



Impact of covid19 on fundamental rights of Indian constitution (Special Reference of article 21)

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Abstract

The outbreak of COVID19 has affected all segments of the population. The constitution in his Part III guaranteed fundamental rights with article 21 of the Indian Constitution. It provides that, "No person shall be deprived of his life or personal liberty except according to the procedure established by the law." In 1992, the Supreme Court declared that the Indians at all levels shall be given this new 'Right to education'. This new right has been held to be a part of the Fundamental Right to life under Article 21 of the Constitution by the 86th Constitutional Amendment Act of 2002. Due to this pandemic, our right to life and liberty has effected a lot, for example right to privacy, Right to livelihood, and right to education. During Lockdown students are unable to attend their school and colleges. They did not get quality of education. Online classes are going on but it could not run effectively in the remotest area or village. With the inception of the lockdown public discourse was shaped three major rights. These were the right to life, the right to health, and the right to food. During this pandemic our government has assured food for all & right to health to all individuals. Despite these effort limited healthcare facilities and interruption in regular immunizations in hospitals leading to anxiety and fear among the population. Inadequate infrastructures, leading to ill-equipped healthcare employees who are fighting endlessly to treat patients and protect themselves from infection at the same time are all quite visible that their right to life and liberty are in danger. These days our right life and liberty have badly affected by COVID 19. It is the duty of the government to take major steps towards protection of this right. we cannot enjoy other rights without article 21.

Keywords: health, education, government, food, privacy

1. Introduction

The global corona virus has radically impact on the people of India. Corona virus disease is a very infectious disease. It is characterized as a pandemic by the WHO which attack society at their core. It is originated from Wuhan city of china on 31st December 2019. In India, the first case came on 30th January 2020 in Kerala. It has affected millions of people around the globe. As we know every event has a cause like this COVID19 is caused by SARS-COV2 is of unprecedented global public health concern severe acute respiratory syndrome. 11 February 2020 WHO announced a name for the new corona virus disease COVID19 ON March 11, 2020, WHO declared COVID19 a pandemic. It is global but its effect is local in the era of globalization India has also come in the influence of COVID19.

The outbreak of COVID19 has affected all segments of the population. This is probably the first instant in the history of India where infectious disease is testing itself. The constitution in his part III guaranteed fundamental rights with article 21 of the Indian Constitution. It provides that, "No person shall be deprived of his life or personal liberty except according to the procedure established by the law." It corresponds to the Magna Carta of 1215, the 5th Amendment to the American Constitution, and article 31 of the constitution of Japan, 1946. This article is available to every citizen or alien, thus even a foreigner can claim this right. It does not entitle and reside and settle in India, as mention in article 19(1) e. Article 21 has got a constitutional value of supreme importance in India. In 1992, the Supreme Court declared that the Indians at all levels shall be given

this new 'Right to education'. This new right has been held to be a part of the Fundamental Right to life under Article 21 of the Constitution by the 86th Constitutional Amendment Act of 2002. Due to this pandemic, our right to life and liberty has affected a lot, for example, right to privacy, Right to livelihood, and right to education. During Lockdown students are unable to attend their school and colleges. They did not get the quality of education. Online classes are going on but they could not run effectively in the remotest area or village. With the inception of the lockdown public discourse was shaped three major rights. These were the right to life, the right to health, and the right to food. During this pandemic, our government has assured food for all & right to health to all individuals. Despite these efforts limited healthcare facilities and interruption in regular immunizations in hospitals leading to anxiety and fear among the population. Inadequate infrastructures, leading to ill-equipped healthcare employees who are fighting endlessly to treat patients and protect themselves from infection at the same time are all quite visible that their right to life and liberty are in danger. These days our right life and liberty have badly affected by COVID 19. It is the duty of the government to take major steps towards protection of this right. we cannot enjoy other rights without article 21.

