

ROLE AND RELEVANCE OF RIGHT TO PERSONAL LIBERTY IN DISTRICT COURTS

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धर्म एव हतो हन्ति धर्मो रक्षति रक्षितः ।
तस्माद्धर्मो न हन्तव्यो मा नो धर्मो हतो वधीत ॥

Destruction of law and justice brings about the destruction of society; the protection of law and justice has a protective influence. Therefore, law and justice should not be destroyed.

The ideals and aspirations of the people of India have been enshrined in the preamble of our Constitution. It receives to all its citizens, justice, liberty, equality and fraternity. There are three functions of the State namely executive, the legislative and the judicial. The principle of separation of powers has been accepted in our Constitution. The legislative function consists in the enactment of laws which regulates the conduct of the members of the society. The working of the machinery of the government in accordance with these laws falls within the province of the executive. The judicial function consists in determining whether the conduct of the various members of the society and state authorities conform to the law of the land or not. The primary object of the administration of justice is to establish a Rule of law and to create a sense of security among the people by assuring them that the wrong doer will not go unpunished and all just grievances will be redressed so that they may not be tempted to self-help. In order to maintain peace and tranquillity in the society the law established or prescribed by the state has be to followed only then the justice can be imparted to everyone in the society. Equality and fairness are the pillars of the justice.

The principal theme of the Book 'Law, Judges and Justice' written by Hon'ble Mr. Justice S.M.N. Raina (Retd. Judge of High Court of M.P.) is 'Life of law is justice and it is for the judge to breathe the life into law'. While dealing with the spirit of Constitution, Hon'ble Mr. Justice Raina opined that if we carefully examine the various provisions of the Constitution to discover its true spirit, we shall notice distinct aspirations of the people and one for liberty, another for justice and the third for socialism. According to Palkhiwala, civil liberty is the very stone of the Constitution. In my view, justice is the key-stone, Justice for the individual as well as justice for the masses, that is social justice. It assures justice to individual by declaring the basic human rights as fundamental in Part III and justice for the masses by giving directives regarding the policies of the State.

Articles 19, 20, 21 and 22 form one group entitled Right to Freedom. Article 21 guarantees the most essential of all rights the right to life and personal liberty. It runs as follow :

Art. 21 PROTECTION OF LIFE AND PERSONAL LIBERTY

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

The object of Article 21 is to prevent encroachment upon a personal liberty by the Executive save in accordance with law. Right to life means something more than survival or animal existence (*State of Maharashtra v. Chandrabhan*, AIR 1983 Supreme Court 803, para 1, 20). It would include the right to live with human dignity (*Olga v Bombay Corporation*, AIR 1986 Supreme Court 180 paras 33, 34). It would include all those aspects of life which go to make man's life meaningful complete and worth living (*Maneka v Union of India*, AIR 1978 Supreme Court 597). Prior to the decision of *Maneka Gandhi's* case, Article 21 was construed narrowly only as a guarantee against executive action unsupported by law. But *Maneka's* case opened up a new dimension and laid down that it imposed a limitation upon law making as well namely that while prescribing a procedure for providing a person of his life or personal liberty, it must prescribe a procedure which is reasonable, fair and just (*Frances v Union Territory*, AIR 1981 Supreme Court 746, para 3).

Personal Liberty

In *Unni Krishnana v. State of A.P.* [1993 (1) Supreme Court Cases 1234] the Hon'ble Supreme Court has stated that several un-enumerated rights fall within Article 21 since the expression 'personal liberty' is of the widest amplitude. The Hon'ble Court gave the following list —

(1) Right to go abroad, (2) Right to privacy, (3) Right against solitary confinement, (4) Right against Bar Flatters, (5) Legal aid, (6) Speedy trial, (7) Right against hand-cuffing, (8) Right against delayed execution, (9) Right against custodial violence, (10) Right against public hanging, (11) Doctors' assistance and (12) Shelter.

Public interest petitions have also expanded the scope of Article 21. They touch diverse aspects such as children in jail, being entitled to special treatment, health hazard due to pollution, beggars interest in housing, health hazards from harmful drugs, immediate medical aid to injured persons, starvation deaths right to know, right to open trial, inhuman conditions in after care-homes etc.

