



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

CONSTRUCTION OF THE RIGHT TO LIFE IN THE INDIAN CONSTITUTION VIS A VIS THE UK AND USA CONSTITUTION

NAME - DEEPALI YADAV, ASSISTANT PROFESSOR, SRI RAMSWAROOP MEMORIAL UNIVERSITY, LUCKNOW

ABSTRACT

The research paper aims to study the trend taken by the Judiciary in analysing the terminology Right to life and personal liberty and the depth of the interpretation taken by it in analysis of it. The research paper tends to address the point as to whether narrow or broad interpretation has been favoured by the judiciary in its decision. Further, the research paper tends to analyse the difference in the interpretation by the courts by adopting a comparative approach between countries of UK, USA and India. Further, the research paper will deal with the contemporary framework adopted by the Indian judiciary in current scenario in further giving meaning to the existence and the scope of the Article 21.

The objective of the research paper is to understand the judicial trend in giving more meaning and depth to Right to Life and Personal Liberty and the objective also tends to focus on the comparative framework by adopting a study of three countries to find out the difference between them so as to analyse the scope of Article 21. Moreover, the objective also lies in studying the judicial approach in current context, the manner adopted by the courts to realise the significance of rights of the individuals which will in turn help in understanding the significance of Article 21.

KEYWORDS:- Personal Liberty, Right To Life, Fundamental Right, Due Process, Procedure Established By Law, Due Process Of Law

1. INTRODUCTION:-

Right to life is the most essential of every basic freedom, and any choice influencing human existence or which might put a singular's life in danger should require the most restless examination. The sacredness of human existence is likely the most crucial of the human social qualities. It is perceived in completely edified social orders and their general set of laws and by the globally perceived assertions of common freedoms. Right to life and individual freedom are summary terms that incorporate an assortment of privileges and traits. The extended importance incorporates the option to hold a specific assessment, to support and sustain that assessment. Article 21 is an announcement of profound confidence and faith in fundamental rights. Article 21 however framed in an adverse language gives on each individual the basic right to life and fundamental right. Article 21 is an announcement of profound confidence and faith in basic freedoms. In this example of assurance woven in Part 3 of this Constitution, individual freedom of man is at the base of Article 21 and every articulation utilized in this Article improves human poise and qualities. The articulation "individual freedom" is utilized in a succinct term to incorporate inside it's an assortment of privileges of an individual which go to make up "individual freedom" of a person.

2. MATERIALS AND METHODS:-

The research paper would take into account various primary and secondary literature to study the topic of the research paper and the research paper would follow the doctrinal research methodology thereby studying the existing literature to come to the build-up of the effective analysis on the above-mentioned taken topic

3. **RESULTS AND DISCUSSION:-**

A. **REFLECTION OF ARTICLE 21 IN OTHER CONSTITUTIONS:-**

AA). ENGLAND:

In Magna Carta (endorsed by King John in 1215), it was requested that: "No liberated individual will be taken, or detained, nor will the King submit him to jail, except if by the judgment of his friends or the rule that everyone must follow". This interest was repeated in the Petition of Rights, 1628, and from that point forward the recognition of this standard has set up what is known as the Rule of Law in England. The expression 'fair treatment of law' was first utilized in a sculpture of the fourteenth century and the designers of the American Constitution seem to have acquired the expression from that point. In any case, under the English Constitution, the articulation 'tradition that must be adhered to' has an unexpected significance in comparison to the 'fair treatment of law' of the American Constitution. In England, 'law' signifies the law as pronounced by Parliament.

(AB). U.S.A.:-

The Fifth Amendment to the Constitution of U.S.A. (1791) announces:- "No person shall be denied of his life, freedom property, without due process of law". The Fourteenth Amendment forces comparative limits on the State specialists. These two arrangements are helpfully alluded to as due process clauses. Fair treatment is helpfully perceived means procedural routineness and decency. While in England, all that Parliament orders are 'tradition that must be adhered to', an administrative establishment, in the U.S.A., isn't 'law' except if it is in similarity with 'due process. Since the assurance applies likewise against the Judiciary, it follows that any judicial proceeding which relinquishes the life or freedom of an individual, notwithstanding how blameworthy he might be, without consenting to the procedural prerequisite of due process, should be held to be invalid.