Objective

Time to time the country has faces many types of calamities. In these situations, the government has played a very vital role to maintain a balance between individual liberty and law & order. In the current situation we are facing

pandemic. It is global in nature along with its effect is local. During this pandemic, the fundamental rights of Indian citizens are adversely affected. So the aim of this paper to explain the effect of COVID19 on our fundamental rights and what a major step was taken by the government to protect our fundamental rights especially article 21 which is the basis of all rights. Democratic philosophy considers some of the individual rights as basic or fundamental to a better and happier life and people clamored and struggled for them everywhere and always. Fundamental rights have been rightly regarded as the soul of the constitution.

Methodology

I have chosen a secondary method to collect my data from magazines, books, newspapers, the internet, Wikipedia, Shodhganga, live-law, Supreme Court, and High court judgments etc.

Meaning of Fundamental Rights

The fundamental right is the main features of the Indian constitution. It is called fundamental because it has mentioned in our constitution and it is essential for the development of personality. It is justiciable. According to D.D. Basu "A fundamental right is one which is protected and guaranteed by the written constitution of the state." It can be altered only by the process of the constitutional amendment. No organ of state can act in contravention of such right H.J.Laski said "there can be no liberty without rights. A state is known by the rights it maintains."¹

The conflict between man and the state always exists in human society. Though attempts have been made for centenary to bring about a proper adjustment between the competing claim of the state and the individual, the solution seems to be still off. It is clear neither individual are allowed to have absolute freedom of speech and action nor the state can be given absolute power to determine the extent of personal liberty. Hence the main problem is how to make a fitting adjustment between individual freedom and government power. In a democratic society, the government pays special attention to maintain the balance between life and liberty of the individuals and security of the state itself. Our executive and legislative authorities have ensured to protect our fundamental rights which are given by our constitution.

Importance of fundamental rights

Democratic philosophy considers some of the individual rights as basic or fundamental to a better and happier life and people clamored and struggled for them everywhere and always. Fundamental rights have been rightly regarded as the soul of the constitution. In Indian democracy, such rights are mentions in the constitution. The framers of our constitution were especially influenced by the bill of rights of the American constitution. The framers of our constitution did not fallow the British constitution in this respect rather they have followed the American constitution. Fundamental rights are safeguard individual liberty and directive principle of state policy to ensure social, economic, and political justice for every citizen. Fundamental rights try to adjust between the competing claim of the state and the individual. It regarded as the MAGNA CART of the essential liberties of the Indian people.

Classification of Fundamental Rights

Initially, We Have Seven Fundamental Rights but AT Present we have six fundamental rights because in 1978 by 44th amendment right to property has omitted and now it is legal right. These fundamental rights are as follow;

1. Article 14 to 18 - Right to Equality
2. Article 19 - Right to freedom
3. Article 20 - Protection in respect of conviction for offences
4. Article 21 - Protection of life and personal liberty
5. Article 22 - Protection against arrest and detention in certain cases
6. Article 23-24 - Right against exploitation
7. Article 25-28 - Right to freedom of religion
8. Article 29-30 - Cultural and educational rights
9. Article 32 - Constitutional Remedies

1. Right To Equality: (from article 14 to article 18)

1. Equality before the law. (Article 14)
2. Prohibition against discrimination. The state shall not discriminate on the ground of sex, religion, race place of birth, or any of them. (Article 15)
3. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. There shall be no discrimination on the ground of religion, race, caste, sex, descent, place of birth residence. (Article 16)
4. Abolition of untouchability. Untouchability is an offense punishable in accordance with the law. (Article 17)
5. Abolition of titles. (Article 18)

2. Right To Freedom:(From articles 19 to 22)

According to M.Y.PYLEE, "Personal liberty is the most fundamental of fundamental rights. Articles 19 to 22 deal with different aspects of these basic rights. Taken together, these four articles form a charter of personal liberties, which provide the backbone of the charter and fundamental Rights"¹. These are popularly known as the "seven freedoms" under our constitution. In the original constitution there were seven freedoms in Article 19 (1) but that one of them "The Right to property" has been omitted by the constitution 44th amendment Act 1978, leaving only six freedom in that article.

