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Covid-19: Impact on Right to Life and Personal Liberty



In the advent of delving into one of the most debated issues that has evolved over the years and has tremendous effects on the basic ethical principles and most importantly, the sanctity of life, the valuable words of Thomas Jefferson¹ touch a chord:

“The care of human life and happiness and not their destruction is the first and only legitimate object of good governance.”

A right to life is a right to have or strive for whatever one needs to live, provided that having it does not violate rights of other beings.

In a free, democratic society, each of us has a right to health, a right to privacy, a right to food, a right to livelihood and right to education. But have we ever stopped to wonder what it is that guarantees us these rights? All of this, and much more is guaranteed by eighteen words

enshrined in the Constitution of India.

Article 21 of the Constitution says –

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

These eighteen words guarantee us the right to live, meaning no one can injure us and get away with it; meaning we cannot be illegally deprived of our personal liberty. This means that a person’s life and personal liberty can only be disputed if that person has committed a crime.

It is interesting to note that the founding fathers have perhaps never visualized that a short provision that they were embodying in the Constitution has so much potentiality. In fact, the history of framing Indian Constitution and debates of Constituent Assembly clearly reveals that they were not very enthusiastic about judicial creativity. They believe that the job of the judge is law application and not the law creation. Therefore, though they conceded to the courts the power of judicial review but at the same time thought that it should remain caged and cabined. They curtail the scope of judicial creativity as much as they could do consistently with the power of judicial review. The recipe which they invented to achieve this purpose was the drafting of the Constitution in all details and the use of specific language avoiding open textured words and phrases. This philosophy of the framers is clearly reflected in the wording of Article 21. As a part of this very pattern they have preferred the word ‘procedure established by law’ in place of ‘due process of law’ and prefix the word ‘liberty’ with the adjective ‘personal’ in Article 21.

But the irony is that the provision which was intended to leave no scope for judicial innovation, has in less than half a century after the commencement of the Constitution become the epitome of judicial creativity. Article 21, which was thought of as the most celebrated example of specificity in the use of language has proved to be the most convenient vehicle for the Hon’ble Supreme Court to constitutionalize new values and to extend constitutional protection to many new claims and interest².

In the background of the aforesaid, this article seeks to analyse the elements of Article 21 in the light of the current situation with an extended view of right to life, right to health, right to education, right to food and right to privacy.

With the inception of the lockdown, the fundamental rights of citizens have been entailed. Despite several thoughtful initiatives taken by the state governments, the enforcement of the same has been a fight.

Hereinafter are the aspects of Article 21 running parallel to the present pandemic:

1. Right to Life

Taking into account the situation of Covid-19, the Ministry of Home Affairs issued directions to the state governments and authorities to ensure that all the employers make payment of wages to their workers on the due date and the said wages shall under no circumstances be deducted. Further, the wages must be made for the period the establishment/industry/shops are under the closure during the lockdown. It is pertinent to mention that the Hon’ble Supreme Court in

Peoples Union for Democratic Rights v. Union of India³ held that non-payment of minimum wages to the workers is a denial of their right to live with basic human dignity and violation of Article 21 of the Constitution.

As mentioned earlier that the enforcement of initiatives is a fight because certain institutions in the informal sector are breaching the directions issued by the government. From deducting wages to dismissing a percentage of employees to further delaying payment of wages, a few sectors in the economy are practising these violations.

2. Right to Health

In the present circumstances the health and welfare of our nation is at stake which brings forth the Fundamental Right of 'Right to Health' in the spotlight. The ones infected by Covid-19 as well as the ones working on the medical front, are all equally entitled under the right to health and medical care.

However, the government suffers from inadequacies of medical apparatus required to contain a pandemic like this. From the shortage of testing kits necessary to examine the patients with Covid-19 to the unavailability of adequate Personal Protective Equipment essential for the wellbeing of the healthcare workers, the state is unable to provide for both.

Several reports coming in from countries effected by Covid-19 indicate that the absence of Personal Protective Equipment has caused the spread of infection among the healthcare workers. The same situation can arise in our country leading to the spread of infection amongst the medical practitioners.

It is noteworthy to bring into consideration the landmark judgment of **Consumer Education & Research Centre (CERC) and others v. Union of India and others**(4) wherein the Hon'ble Supreme Court held that "the compelling necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependents should not be at the cost of health and vigour of the workman". Thereby, bestowing Personal Protective Equipment and other necessary safety supplies to the healthcare sector is the obligation of the state governments, ignoring which will be a grave contravention of the Fundamental Rights of the healthcare workers.

3. Right to Education and Right to Food

The State Government is under an obligation to make endeavour to provide educational facilities at all levels and under all circumstances. However, considering the pandemic situation, the state governments have suspended the educational institutions.

It is well known that a large chunk of the Indian population cannot pay for the basic technology which is currently being utilised to provide for the lost school hours. It goes unsaid that this deprivation is denying our country's youth from attaining their rightful education.

Further, the mid-day meal programme acts as a knight in shining armour for the government schools, but unfortunately it has taken a back seat due to Covid-19. From providing necessary nourishments to covering for the cost of a child's meal, the mid-day meal initiative deserves an alternative in the current scenario.

Reflecting upon the element of 'Right to Food', the state governments have time and again assured constant availability of food stock to ration shops. However, these measures have turned impractical in the present-day situation as reports show that in various states many poor people struggle to get food and the migrant residents who do not possess a BPL card are considered unsuitable to avail food grains from ration shops.

4. Right to Privacy

In order to contain the spread of Covid-19, there has been several instances wherein the state governments have released the personal data of people who have been quarantined. This data pertains to the names, passport numbers, residential addresses and phone numbers. Every citizen has the rightful authority over their personal data. For the protection of 'Right to Privacy', such data should not be released without the consent of its lawful possessor.

Further, the launch of Aarogya Setu App is a significant development by the government in these trying times. The app obtains data from the user about their health and further utilises it to keep a record of their movement and health. The data obtained by the app thereby helps the community in being vigilant and informed about their surroundings thereby alerting its user if they have come in contact with a Covid-19 positive patient.

This functioning of Aarogya Setu App attracts the ambit of right to privacy. At present, use of the app is entirely voluntary, however, many organisations have mandated the use of this app in their daily operations to identify the potential cases. To prevent misuse of this intricate data, the state governments should ensure systematic use of records and must take all necessary measures to protect the same.

Conclusion

To conclude, as numerous advances were made in the field of Right to Life, the Hon'ble Supreme Court has significantly widened the scope of this right by including in its ambit all which is essential to live a life with human dignity which includes shelter, livelihood, health, education, privacy, healthy environment and many other rights.

The effect of Covid-19 has called attention to the elasticity of the existing fundamental rights thereby bringing forth the prevailing loopholes of the system into light.

This pandemic has acted as a magnifying glass, compelling the government to read in-between the lines of the Constitution. There is a wide gap between the reality and the existing laws as the state governments suffer from an implementation failure.

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[1] Thomas Jefferson was an American statesman, diplomat, lawyer, architect and philosopher who served as the third president of the United States of America from 1801 to 1809.

[2] H.M. Seervai, "Constitutional Law of India", Universal Book Traders, (2002), pg. 1134.

[3] AIR 1982 SC 1473.

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