(C). WEST GERMANY:-

Art. 2(2) of the West German Constitution(1948) announces:- "Everybody will reserve the right to life and physical inviolability. The freedom of the individual will be sacred, these privileges might be meddled with just based on the legitimate request". Procedural assurance is given by Arts. 103(1) and 104. Craftsmanship. 104(1)- (2) gives that the opportunity of the individual might be limited distinctly based on a proper law and just with due respect to the structures recommended in that. Just the Judges will settle on the tolerability and proceed with the hardship of freedom. These arrangements relate to Art. 21 of our Constitution and the court is enabled to set a man to freedom assuming apparently he has been detained without the power of a proper law or in contradiction of the procedure recommended in that.

(D). JAPAN:-

Art. XXXI of the Japanese Constitution (1946) says:- "No person will be denied of life or freedom nor will some other criminal punishment be forced, besides as indicated by strategy set up by law". This article is like Art. 21 of our Constitution save that it incorporates other criminal punishments, like fine or relinquishment inside its ambit.

B. SCOPE OF ARTICLE 21:-

While inspecting the width, degree, and content of the articulation "individual freedom" in this Article, it was held in Kharak Singh v. Province of U.P, that the term is utilized in this Article as a succinct term to incorporate inside itself all assortments of freedoms which goes to make up the "individual freedoms" of man other than those managed inside a few provisos of Article 19(1). The Court for this situation acknowledged the dispute of the solicitor that domiciliary visits abused his own freedom. It proclaimed Regulation 236(b) of the Uttar Pradesh Police Regulations which approved domiciliary visits around evening time, void and held that opportunity of residing in one house without aggravation was a piece of the idea of individual freedom. While Article 19(1) manages specific species or properties of that opportunity, "personal liberty" in Article 21 takes on and involves the buildup

C. PERSONS:-

While the rights under Art.19 are bound to citizens, the assurance of Art.21 is stretched out to all 'people', including outsiders. (Loius v. Association of India, (1991) 3 SCJ 141). However, the right of outsiders are bound to article forever and freedom and do exclude the right to live or remain in India. It was held that the force of Government to oust outsiders is outright and limitless and there is no arrangement in this Constitution shackling its watchfulness and the chief government has unlimited right to remove an outsider.

D. LIFE:-

The right to life which is the most principal of everything is additionally the hardest to characterize. Absolutely it can't be bound to assurance against the removing of life; it should have a more extensive application. Concerning a comparing arrangement in the fifth and fourteenth amendments of the U.S. Constitution, which says that no individual will be denied of his "life, freedom or property without fair treatment of law", in Munn v. Illinois, Field J. talked about the right to live in the accompanying words:- "by the expression "life" as here utilized something more is implied than simple creature presence. The

restraint against its hardship reaches out to that large number of appendages and resources in which life is delighted in. The arrangement similarly denies the mutilation of the body by the removal of an arm or leg, or the putting out of an eye, or the annihilation of some other organ of the body through which the spirit speaks with the external world." This explanation which has been more than once cited with endorsement by our Supreme Court has been additionally extended in Francis Coralie v. Union Territory of Delhi, by the explanation that any demonstration which harms or harms or meddles with the utilization of any appendage or workforce of an individual, either for all time or even for a brief time, would be inside the restraint of Article 21".

E. PERSONAL LIBERTY:-

The articulation "Freedom" in the fifth and fourteenth changes to the U.S. Constitution has been given an extremely wide importance. It takes in all opportunities. As per Blackstone¹, the right of individual freedom incorporates the force of velocity, of evolving circumstances, or eliminating one individual to whatever spot to one's tendency might coordinate, without detainment or restriction, except if by proper way of law". Liberty of social man comprises in the insurance of over the top activity in or high a degree as a similar case of security of every individual concedes to, or in the most productive assurance of his privileges, claims, interests, as a man or resident or of his humankind showed as something social. In Munn v. Illinois², it was said that, "by the term 'freedom' as utilized in the provision(Fifth Amendment) something more is implied than simple independence from actual restriction or obligations of a jail".

F. PROCEDURE ESTABLISHED BY LAW:-

'Procedure signifies the way and type of authorizing the law. Art.21 basically implies that one can't deny a man of his own freedom, except if he follows and acts as per the law which accommodates the hardship of such freedom. The articulation, "strategy set up by law" in the Constitution is similar to the law proclaimed in McNabb v. US³, wherein it was held: "the historical backdrop of freedom has generally been the historical backdrop of the observances of procedural shields". Any law meddling with the individual freedom of an individual should fulfill the triple test;(1). It should recommend a strategy. (2). The strategy should endure the trial of at least one of the major privileges presented under Art.19 which might be material in a given situation. (3). It should likewise be obligated to try concerning Art.14.