1. All citizens have the right to
 - A. Freedom of speech and expression.
 - B. Freedom of assembly.
 - C. Freedom of association
 - D. Freedom of Movement.
 - E. Freedom of residence and settlement.
 - F. To Practice of profession, occupation, trade, or business.
2. Protection in respect of conviction for offences.(Article 20)
3. Protection of life and property (Article 21)
4. Protection against arrest and detention. (Article 22)

3. Right against Exploitation.(From article 23-24)

It deals right against exploitation. Exploitation means Misuse of services of others with the help of force. in pre-Independence India, this type of exploitation was prevalent in many parts of the country. The constitution has, therefore, rightly abolished such practice. It includes Traffic in human beings is prohibited; Beggar and other similar forms of

forced labor are prohibited. Any contravention of this provision is punishable in accordance with the law. No child below the age of 14 shall be employed to work in any factory or mines or engaged in hazardous employment.

4. Right to freedom of religion: (From articles 25 to 28)

25. All citizens have freedom of conscience and free profession, practice and propagation of religion.
26. Freedom to manage religious affairs.
27. Every religious section has freedom as to payment of taxes for promotion of any particular religion.
28. No religious instruction shall be provided in educational institutions maintained by government.

5. Cultural and educational rights: (From article 29 and 30)

Article 29 and 30 of the constitution provides that minorities shall have the right to conserve its own language, script, literature, and culture.

6. Right to constitutional remedies: (From article 32 to 35)

32. Enforcement of fundamental rights by the Supreme Court.
33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.
34. Restriction on rights conferred by this Part while martial law is in force in any area.
35. Legislation to give effect to the provisions of this Part.

Meaning of Article 21 (Protection of life and personal liberty)

Article 21 of the Indian Constitution provides, "No person shall be deprived of his life or personal liberty, except according to the procedure established by the law." In 1978 by the 44th amendment had declared the Right to life and liberty inviolate emergency or no emergency? The fundamental right of life and liberty must continue all circumstances. Article 21 was thus made an exception to the general rule let down in article 359 that the President has the power to suspend the enforcement of any or all of the fundamental rights during an emergency.

Supreme Court of India has held a remarkable decision on March, 8, 2018 that the right to die with dignity is a fundamental right. The bench also held that passive euthanasia and living will be also legally valid. The court has issued detailed guidelines in regard. The court has expanded the spectrum of article 21 to include within it the right to leave with dignity as a component of the right to life and liberty.

In 1992, the Supreme Court declared that the Indians at all levels shall be given this new 'right to education'. This new right has been held to be a part of the Fundamental Right to life under Article 21 of the Constitution. Justice Kuldeep Singh and R.M Sahai have given this new a gift to the citizens of India in Miss Mohini Jain, versus the State of Karnataka by states that, "The right to life and the dignity of an individual's cannot be assured unless it is given the right to education." With a single judgment, the judges have converted the non-enforceable right to education in the Directive Principle of the Constitution into an enforceable Fundamental Right. By the 86th Constitutional Amendment Act of 2002, the following Article has been inserted after Article 21 of the Indian Constitution. India has also started

historic law making education of fundamental right of every child coming into force. The act of compulsory education will directly benefit children who do not go to school at present. According to this act the appointment of teachers through academic qualifications.

Former Prime Minister Dr. Manmohan Singh announced the implementation of the act. Children, who were not going to school or dropped out of schools, will get elementary education and the state and local government to ensure that all children in the 6–14 age groups get schooling. According to this act, 25 percent of seats in all private educational institutions should reserve for the children of weaker sections of society. For the implementation of this act, the center and the states share the financial burden fixed in the ratio of 55:45.

In 2005 under Article 19(1) of the Constitution Right to Information (RTI) which gives any citizen of India may get information from a "public authority.

