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WRIT JURISDICTION AND HUMAN RIGHTS UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA

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RESEARCH ARTICLE

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ABSTRACT

Human Rights is a developing concept in the present era. This particular article focuses on Writ Jurisdiction and Human rights which is available under the Article 21 of the Constitution of India. The first part deals with various Human Rights available under Article 21. The second part deals with the Writ jurisdiction and different kinds of Writs in protecting Human Rights under Article 21. This article also deals with the compensation remedies which are available for violation of Human Rights. Human Rights is possible only if it has an enforcement measure. That part is done by the judiciary in expanding the Human Rights Jurisprudence in India.

KEYWORDS: Writ, jurisdiction, Article 21, Constitution, life, human rights

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1. INTRODUCTION

“Every human being is entitled to certain necessities like food, water, cloth, shelter, health which are basic for sustaining life, without which one cannot live as human beings. Thus ‘Human Rights’ are those rights, which are essential to human beings to live as human beings.”¹ “Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.²

“When Human Rights are guaranteed by the written Constitution they are called as fundamental rights by some Constitution. Unlike an ordinary right, a fundamental right is an interest, which is protected and guaranteed by the written Constitution. Such rights are called “fundamental” because while an ordinary right may be changed by legislature in its process of legislation but the fundamental rights, being guaranteed by the Constitution, cannot be altered by any process short of amending the Constitution itself. The effect of guaranteeing Human Rights in a written Constitution is to ensure that any state action including legislation which violates a fundamental right shall be struck down by the courts because the Constitution is the fundamental law of the land. A right cannot be said to be ‘fundamental’ if it is not enforceable against the state by the Courts.”³

Indian Constitution recognizes the above Human Rights in the form of Fundamental Rights under Part III of the Constitution. If these rights were violated the affected person can approach the Supreme Court under Article 32 and High Courts under Article 226 of the Constitution for providing remedies under writ jurisdiction.

2. Objectives

1. To analyze Human Rights available under Article 21.
2. To analyze Writ Jurisdiction in protecting Human Rights under Article 21.

In order to highlight the above said objectives Doctrinal Methodology was adopted. The study is based on primary sources and secondary sources. Human rights were recognized under Part III of the Indian Constitution, as it confers various rights the study is limited only to Article 21.

3. Writ Jurisdiction and Human Rights under Article 21

According to Article 21 of the Constitution "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21 guarantees the right to life and personal liberty and if any person is deprived from this right by the State, then they can claim remedy under Article 32.

The phraseology of Article 21 starts with negative word "No" that has been used in relation to the word 'deprived'. The opening with an emphatic "No" used in the sense what it forbids is curtailment, or shortening of individual life expectancy, any abridgement, deprivation or denial of personal liberty by the State and its instrumentalities. The object of this human right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life by the State except according to procedure established by law. This right has been provided against the State. No one can be subjected to imprisonment, arrest or other physical restraint or coercion in any manner that does not admit of legal justification. This guarantees contemplated in Article 21 is not merely procedural in its nature and is substantive as well.⁴

The right to life and personal liberty guaranteed in Article 21 of the Constitution of India is available to citizens and non-citizens. The Supreme Court has extended its scope and included so many human rights within the ambit of Article 21.

3.1. Right to Life is right to live with human dignity.

In *Maneka Gandhi's*⁵ case the Court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it includes within the right to live with human dignity.

3.2. No right to die

In *Gian Kaur v. State of Punjab*,⁶ the Supreme Court held that "right to life" under Article 21 does not include "right to die" or "right to be killed".

3.3. Right to livelihood

In *Olga Tellis v. Bombay Municipal Corporation*,⁷ popularly known as the 'pavement dweller's case the Court has ruled that the word 'life' in Article 21 includes the 'right to livelihood' also.

3.4. Right to privacy

In *R. Rajagopal v. State of Tamil Nadu*,⁸ the Supreme Court has expressly held the "right to privacy", or the right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of its own, his family, marriage, procreation, motherhood, child bearing and education among other matters. It also held that the State or its officials have no authority in law to impose prior restraint on publication of defamatory matter. The public officials can take action only after the publication if it is found to be false.

3.5. Right to travel abroad

In *Satwant Singh v. Assistant Passport Officer, New Delhi*,⁹ the Supreme Court further extended the scope of this Article and held that the "right to travel abroad" was part of a person's 'personal liberty' within the meaning of Article 21 of the Constitution and, therefore, no person could be deprived of his right to travel abroad except according to procedure established by law.

3.6. Right to shelter

In *Chameli Singh v. State of U.P.*,¹⁰ it has been held that the right to shelter is a fundamental right under Article 21 of the Constitution. In any organized society, the right to live as human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to benefit himself. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without the basic human rights. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.

3.7. Right to good health and medical aid

In *Vincent Parikurlangur v. Union of India*,¹¹ the Court held that the right to maintenance and improvement of public health is included in the right to live with human dignity enshrined in Article 21. In a welfare State this is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health.

In *Paramananda Katara v. Union of India*,¹² it has been held that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life under Article 21 without waiting legal formalities to be complied with by the police under Cr.P.C.

3.8. Right to Environment

In a landmark judgment in *Intellectual Forum Tirupathi v. State of Andhra Pradesh*,¹³ the Supreme Court has held that under Article 21 and Article 51A it is the constitutional obligation of the Governments to protect and preserve the environment.

