTERPRETATION AND PROTECTION OF UNENUMERATED RIGHTS IN THE INDIAN CONSTITUTION-A LEGAL STUDY.

A. NARAYANASWAMY
Assistant Professor of Law
Department of Law
Vidyodaya Law College,
Tumakuru city, Karnataka, India.

ABSTRACT:

Unenumerated rights are not expressly enumerated or coded within the frame work of written Constitution. However, these rights are the legal rights inferred from other rights that have been implied by the existing some other sources of written constitution. In the Indian Constitution, unenumerated rights are mainly inferred from Part III and Part IV of the Constitution in the name of Fundamental Rights and Directive Principles of State Policy. For Example Right to travel abroad, Right to privacy, Right to shelter, Right to health, Right to free legal aid, Right against solitary confinement, Right to a speedy trial, Right against handcuffing, Right against inhuman treatment, Right against bonded labor, Right against custodial harassment, Right to emergency medical aid, Right to a fair trial, Right to information, Right to social security, Right to social and economic justice and Right to Environment etc..are unenumerated rights.

However, an independent judiciary is empowered to interpret and protect such unenumerated rights. As per Article 50 of the Indian Constitution, the Indian Judiciary is an independent Judiciary. The Constitutional Courts such as the Supreme Court under Article 32 and High Courts under Article 226 have empowered to interpret and protect the unremunerated rights to ensure and safeguard fundamental human rights. Indeed, the Indian judiciary is more proactive to interpret and protect unremunerated rights. The Supreme Court and High Courts have empowered to exercise judicial review power over the Legislative and Executive actions in case of violations of fundamental rights guaranteed in the Indian Constitution. Apart from the above, we have adopted the Rule of Law, where in there is no scope for any arbitrary actions by governments. The rule of law provides equal opportunities and fair justice which prevents any tyranny actions by administrative authorities also. Perhaps, the Indian judiciary has made a significant contribution to protect the unenumerated rights by exercising Judicial review power and its judicial decisions in this direction as follows;

In the cases of *Maneka Ghandi v/s Union of India*, *Olga Tellis v/s Bombay Municipal Corporation*; *Coralie v/s Union Territory of Delhi etc..* the Hon'ble Supreme Court has interpreted the right to life stated in Article 21 of the Indian Constitution also implies the right to travel abroad in Maneka Ghandi case.

KEY WORDS: 1) Unenumerated Rights. 2) Indian Judiciary. 3) Supreme Court. 4) High Court. 5) Judicial Review. 6) Fundamental Human Rights.

1. INTRODUCTION:

In any written Constitution it is common to written some fundamental rights to safeguard and protect the fundamental human rights of its citizen, but it is highly impossible to mention all kinds of rights in any written form in the Constitution. Perhaps, these kinds of not coded or written rights which protect fundamental interest of people are considered as unenumerated rights. Indeed, such unenumerated rights are interconnected with other forms of fundamental and non-fundamental rights. These unenumerated rights which are also significant and essential to ensure and protect the dignity and humanity of an individual in a civilized legal society. Therefore, independent judiciary can sure to interpret and protect such kind of unenumerated rights.

2. MEANING OF UNENUMERATED RIGHTS:

Unenumerated Rights are not expressly enumerated or coded within the frame work of written Constitution. However, these rights are the legal rights inferred from other rights that have been implied by the existing some other sources of written constitution. In the Indian Constitution, the unenumerated rights are mainly inferred from Part III and Part IV of the Constitution in the name of Fundamental Rights and Directive Principles of State Policy. These Unenumerated Rights such as Right to travel abroad, Right to privacy, Right to shelter, Right to health, Right to free legal aid, Right against solitary confinement, Right to a speedy trial, Right against handcuffing, Right against inhuman treatment, Right against bonded labour, Right against custodial harassment, Right to emergency medical aid, Right to a fair trial, Right to information, Right to social security, Right to social and economic justice and Right to Environment etc.. are some of the unenumerated rights. Strictly speaking these rights are no where mentioned in the constitution, but these are interconnected with the fundamental rights and Directive Principles of State Policy by the interpretation of independent Indian Judiciary.