A nine-judge bench of the Supreme Court on August 24, 2017, has ruled that Indians enjoy the Fundamental Right to privacy that it is intrinsic to life and liberty and thus comes under Article 21 of the Indian Constitution in page 547 judgment that declares privacy to be a Fundamental Right.

In Article 21 of the Constitution, privacy is a fundamental right that emerges primarily from the guarantee of life and personal liberty. Elements of privacy also arise in varying contexts from the other facts of freedom and dignity recognized and guaranteed by the Fundamental Rights. Contained in part III-like other rights which form part of the fundamental freedom, protected by part III, including the right to life personal liberty under Article 21, privacy is not an absolute right. The Supreme Court had recognized the right to privacy in the Puttaswamy case. It was recognized by the Apex Court as early as in 1998, in the case of Mr.Xv.Hospital Z. The Court opined in this case that patients had the right to confidentiality and privacy as regards their personal details. However, this right was not absolute and could be overlooked when there was a larger public interest. Further, Regulation 2.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, reads as "defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the law"

In fundamental right the law which encroaches upon privacy is permissible restriction. In the context of Article 21, an invasion of privacy must be justified on the basis of a law that stipulates the procedure which is fair just and reasonable. The law protects the inner sphere of an individual from the government and permitted citizens to make autonomous life choices. On 24 August 2017 the Supreme Court of India ruled that: "Right to Privacy is an integral part of Right to Life and Personal Liberty guaranteed in Article 21 of the Constitution,"

The right to live includes the right to live with human dignity and all that goes along with it *viz* the bare necessities to life such as adequate nutrition, clothing, and shelter over the head and facilities for reading writing and expressing oneself in diverse from freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities of life and also the right to carry on function and activities as to constitute the bare minimum expression of the human self. These dimensions are given by the Supreme Court in Maneka Gandhi vs. union of India

case and held that the right to live is not merely a physical right but includes the right to live with human dignity.

Right against sexual harassment, at the workplace article 21 guarantees the right to life with dignity. The court in this context has observed that the meaning and content of fundamental right guaranteed in the constitution of India are of sufficient amplitude to encompass all facts of gender equality including protection of sexual harassment or abuse. Appropriate work condition should be provided in respect of work, leisure health, and hygiene to further ensure that there is no hostile environment towards the woman at the workplace and no employee woman should have reasonable ground to believe that she is disadvantaged in connection with her employment.

Article 21 includes the right to Reputation and right to livelihood, right to social security and protection of the family, right against honor killing, right to health, right to medical care, no right to die and also right to get pollution-free water and air in *Subhas kumar v state of Bihar* it has held that public interest litigation is maintainable for insuring to get pollution-free water and air which is included in the right to live under article 21 and also the right to clean environment.

The court in India has mandated that some of these rights are applicable to non-human entities which have been given the status of the legal person and human has the legal duty to act as loco parents towards animals' welfare like a parent has towards the minor children. Punjab and Haryana high court in 2018 cow smuggling case. Deity as a legal person is entitled to right S.C. in 2018 the entry of women to Sabarimala granted Lord Ayyappan right to privacy. River are legal person U.K. high court mandated that the river Ganga and Yamuna have right to protect against pollution caused by a human. The right to open trail. This scope of the right of life and liberty has been extended even to innocent hostages detained by militants.

Impact of COVID19 on Article 21: Right to life and liberty

During pandemic, Indians have started to follow the guideline which is passed by WHO. In this regard, the first lockdown was imposed on 22nd march, 2020. During the lockdown, all the activities of human societies were restricted except essential goods and services. During this period people have faced so many problems like losing jobs, lack of medical facilities, lack of education, restriction on transportation, harvesting of crops, etc.

