
BINDING THE BORDERS OF RIGHT TO LIFE

Legal Upanishad Journal (LUJournal.com)

Vol 1 Issue 3 | December 2023 | pp. 150-157

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ABSTRACT

Fundamental rights have formed the very foundation of our civil society by protecting the sanctity of human existence, but the statutes that contain them are nothing but mere words until provided with meaning from their interpreters. This is the reason that the responsibility of interpretation of statutes is burdened on the able shoulders of the judiciary alone, because courts are expected to never interpret arbitrarily. Interpretation of statutes is the ingenuity of deciphering the supposed meaning of laws by providing the plain texts of the statutes with their true and necessary meaning. The responsibility of interpretation of statutes being provided only to courts has resulted in the continued practice by the judiciary, leading to the inception of various principles in the form of fundamental rights. The most apparent example of this is the inclusion of several rights within the ambit of the right to life provided by Article 21 of the Constitution of India, which are also recognised as substantive rights. This extension of the ambit of the right to life is arguably the most important step in realising the aim of the framers of the constitution, which is to provide the citizens of the country with true equality amongst them. However, this is a scene far from the reality that we live in, even when the judiciary is dabbling with cases in ways for the furtherance of this aim whenever it finds itself with a chance to do so. This is mostly because the judiciary is mostly concerned with giving judgements and orders wherein it recognises any right for the people but is seldom bothered regarding the executive procedures that shall follow those orders. Therefore, it is necessary for the courts to review the way in which they provide decisions regarding the recognition of fundamental rights.

Keywords: *Constitution, Fundamental Rights, Interpretation of statutes, Judiciary, Right to life.*

1. INTRODUCTION

Recent developments around the right to life and personal liberty¹ suggest a rejuvenated interest of the judiciary in the salient provisions of the Indian Constitution. While the court has, through several judgements in the past, recognised the right to life to encompass several unwritten but intended rights as extensions of the right to life and personal liberty, its recent stance and orders regarding such rights have caused a stir amongst the legal and social circles concerned with them. Thus, it is important to acknowledge these discussions for charting the way for its future.

In the words of Justice P.N. Bhagawati, 'Article 21 embodies a fundamental value of supreme importance in a democratic society². This quote by one of the pioneers of Indian judicial history speaks volumes about the importance that the provision holds within the circles of judicial discussions and the legal landscape. Interpretations similar to this have been one among numerous others that have collectively contributed to making Article 21 of the Constitution of India one of the most widely discussed provisions of law by the judiciary. Ever since the inception of substantive rights, recognised to be present within the meaning of right to life and personal liberty intrinsically in 1978³, consequent to the court's opinion that 'the right to life includes the right to live with human dignity and all that goes along with it...'; this trend of interpretation of the provision has been elementary in providing the people with justice when the texts of laws reached their linguistic limits. The necessity of extending the ambit of the right to life has been clear from the impact it has had on the protection of the rightful interests of the people. The results of the extension, sadly, haven't been able to bridge the gap between intentions and reality.

The perspective of history presents us with the true view of the importance of expanding the ambit of the right to life, but at the same time, their failure to impact society due to a lack of proper executive prowess is also evident. While the developments under Article 21 have been beneficial in furthering an inclusive dimension to the statute, they have also inadvertently affected the provisions of other state legislation. This brought forth a number of problems, which may be considered a result of academic hyperopia for the future but is nonetheless a challenge that possesses the potential to erode the basis of the rule of law. When discussed

¹ INDIA CONST. art. 21

² Francis Coralie Mullin V. The Administrator, Union territory of Delhi & Ors., AIR 1981, SCR (2) 516

³ Maneka Gandhi V. Union of India, AIR 1978 SC 597; (1978) 1 SCC 248

broadly, these challenges can be trimmed down to emerge from two facets of judicial actions, namely the lack of a proper definition of rights and the inability to implement rights.

2. INADEQUATE DEFINITION OF RIGHTS

The importance of defining laws lies in creating the boundaries for the implementation of each provision so as not to violate any other provision. The right to life has been discussed and interpreted by the apex court in many landmark judgements over the course of its 73-year history. However, till date, there hasn't been a concrete definition or part of it regarding what constitutes the right to life. This is mostly due to the judiciary's focus on providing provisions for a dignified life while at the same time not providing a proper definition of it. Perhaps the closest that the courts have gotten to a definition is through the recognition of various substantive rights within the ambit of Article 21.

The problems of not providing concrete, if not accurate, definitions in law have been recognised by jurists such as HLA Hart. Hart rejected the idea of vagueness as a source of philosophical perplexity regarding legal terms⁴. Hart described how philosophers often find three major problems while defining law⁵. These can be solved by recognising the nature of the law and observing the context in which it is being invoked.