2. THE LEGAL STATUS OF JUDICIARY IN THE CONSTITUTION:

The Indian judiciary is considered as an independent judiciary and separate from executive under Article 50 of the Indian Constitution.¹ The Constitutional Courts such as the Supreme Court under Article 32 and High Courts under Article 226 have empowered to interpret and protect the unremunerated fundamental human rights.² Indeed, the Indian judiciary is more proactive to interpret and protect unremunerated rights. Constitutionally, the Supreme Court and High Courts have empowered to exercise judicial review power over the Legislative and Executive actions in case of violations of fundamental rights guaranteed in the Indian Constitution. Apart from the above, we have adopted the Rule of Law, where there is no scope for any arbitrary actions by governments. The rule of law provides equal opportunities and fair justice which prevents any tyranny actions by administrative authorities also. Perhaps, the Indian judiciary has made a significant contribution to protect the unenumerated rights by exercising judicial review power by its judicial decisions.

3. JUDICIAL ACTIVISM IN INDIA:

The judicial activism is evolved through the process of judicial review power over executive and legislative arbitrary and unconstitutional actions. The Constitutional Courts such as the Supreme Court and High Courts have judicial review powers for the protection of the Constitutional fundamental rights guaranteed to its citizens. The judiciary has been assigned active role to take positive steps with a view to securing the goals of Constitution. Article 32 Clause (2) Confers power on the Supreme Court to issue appropriate directions or orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari for the enforcement of any of the rights conferred by Part-III of the Constitution in the name of Fundamental Rights. Similarly Article 226 provides that notwithstanding anything in Article 32, every High Court shall have the power, throughout the territorial limits in relation to which it exercises jurisdiction to issue to any person, or authority including the appropriate cases, any governments, within those territories directions or orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-

¹ V.N.Shukla, Constitution of India, Tenth Edition, Eastern Book Company, Page-313, Luck now, 2006.

² Dr.J.N.Pandey, Constitutional Law of India, Central Law Agency, fifty fourth edition, page-413, Allahabad, 2017.

warranto and Certiorari or any of them-(a) for the enforcement of any of the rights conferred by Part-III of the Constitution in the name of Fundamental Rights and (b) for any other purpose.

The Supreme Court has empowered to exercise judicial review power for protecting fundamental rights and liberties of citizens of the country. Perhaps, after independence for the first decade judicial activism almost silent and executive and legislative organs of the government actively dominated and intervened in the working of the judiciary, but it was in 70s, the Apex Court started viewing the judicial and structural view of the Constitution. Whenever either executive or legislature failure to discharge their constitutional obligations, judiciary plays pivotal role to discharge its obligations to protect Constitutional values. In the landmark judgment in *Keshwananda Bharati* case, the Apex Court declared that the executive had no right to intercede and tamper the basic structure of the Constitution. In another case *Sheel Barse v/s State of Maharashtra*,³ a letter was written by a journalist to the Supreme Court regarding custodial violence of women prisoners in jail. Then the Court treated that letter as a writ petition and took cognizance of that matter and issued guidelines to the concerned authorities of the state.

4. THE ROLE OF JUDICIARY TO THE INTERPRETATION AND PROTECTION OF UNENUMERATED RIGHTS:

The Apex Court in several cases on several subject matters interpreted unenumerated rights and gave several decisions to protect such kind of unenumerated rights and they are as follows;

(A). Right to travel abroad and Right to fair justice are relating to Article 21 protection of life and personal liberty.

The right to travel abroad and right to fair justice are nowhere specifically mentioned in the Constitution, but the Apex Court by interpreting declared these are fundamental rights and included in Article 21 of the Indian Constitution and as follows;