During lockdown all the industries, tourism, hotel, construction work were shut down. Due to this, an estimated 140 million people lost their employment while many suffered from diminution of their salaries. Among them, about 20 million people did not have money to buy grain and bread two times. They were suffering from hunger. This affects their right to life. They were unable to enjoy their article 21. There is a restricted movement of people with reduced consumption of all sorts of goods and services except certain essential commodities and services. Such a situation poses a serious threat to the survival of daily wage workers, roadside vendors petty traders act because of no cash in hand people cannot carry on with their usual jobs or occupation. The existing situation of unemployment worsens with the weakling of the socio-economic system, a large number of people losing their usual jobs or occupation. Livelihood is in danger of irreversible. This is a

crucial period for everyone and to act socially more responsible for our society.

According to article 19 citizens of India has the right to move any part of the country. But during lockdown people did not enjoy their right to movement. During pandemic those who lost their jobs in cities, they started to move their villages for the survival of their lives. But they were facing lots of problems reaching their native because of government-imposed restrictions on movement. It is also a violation of article 21.

Social stress caused by the lockdown has many faces and reasons resulting from traveling restrictions and disruption of cultural celebrations, limited healthcare facilities and interruption in regular immunizations in hospitals leading to anxiety and fear among the population, social distancing with friends and family, closure of places of entertainment and leisure, unplanned closure of schools and colleges affecting both students and parents regarding the academic year and the loss of quality education. Inadequate infrastructures, leading to ill-equipped healthcare employees who are fighting endlessly to treat patients and protect themselves from infection at the same time are all quite visible.

To use of Disaster Management Act if a person gets affected by COVID19, he or she is totally boycotted by society and even by their family. This affects their physical as well as mental health. According to this act, patients were treated without their consent.

Another new trend seems to be a breach of personal information in the grab of COVID19 tracing there have been several instances where the government has released personal data of people who have been quarantined. The data includes names, passport numbers, residential addresses, and phone numbers. This release of personal data has become a privacy concern and has a stated as a gross violation of the legitimate exception of privacy.

On the health care front the government suffers from availing adequate testing kits to check patient with COVID19 the situation is worse for government healthcare workers who had not been provided with adequate personal protective equipment. They are making the lack of PPE are a grave violation of the fundamental right of the health care worker. During the lockdown unplanned closure of schools and colleges affecting both students and parents are regarding the academic year and the loss of quality education. Children did not attend their classes. Most of the examinations were canceled. Our right to education is also badly affected by this pandemic. With the inception of the lockdown public discourse was shaped around three major rights these were right to life, right to health, and right to food. Many state governments like Delhi, Uttar Pradesh, and Punjab in an unprecedented move acknowledged the need for unemployment wages to ensure self-substance for the poor. The migrant did not get ration by the government because they did not have BPL card due to the lack of permanent address in a particular state. Similarly, some other state governments attempt to guarantee the right to health for all individuals. For that, they have converted major government hospitals into COVID19 hospitals. The Government also assured the availability of food to Ration shops. Despite these afford state struggle to enforce the fundamental rights which were guaranteed by the constitution. Recent report shows that migrants who were not able to leave the city struggled to get food and shelter.

The Shelter homes in Delhi were overcrowded with social distancing becoming impossible. The situation is worse for health care workers who had not been provided with adequate PPE kit. The scheme to unemployment wages provided by the state to the workers is plagued with a major issue. The employees' state insurance scheme is available only to those who are in the organized sector.

The Important judgment of courts to protect our article 21 during this period

During pandemic in a PIL interim order passed by the Supreme Court to direct the government to ensure that testing for COVID19 is conducted free of charge in all private lab. The Supreme Court has kept the issue of reimbursement of the private labs by government open being considered in the further hearing.

In other case, the Supreme Court stated that "Right to Life Can't be Taken Away Due to Lockdown, Judgment during Emergency Retrograde". The court has ordered that right to life and personal liberty could not be affected adversely on the ground of the lockdown and hence, delay by police to file a charge sheet will entitle an accused to bail.