While Hart ultimately describes that none of the methods suggested by him or his peers could be completely adequate in defining laws, he advocates the idea that for their implementation in society, laws must have definitive boundaries.

Though the inclusion of these substantive rights within the ambit of Article 21 has been used as a tool to redress social evils by making up for a lack of legislation on various issues, the recent trend of the Supreme Court declaring rights that are difficult to enforce has led to their being a part of the rule of law in name alone. Thus, definitive boundaries over the judicial interpretation of statutes like the right to life and personal liberty are a necessity of our times.

⁴ Michael D. Bayles, Hart on Problems in Legal Philosophy, 2(1) METAPHILOSOPHY (1971)

⁵ *Id.*

The idea of substantive rights provided by Article 21 is only bound by the understanding and interpretation of the judges. The continuous expansion of the ambit of Article 21 has been viewed as a cornerstone, describing the flexibility of the Indian constitution.⁶

The flexibility of the constitution means not only the ability of a country's constitution to be amended but also the capability of its ambit to encompass interpretations of its statutes from different perspectives while maintaining harmony with other provisions of the law.

The Supreme Court introduced the concept of due process of law and mandated that for any law to be enforced under the ambit of Article 21, it must satisfy the conditions under Articles 19 and 14⁷. This sort of wide interpretation of the statute has been invaluable for the identification of substantive rights within the ambit of Article 21. However, with the changing times and needs of the citizens around the country, it has become difficult to provide definitions for every right recognised by the law, which can be evidently observed from the lack of proper mechanisms present to implement and see to them being enjoyed by the citizens.

3. INABILITY TO IMPLEMENT RIGHTS

The second problem that the law faces today is to see that the rights recognised by it are being enjoyed properly and fully by the citizens. This is mostly a responsibility burdened by the executive wing of the government, but since many cases have emerged where the onus of failure in implementation hasn't fallen upon the executive, it is important to understand where the system is lacking to provide for the citizens.

In recent times, the fundamental right to life and personal liberty has become the favourite provision for the judiciary to experiment with in order to redress a variety of injustices and social wrongs. However, this endeavour has led to some rulings by the Supreme Court granting a right that is impossible to enforce.

The former CJI S.H. Kapadia's remark on a ruling by justice B.S. Chauhan, regarding his interpretation of Article-21 that led to the recognition of right to sleep, had been a source of debates in the judicial spheres recently. CJI Kapadia commented, "judges must apply the

⁶ Nisha Gandhi, Expanding and Evolving the Ambit of Article 21 of the constitution of India with the Developing Scenario, 2(4) INDIAN J. INTEGRATED RSCH. L. (2022)

⁷ INDIA CONST. arts. 19, 14.

principle of enforceability before propounding legal principles and passing orders.⁸ The expansion of the ambit of Article-21 must not be done in such a way, so as to deviate from its core or else the question of enforceability would make it effectively moot in practice. When we analyze the situation of enforcing these substantive rights under Article-21 from the past, we conclude that most of these rights have failed to achieved their desired aims due to lack of suitable execution from appropriate state agencies.

On similar lines we can take examples of the following rights: -

3.1 Right to marry

This right was identified in the judgement of Ravi Kumar v. State⁹ and then reiterated in Lata Singh v. The State of U.P.¹⁰, which intended to save couples from the wrath of honour killings and Khap Panchayats, but the situation hasn't improved due to a lack of executive mechanism. According to the data collected by the NCRB, the number of confirmed honour killings between 2019 and 2021 was 83. Even though this signifies a decrease in the cases of honour killings from 145 between 2017 and 2019, the cause of concern is that the number is still high when states like Rajasthan have already passed bills in their state assemblies since August 2020, but no act has been made till date. The Supreme Court itself has recognised honour killings as a grave crime in Shakti Vahini v. Union of India¹¹ but hasn't been able to put an end to them. This failure to uphold the apex court's order is due to the legislature not acting upon it and making separate laws specifically aimed at stopping honour killings. A similar pattern has been observed in state legislatures as well, where the northern states, where the problem of honour killings has been prevalent, didn't take any action in furtherance of the judgement.

3.2 Right to live-in relationships

Legal validity for live-in relationships was provided in Badri Prasad v. Dy. Director of Consolidation¹². This was in furtherance of the judgement given in Payal Sharma v. Nari

⁸ Abhinav pandey, Wide Interpretation of the Right to Life: The Question of Enforceability, SSRN ELEC. J. (2014)

⁹ Ravi Kumar V. The State & Anr., 124 (2005) DLT 1, II (2005) DMC 731

¹⁰ Lata Singh v. The State of U.P, 2006 (5) SCC 475

¹¹ Shakti Vahini V. Union of India & Ors., WP (C) No. 231 of 2010

¹² Badri Prasad v. Dy. Director of Consolidation, 1979 SCR (1) 1

Niketan¹³, where it was held that a man and woman have all the rights to stay together with each other's consent and company without marrying each other. The aim of both judgements' was to bring a sense of approval from the larger public towards the concept of live-in relationships, but the situation has not changed as the people who are a part of such family models still find it difficult to get a place to stay and face disdain from other members of the society. Similarly, while the court has given clarity regarding the rights and obligations of parties living in a live-in arrangement, no provisions were made for the children born out of such arrangements. Though the status of a child born out of a live-in relationship was discussed by the Kerala High Court¹⁴, at the national level, the execution is still rudimentary at best.