In *Maneka Gandhi v/s Union of India*,⁴ in this case the petitioner Maneka Gandhi was issued passport on 1st June 1978 as per the Passport Act, 1967, but on 02nd July 1977, the Regional Passport Office ordered her to surrender her passport without giving any reasons. The petitioner filed a writ petition under Article 32 for violation of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution alleging that section 10 (3) © of the Passport Act, 1967 was ultra virus the Constitution.. Further, the petitioner contended that the administrative order seized the passport on 4th July 1977 was infringed upon the petitioner's rights of freedom of speech and expression, right to life and personal liberty, right to travel abroad, and right to freedom of movement. On the other hand the respondent stated that Article 21 contains the phrase Procedure established by law and such procedure does not have to pass the test of reasonability and need not necessarily be in consonance with the Articles 14 and 19 of the Constitution. Indeed, the Hon'ble Supreme Court attempts to analyze and expanded the scope of Article 21 and the Court was interpreted personal liberty means freedom from physical restraint and coercion which is not authorized by law. Prior to this case Article 21 guaranteed the Right to Life and Personal liberty only against arbitrary actions of executive and not from the Legislative action. Perhaps, Maneka Gandhi's case extended the protection against legislative actions also. In this case, the Apex Court was confirmed the Golden Triangle rule to protect the democracy and fair justice through the procedure established by law and introduced new concept of due process of law. Therefore, in this case the Apex Court stated that it is violation of Article 14, since the aggrieved party was not given opportunity to hear and it was also violation of Article 21, since it does not affirm to the word procedure as mentioned in the clause and confirmed the right to travel abroad is a fundamental right.

³ AIR 1983 SC 378

⁴ AIR 1978 SC 597.

(B). Right to livelihood is a part of right to life under Article 21 of the Constitution:

The right to livelihood connected rights are not mentioned specifically in the fundamental rights by the Constitution, but the Supreme Court declared the right to livelihood is a part of right to life and as follows;

In **Olga Tellis v/s Bomabay Municipal Corporation**,⁵ in this case five judges Bench of the Supreme Court held that the word life in Article 21 includes the right to livelihood also and this case popularly known as the pavement dwellers case. In this case the petitioners had challenged the validity of sections 313,313-A, 314 and 497 of the Bombay Municipal Corporation Act, 1888 which empowered the Municipal Authorities to remove their huts from pavement and public places on the ground their removal amounted to depriving them of their right to livelihood and it was violation of Article 21. The Court held that the above sections were Constitutional and it can be curbed and curtailed by following just and fair procedure. Further, the Court stated that public streets are not meant for carrying on trade and business. However, the Court took a humanistic view and directed the Municipal Authorities to remove them only after the end of current monsoon season. The important facet of life is that no person can live without the means of living, e.g. livelihood. If right to livelihood is not treated to be part of constitutional right to life, it would make human being life impossible to live.

(C).Right to Shelter, Clothing and Adequate nutrition food are relating to Article 21 protection of life and personal liberty.

Indeed, in the constitution, nowhere it is mentioned that the right to shelter, right clothing and adequate nutritious food are as the fundamental rights, but the Apex Court declared these are part of fundamental human rights under Article 21 of the Indian Constitution and as follows;

In the case of **Francis Coralie v/s Union Territory of Delhi**,⁶ the Supreme Court stated that the right to live is not restricted to mere animal existence but also includes the right to live with human dignity which requires the bare necessities of life such as adequate nutrition food, clothing, shelter, facilities for reading and writing and expressing ourselves in diverse forms etc part of right life under Article 21 of the Indian Constitution. . Therefore the rights such as right to shelter, clothing, adequate nutrition food etc... developed due to judicial activism.

Again in **Chameli Singh V/s State o U.P.**,⁷ the Supreme Court was stated that the right to shelter is a fundamental right under Article 21 of the Constitution. The right to live guaranteed in any civilized society implies right to food, water, decent environment, education, medical care and shelter. The right to shelter includes adequate living peace, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and roads.

(D) Right to get Minimum Wage is a Fundamental Right under Article 21:

Right to get minimum wage is not a fundamental right, but it is the directive policy of the state under part-IV of the Indian Constitution, but judiciary interpreted right to get minimum is a part of right to life under Article 21 to ensure right to dignity and standard of life and as follows;

In **people's Union for Democratic rights v/s union of India**,⁸ the Apex Court held that non-payment of Minim wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and ultimately it is the violation of Article 21 of the Indian Constitution.

(E) Right to Privacy is a Right Life under Article 21:

Right to privacy is part of right to life, but it is not specifically mentioned in the written Constitution, but the Supreme Court declared right to privacy is a part of right to life and as follows;

In **R.Rajagopal v/s State of Tamil Nadu**,⁹ in this case the Supreme Court state that the right to privacy or the right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has a right o safeguard the

⁵ AIR 1986 SC 180

⁶ AIR 1981 SC 746.

⁷ (1996) 2 SCC 549.

