

ARTICLE 21

No person shall be deprived of his right to life or personal liberty

FRAMERS- VIEW

- 'Due process' v 'Procedure established by law'.
- Liberty v Personal Liberty
- Japanese v US Constitution.
- Proponents of due process clause- Kazi Syed Karimuddin, Mehboob Ali Baig, KM Munshi.
- Alladi Krishnaswami Ayyar-
- no uniformity at all in the decisions of the US Supreme Court.e
- may serve as a great handicap for all social legislations.
- B.R.Ambedkar "For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes."

What does the term “life” connote?

- **Munn v Illinois (1877)- Justice Stephen Field (dissenting)**
- By the term "life," as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. The deprivation not only of life, but of whatever God has given to every one with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision.

Francis Coralie Mullin v UT of Delhi AIR 1981 SC 746

- **Justice Bhagwati-** We think that 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 one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the 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-self.

Expanding Horizons of “right to life”

- **Bandhua Mukti Morcha v Union of India AIR 1984 SC 802**
- Right to Life- it must include protection of the health and strength of the workers, men and women and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity.
- **CERC v Union of India AIR 1995 SC 922.**
- right to health to be an integral part of the right to life enshrined in Article 21 of the Indian Constitution.
- **Olga Tellis v Bombay Municipal Corp.-** Right to life includes the right to livelihood.
- **Gauri Shankar v Union of India AIR 1995 SC 55-** Right to life includes right to shelter

Expanding Horizons of “right to life”

- **Unni Krishnan J.P. v State of AP. AIR 1993 SC 2178. RIGHT TO EDUCATION**
- The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of 14 years. Thereafter his right to education is subject to the limits of economic capacity and development of the State. (Article 21-A).
- **MC Mehta v Union of India Cases-** Right to live in a clean and pollution free environment.
- **Some recent case laws:**
- **Euthanasia & Right to die with dignity- Aruna Ram Chander Shanbaug v Union of India (2011) 4 SCC 454.-**Passive Euthanasia.
- **Common Cause (A registered society) v Union of India -**Living Wills and Medical Power Attorney.
- Right to privacy- **Justice K.S.Puttuswamy v Union of India MANU/SC/1044/2017**

Aruna Ram Chander Shanbaug v Union of India (2011) 4 SCC 454.

passive euthanasia

- *Qouting Mirza Ghalib:*
- *Marte hain aarzoo mein marne ki, Maut aati hai par nahin aati*
- Justice Markandey Katju- “passive euthanasia should be permitted”.
- Court laid down elaborate guidelines to regulate passive euthanasia.
- However, the court made it is amply clear that passive euthanasia cannot be permitted in India.

Common Cause (A registered society) v Union of India MANU/SC/0232/2018

Living Wills and Medical Power Attorney.

- Justice DY Chandrachud- Dignity of life must encompass dignity in the stages of living which lead up to the end of life. Dignity in the process of dying is as much a part of the right to life under Article 21 of the Constitution. To deprive an individual of dignity towards the end of life is to deprive the individual of a meaningful existence. Hence, the Constitution protects the legitimate expectation of every person to lead a life of dignity until death occurs.

Justice K.S.Puttuswamyv Union of India

MANU/SC/1044/2017

- Justice DY Chandrachud:
- Right to Privacy- a part of right to life under Article 21.
- Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence.
- The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.
- Life and personal liberty were not creations of the Constitution. These rights were recognised by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within.
- Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution.
- privacy is not an absolute right. A law which encroaches upon privacy would have to withstand the touchstone of permissible restrictions on fundamental rights.

Procedure established by “law”

- What does the term “law” connote?
- A.K.Gopalan v State of Madras AIR 1950 SC 27.
- Maneka Gandhi v Union of India AIR 1978 SC 597
- Bachan Singh v State of Punjab AIR 1980 SC 898
- Mithu v State of Punjab AIR 1983 SC 473.
- Selvi v State of Karnataka AIR 2010 SC 1974.(Right to fair trial)
- Hussainara Khaton v State of Bihar AIR 1979 SC 1360 (Speedy Trial).
- M.H.Hoskot v State of Maharashtra AIR 1978 SC 1548 (Right to legal aid)
- Rudul Sah v State of Bihar AIR 1983 SC 1086- Right to compensation for violation of a fundamental right.