3.3 Right to shelter

In the Olga Tellis case¹⁵, the Supreme Court recognised the right to shelter, but the court was faced with people who were living on footpaths, and they had to be removed in order to clear footpaths for pedestrians. So the right to shelter, as a fundamental right, turned out to be a platitude when it could be dispensed with by the corporation after following proper procedure.

3.4 Right to sleep

The Ram Leela Maidan case is perhaps the most controversial judgement amongst the discussions of orders and practicality that have been seen in the recent past. In this case, the Supreme Court declared the right to sleep a part of the right to life. However, the definitions for what timing would be considered while discussing sleep, what types of acts would be considered violations, etc. weren't considered or discussed. While a similar stance had been taken by the apex court in the judgement of Kharak Singh v. Union of India¹⁶, where the court, while defining ancillary visits at night, held that "intrusion into the residence of any person and knocking at his door with disturbance to his sleep and ordinary comfort necessarily violates his freedom of right to move freely¹⁷ and is also a deprivation of his right to personal liberty guaranteed under Art. 21, the problem with the former judgement is the

¹³ Payal Sharma v. Superintendent, Nari Niketan, AIR 2001 All 254

¹⁴ XXXXXXXXXX V. State of Kerala, Ker. 2021 SCC online 1709

¹⁵ Olga Tellis and ors V. Bombay Municipal Corporation and ors, 1986 AIR 180

¹⁶ Kharak Singh v. Union of India, 1964 SCR (1) 332

¹⁷ INDIA CONST. art. 19(1)(d)

declaration of sleep as a separate fundamental right, which raises the question: can the right to sleep be claimed as a person's fundamental right? Upon introspection, J. Chauhan further elaborated on this and said that "the right to sleep cannot be claimed before a court of law," thus making the right in its entirety nothing but a right on paper alone and presenting the problems in its implementation.

3.5 Right to electricity

In the M.K. Acharya case¹⁸, the court recognised the right to electricity but didn't consider the states' capabilities in being able to provide the same at all times to every part under its jurisdiction. As such, the electricity boards of the states that aren't able to provide adequate amounts of power as ordered by the court can only be excused for their inability to adhere to court orders.

The principle of progress being tempered with reality is a necessary aspect that the judiciary must inculcate. The judges should be trained to analyse their judgements and consider their applicability before passing them. The examples above are reminiscent of the limits on the capabilities of the government to fulfil its duty in furtherance of judicial actions. However, execution alone isn't the sole problem in the system that promises to provide the people with equality. As discussed above, apart from the issues in execution, the problems of defining limits to fundamental rights by the court are just as important for the rights to be implemented and enjoyed properly by the citizens. The intention behind the existence of substantive rights was to fill the gaps in legislation for which the laws weren't enacted; however, given the recent developments, it is perhaps time for those gaps to be filled individually to ensure that specific challenges posed at those junctures are properly redressed and solved.

Given the observation above, one would imply that the courts should not grant any rights because there are no resources for their proper implementation. However, the history of fundamental rights' evolution is evident to show how necessary it is for the court to recognise them. The only amendment to be prescribed here is the addition of definitive boundaries to each right that is being recognised for the authorities to be able to implement them better for the sake of the citizens, and, as mentioned earlier, the making up of specific legislation for specific subject matters.

¹⁸ Molay Ku. Acharya V. Chairman-cum-Managing Director, West Bengal Electricity Board, AIR 2008 Cal. 47

The judiciary is the watchful protector of the rights of the people and the constitution. With due respect to its views, however, it is necessary to point out that it would be better if the judiciary included a purview of practicality as a part of its interpretation of the statutes, even if it is tempting to provide maximum benefits to most of the masses. If a template of a universal right to food is being considered to be provided to the people, the capability of the government to make it a reality must also be considered.

4. CONCLUSION

Intrinsically recognised rights have helped to check out any gaps left in the law so that the judiciary can work to subdue social evils that aren't accounted for by other legislation. However, it must be remembered that these are fail safes and cannot replace actual laws, especially if they cannot be implemented due to a lack of legal definitions or executive capabilities. Therefore, whenever these alternatives start falling short in providing people with their intended results, they must be replaced with specific legislation as soon as possible to avoid a future where laws are restricted to becoming mere words for the wise.

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