The Supreme Court in Maneka Gandhi v. Union of India⁴ changed this appalling position and gave a major person to one side in Article 21. This the Court did by building up a connection between Articles 14, 19, 21 which had evidently been denied in Gopalan, especially in regard to Articles 19 and 21. Bhagwati, J., who conveyed the main assessment for this situation, held that the law should now be taken to be all around settled that Article 21 doesn't bar Article 19 and a law endorsing a methodology for denying an individual of 'individual freedom' should meet the prerequisite of Article 21 and furthermore of Art.19 just as of Art.14.

G. ESTABLISHED BY LAW:-

By the utilization of the above words, our Constitution acknowledges the English guideline of incomparability of the law, in inclination to the American regulation of judicial review of legislation, most definitely. Freedom as per this view, as we have seen is a "freedom bound and constrained by law". "Law" in this articulation implies State made or ordered law and not the overall standards of normal justice. (Gopalan). The procedure established by law accordingly implies a system recommended by the Legislature. "Art. 21 manage the cost of no insurance against skilled legislative action in the field of substantive criminal law, for there is no arrangement for judicial review, on the ground of reasonableness or in any case of such laws".

H. GOPALAN: 1950:-

Before long the Constitution had come into power, the Supreme Court was called upon to characterize the extent of individual freedom in A.K. Gopalan case. Gopalan, a socialist chief, was confined in the Madras prison. He had been in detainment starting around 1947. He was condemned to different terms of detainment under the common criminal law yet every time the sentence was saved.

I. DUE PROCESS OF LAW:-

Due process has two perspectives. Substantive due process conceives that the meaningful arrangements of law ought to be sensible and not subjective. Procedural fair treatment imagines a sensible strategy, i.e., the individual impacted ought to have a reasonable right of hearing which incorporates four components; (1). Notice,(2). Freedom to be heard,(3). A fair-minded court and (4). A precise technique. The 'fair treatment' provision has been utilized by the U.S. High Court to broaden both procedural and substantive protections to "Life, freedom, and property."

¹ Blackstone's Commentaries, Book 1, P.134.

² 94 US 113.

³ 318 US 332.

⁴ AIR 1978 SC 597.

REFERENCES:-**ARTICLES:-**

1. Right To Privacy In India: A Constitutional Perspective, By 'A. Subrahmanyam' ,Journal Of Constituional And Parliamentary Studies, Page No 74-83.
2. Environment Protection And Judicial Activism, By 'Ms Shashi Bala, Journal Of Constitutional And Parliamentary Studies, Page No-140-152.
3. Right To Social Security: A Fundamental Right Under Right To Life, By 'Dr. S.Sjaiswal And Dr. M.K Pandey', Indian Bar Review, Page No 37-53.
4. Expanding Horizon Of Human Right To Legal Aid : Right Of Hon'ble Judges P.N Bhagwati And V.R. Krishna Iyer, By 'Dr Jal S. Singh, Indian Bar Review, Page No 85-112.
5. Sustainable Development : An Important Tool For The Protection Of Right To Environment And Right To Development , By "Aneesh V. Pillai.
6. Speedy Trial And Criminal Justice System In India A Juristic Study, By Krishna Kant Diwedi, Cnlu Law Jornal, Page No 112-123.
7. Custodial Violence Under Police Custody: A Serious Problem In India, By 'Dr. Om Prakash Singh & Dr. T.N Mishra' , The Legal Analyst, Page No 82-88

BOOKS:-

1. M.P.Jain, "Indian Constitutional Law", Sixth Edition, Lexis Nexis Butterworths Wadhwa.
2. Durga Das Basu, "Commentary On The Constitution Of India", Eight Edition, Volume 3, Lexis Nexis Butterworths Wadhwa.
3. V.N. Shukla, "Constitution Of India", Tenth Edition, Eastern Book Company.
4. J.N. Pandey, "The Constitutional Law Of India", Forty Seventh Edition, Central Law Agency.

WEBSITES:-

1. <http://nhrc.nic.in/press-release/right-food-fundamental-right>
2. <https://globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-union-india/>
3. <https://www.firstpost.com/india/right-to-privacy-scs-verdict-on-ks-puttaswamy-case-is-landmark-but-may-raise-few-law-and-policy-issues-3988913.html>
4. <https://www.myadvo.in/blog/right-to-marry-in-india-hadiya-case/>, last visited on Nov 3, 2019 ,time 5:30PM).
<https://edition.cnn.com/2019/11/05/asia/delhi-smog-pollution-court-intl-hnk/index.html>