⁸ AIR 1982 SC 1473.

privacy of his own, his family, marriage, procreation, motherhood, childhood, and education and no one can publish anything concerning the above matters without his consent whether truthful or otherwise. If anybody publishes without his consent, he would be violating the right of the person concerned. However, this is subject to certain exception that if any publications of such matters are based on public records it will be unobjectionable.

(F) Right to health and Medical Assistance is Right to Life under Article 21:

In a welfare state it is the obligation of the state to seek the welfare of all in all aspects, but state has neglected to discharge its obligations, but the Apex Court declared right to health and medical assistance is a part of right to life as follows,

In **Paramananda Katara v/s Union of India**,¹⁰ the Court held that it is the professional obligation of whether government or private to extend medical aid to the injured person immediately to preserve his life without waiting for formalities to be complied with by the police under Cr.P.C. Article 21 of the Constitution casts the obligation on the state to preserve the life.

Again in **Paschim Bang Khet Mazdoor Samity v/s State of West Bengal**,¹¹ the Supreme Court held that denial of medical aid by government's hospitals to an injured person on the ground of non-availability of beds amounted to violation of right to life under Article 21 of the Constitution. In this case the petitioner Hakim Singh was a member of Agricultural labourers organization had fallen from a running train and suffered serious head injuries and brain hemorrhage. He was taken to various government hospitals in the city of Calcutta but because of non availability of beds he was admitted. Finally, he was admitted in the private hospital as an indoor patient and he had incurred an expenditure of Rs.17, 000-00 in his treatment. The Court held that Article 21 imposes an obligation on the state to provide medical assistance to every injured person and failure on the part of providing medical aid by the government hospital results in violation of his right to life and the Court directed the state to pay Rs.25, 000-00 to the petitioner as compensation.

(G) Bonded labour is inhuman practice violates Article 21 of the Constitution:

Article 23 of the Indian ensured to prevent all forms of forced labour are prohibited and special statutory provisions have also made to prevent such kind of in human practices, but the state is failed to prevent such a kind of inhuman practices and the Supreme Court declared that the practice of bonded labour is violation of Article 21 and as follows,

In the case of **Bandhua Mukti Morcha v/s Union of India**,¹² the Supreme Court has read the Article 21 in conjunction with Articles 39 (e), (f), 41 and 42 to state that the bonded labour constitutes the "gross and revolting violation of the constitutional values.

(H) Right to sleep is a constitutional freedom under Article 21 of the Constitution:

For a descent and dignified life a sound sleep is very much required, but such a right is not mentioned in the fundamental rights. However, the Apex Court declared right to sleep as a constitutional freedom under Article 21 that is right to life and decided as follows;

In **Ramlila Maidan v/s Home Secretary, Union of India**,¹³ in this case different age group of women come to attend Yoga training Camp organized by Baba Ram Dev and for which permission had been given women were sleeping at midnight at 1a.m. the permission to hold the camp was withdrawn and section 144 imposed without any notice of it. Then, the police in an attempt to disperse gathering resorted to use of tear gas and lathi charge to disperse the peaceful gathering crowd. The Supreme Court two judges Bench Justice swatanter Kumar and Justice Dr.B.S. Chauhan took suo motu cognizance of the matter and issued necessary directions for it. Justice Dr.B.S.Chauhan Stated that sleep is necessary to every individual for optimal health and happiness and depriving it directly affects the quality of life of an individual. Sleep is a biological and essential ingredient of the basic necessities of life and if sleep is disturbed, the mind gets disoriented and it

⁹ (1994) SCC 632.

¹⁰ AIR 1989 SC 2039.

¹¹ (1996) 4 SCC 42.

¹² AIR 1984 SC 802 ,

¹³ 2012 Cr.LJ 3516 (SC)

disturbs the health cycle. The deprivation of sleep would result in mental and physical torture and amounts to violation of the basic human rights of the crowd to have a sound sleep which is also a constitutional freedom under Article 21 of the Constitution.