Telangana HC Points Out Loopholes in Police Claims on Brutality During Lockdown. Hearing a Public Interest Litigation (PIL) regarding police brutality during the lockdown, the Telangana high court pointed out a series of discrepancies in the police's counter-affidavit, asking the state police "to submit the injury reports of the injured persons, their statements, if any recorded by the police, and further to inform this court with regard to the progress made in the departmental inquiries, which have been initiated against the delinquent police personnel". (The order was passed by a bench of Chief Justice Raghvendra Singh Chauhan and Justice B. Vijaysen Reddy.) The supreme court in its landmark judgment of consumer education and research center and other vs. union of India and ors. While enforcing the right to health of the workers working in the hazardous industries held that "the compelling necessity to work in industries exposed to health hazard due to indigence to bread winning for himself and his dependents should not be at the cost of health and the vigor of health care worker falls under the contours let down in the judgment there making the lack of PPE to grave violation of the fundamental rights of the health care worker. A PIL was filed in the Supreme Court for the "payment of minimum wages to migrant workers whether employed by establishments, contractors, or self-employed."

Supreme Court ordered to States/UTs to releasing prisoners on parole/bail to protect them from Corona virus. Supreme Court directed each State/Union Territory to constitute a High Powered Committee to determine which class of prisoners can be released on parole or an interim bail and also provide medical facilities to ill prisoners and maintain social distancing among them.

Major steps were taken by the government to protect art 21 during COVID19

The government has introduced the Aarogya Setu mobile application to educate citizens about the novel Corona Virus and help them make informed decisions amid the crisis. The government provided 5 kg cooking gas cylinder to the poor families and also extend Ujjwala scheme is providing free LPG refills for the next three months. During the lockdown government provided food for poor people and also

provided "one nation one ration card" for BPL families. Under this announcement, the government will provide 5 kg grain per family till November 2020.

The government is providing free testing and treatment of patients of COVID9. All government hospitals change into COVID hospitals. The Government has also provided proper food and medical facilities to the quarantine people. To the protection of the healthcare worker, doctors, nurses provide PPE kit by government. During the pandemic government providing medical insurance cover of Rs. 50 lakh per person for health workers.

He gave the permission to local kirana store for providing essential goods. He also permitted vegetables, fruit, milk & bread to open their shops during the lockdown.

The Government encouraged online classes for the continuation of education. The government started to telecast classes on television. It also decided to promote the students to continue his session. Jharkhand government took initiative to continue the study of students to start a concept of a return to the village.

Due to COVID19 those who migrate from town to village government has decided to the provided job under the MGNREGA. Wages also hiked to Rs. 202 from Rs 182. For lower-income groups, the government permitted that individuals could now withdraw three months' salary from E.P.F. Under the National Social Assistance Program, Rs 1,400 crore has been disbursed for old age people, widows, and disabled people. For construction workers, the relief government released Rs 3,066 crore under the Building and Construction Workers' Fund. For poor women Jan Dhan account holders received Rs 500 each in their account. The Government started sharmik special train for the migrant workers.

These are the above major steps taken by the government to protect the citizens' right to life and liberty during the pandemic.

Conclusion

From the above discussion, we come to the conclusion that fundamental rights are essential for the overall development of the individuals. In the Indian constitution chapter-III there are 6 fundamental rights enjoyed by Indians. Among them, article 21 right to life and liberty in the heart of all rights. As we know we are facing a pandemic of COVID19 and due to this our right is also affected by it. About 20 million people did not have money to buy grain and bread for two times. They were suffering from hunger. This affects their right to life. There is a restricted movement of people with reduced consumption of all sorts of goods and services. Except for certain essential commodities and services. Livelihood is in danger of irreversible. Our education and medical facilities are also adversely effected during the pandemic. The government has taken major steps to protect our right to life and liberty. Judiciary has also played a vital role during this period like the judgment for medical facilities, regarding salaries, migrant workers, people's privacy, etc. We have learned that we should prepare to combat this type of pandemic our medical system should be sound and our small scale industries should also be well established. Each and every village should be self-reliant for their basic needs. Along with education, all the administrative parts should be digital. At last, people should be aware of their rights which are helpful for the establishment of a better democratic country.

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