(I) Right to get pollution free water and air is a fundamental right under Article 21:

Right to get polluted free water and polluted water are not coded in the written Constitution, but the Supreme Court interpreted the right to get pollution free water and polluted air is a fundamental human right under Article 21 of the Constitution and the decision as follows;

IN **M.C. Mehta v/s Union of India**,¹⁴ in this case the petitioner filed a Public Interest Litigation against Ganga Water Pollution and requiring the court to issue appropriate directions for the prevention of Ganga water Pollution. The Supreme Court held that the petitioner not a riparian owner was entitled to move the Court for the enforcement of various statutory provisions which impose duties on the municipal and other authorities. The Court gave directions the Kanpur Nagar Mahapalike and water pollution control boards to prevent pollution in Ganga Water.

Again in **Subhas Kumar v/s State of Bihar**,¹⁵ the Court held that the Public Interest Litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the right to life under Article 21 of the Constitution.

(J) Right to Speedy Trial and Free Legal Aid are fundamental Human Rights under Article 21:

The Supreme interpreted right to speedy trial and free Legal aid is part of right to life under Article 21 of the Constitution and the decision as follows;

In **Hussainara Khatoon v/s State of Bihar**¹⁶ is a landmark judgment which highlighted the importance of timely justice as an integral part of fair trial and widening the scope of Article 21. This case also threw lights on the importance of free legal aid for the poor section of the society to ensure the right to defend in the court of law by an advocate enshrined in Article 39 A.

(K) Right against handcuffing is a part of Article 21 deals with dignity of human being:

Every human being either within the prison or outside the prison has right to maintain descent and dignified life, but states have made different legal provisions for making handcuffing. However, the Apex Court interpreted right against handcuffing is a part of Article 21 which deals with dignity of human being and the decision as follows;

In **Prem Shankar v/s Delhi Administration**,¹⁷ in this case the validity of certain clauses of Punjab Police Rules were challenged as violation of Articles 14, 19 and 21 of the Constitution. Justice Krishna Iyer delivering the majority judgment held that the provisions were violation of Article 14, 19 and 21 of the Constitution. Handcuffing should be resorted to only when there is clear and present danger of escape, breaking out the police control and for this there must be clear material not merely an assumption. Handcuffing is a prima facie inhuman and therefore unreasonable so over harsh and at the first flush, arbitrary and it deals with the dignity of human being mentioned under Article 21 of the Constitution.

5. FINDINGS AND CONCLUSION

Though the Constitutional Courts have empowered to protect the fundamental human rights but there is delay in deciding decisions. Whenever these fundamental rights have been violated in a society, Judiciary should take suo motu cases immediately without waiting for Public Interest Litigation or social interest litigation in case of grave violation of public rights. Public Interest Litigation petitions shall be disposed expeditiously without any delay which need to protect Public interest. There should be establishment of special courts for Public Interest litigations at the state level for speedy disposal of PIL cases.

¹⁴ (1988) 1 SCC 471

¹⁵ AIR 1991 SC 420

¹⁶ AIR 1979 SC 1369,

¹⁷ AIR 1980 SC 1535

Therefore, a number of unwritten and not coded rights in the Constitution which are fundamental in nature such unenumerated rights have been interpreted and protected by the Indian Judiciary. Besides, the Indian Judiciary has consistently interpreted several articles and included various rights which are necessary for decent human life. Indian Judiciary has been pro-active and guarded the fundamental rights for human existence. The Supreme Court has over the years, elaborated the scope of fundamental rights particularly the right to life and liberty consistently, strenuously opposing intrusions into them by agents of the State, thereby upholding the rights and dignity of individual, in true spirit of good governance. In case after case, the Court has issued a range of commands for law enforcement, dealing with an array of aspects of executive action in general, and of police at the cutting edge level in particular. Based on the above, now the scope of Article 21 has been expanded by the decisions of Supreme Court. In the case of Unni Krishnan v. State of A.P; where the apex court has provided a list of some rights covered by Article 21 of the constitution. Consequently, the unenumerated rights of the constitution and its interpretation from enumerated rights have also been seen in fields of industry, labor and trade practices etc...

REFERENCES:

1. V.N.Shukla, Constitution of India, Revised by Mahendra.P.Singh, Tenth Edition, Reprinted in 2006, Eastern Book Company, Lucknow, India.
2. Dr.J.N.Pandey, Constitutional Law of India, Central Law Agency, 54th Edition, 2017, Allahabad, India.
3. KLJ Publications, Indian Constitution, Puliani and Puliani Publication, Fourth Edition, 2020, Bangalore.