3.9. Right to Education

The Constitution of India, before the enactment of Constitution (86th Amendment) Act 2002, does not provide the right to education in Part II as Fundamental Right, but incorporated it under Directive Principles of State Policy in Part IV. However, the Courts considered the right to education as fundamental right considering it as a right under Article 21 in their judgments.¹⁴

In *Mohini Jain v. State of Karnataka*,¹⁵ popularly known as the "Capitation fee case" the Supreme Court has held that the right to education is a fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as capitation fee. The right to education flows directly from right to life.

Article 21A of the Constitution provides that "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

3.10. Right not to be subjected to bonded labour

In *Bandhua Mukti Morcha v. Union of India*¹⁶ an organization dedicated to the cause for release of bonded labours informed the Supreme Court through a letter that there were a large number of labors working in the stone quarries situated in Faridabad District under inhuman and intolerable condition and many of them were bonded labors. The Court treated the letter as a writ petition. The court after inquiry ordered release and rehabilitation of bonded labors.

3.11. Prisoners Rights

Right to free legal aid,¹⁷ Right against solitary confinement,¹⁸ Right to fair trial,¹⁹ Right to speedy trial²⁰, Right against inhuman treatment²¹ are included as prisoners rights under Article 21 and it was enforced by Article 32.

3.12. Right against sexual harassment of working women

In *Vishaka & Ors. V. State of Rajasthan & Ors.*,²² Supreme Court said that "gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right.

The above said Human rights were recognized by the Supreme Court through writ jurisdiction available under Article 32 and Article 226 of the Constitution.

4. Remedies available under Article 32 and Article 226

The Writ Jurisdiction of the Supreme Court can be invoked under Article 32 of the Constitution for the violation of fundamental rights guaranteed under Part III of the Constitution. Any provision in any Constitution for fundamental Rights is meaningless unless there are adequate safeguards to ensure enforcement of such provisions.

As Dicey demonstrated a century ago, abstract declarations of the rights of man are of little value unless there are definite means or machinery for such rights in case any of those rights are violated by the State or its officials. He insisted that even where such rights are guaranteed by a written Constitution, as in the U.S.A., what is more important is not the declaration of the rights in the Bill of Rights, but the means of enforcing those rights under the American Constitutional system. Conversely, he added, a basic right, such as the right to personal liberty existed in the U.K., even in the absence of any guarantee by a written Constitution, because the ordinary law provided the means of redress if an Englishman's personal freedom was violated by governmental action. To quote the celebrated words of Dicey "The Habeas Corpus Acts declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty."²³

Since the reality of such rights is tested through the Judiciary, the safeguards assume even more importance. In addition, enforcement also depends upon the degree of independence of the Judiciary, and the availability of relevant instruments with the executive authority. Indian Constitution, like most of the western constitutions, lays down certain provisions to ensure the enforcement of fundamental rights.²⁴

Article 32(2) of the Constitution of India provides that "The Supreme Court shall have a power to issue directions or orders or writs, including writs in the nature of *Habeas corpus*, *Mandamus*, *Prohibition*, *Quo warranto* and *Certiorari*, whichever may be appropriate, for the enforcement of any rights conferred by this Part III of the Constitution

In a landmark judgment in *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*,²⁵ the Supreme Court being the protector of civil liberties the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect fundamental rights guaranteed by Part III of the Constitution in general and Article 21 in particular, jealously and vigilantly. However the court warned that these extraordinary powers must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to prove credibility and instill confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

In *Mohanlal Sharma v. State of U.P.*²⁶ a telegram was sent to the Court from the petitioner alleging that his son was murdered by the police in the police lock-up. The telegram was treated a writ petition by the Court and the case was directed to be referred to C.B.I. for a thorough and detailed investigation.

Under Article 226 (1) of the Constitution of India provides that “Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in nature of habeas corpus, mandamus, Prohibition, quo warranto and Certiorari or any of them, for the enforcement of fundamental rights conferred by Part III, and (b) for any other purpose”.²⁷

The writs mentioned in Article 226 are known as prerogative writs because they had their origin in the prerogative power of superintendence over its officers and subordinate courts. These writs are among the great safeguards provided by British judicial system for upholding the rights and liberties of the people. In India before the commencement of the Constitution only three Presidency High Courts of Calcutta, Bombay and Madras had power to issue writs. Their writs jurisdiction was limited to presidency towns within which they had original jurisdiction.²⁸ This Article now invests all High Courts in India with the power to issue prerogative writs for the enforcement of fundamental rights. The makers of the Constitution having provided certain basic rights for the people which they called fundamental rights evidently thought it necessary to provide also quick and inexpensive remedy for the enforcement of such rights and vested High Courts with jurisdiction.

4.1. Against whom a writ can be issued

By and large fundamental rights are enforceable against the State. The term ‘State’ has been defined in Article 12. There are few fundamental rights such as, under Article 17, 21, 23 or 24 which are also available against private persons. In case of violation of any such rights, the court can make appropriate orders against violation of such rights by private persons.²⁹

In Indian Council for *Enviro-Legal Action v. Union of India*³⁰ an environmentalist organization filed a writ petition under Article 32 before the Court complaining the plight of people living in the vicinity of chemical industrial plants in India and requesting for appropriate remedial measures. The Supreme Court held that if by the action of private corporate bodies a person’s fundamental right is violated the Court would not accept the argument that it is not ‘State’ within the meaning of Article 12 and therefore, action cannot be taken against it. If the Court finds that the Government or authorities concerned have not taken the action required of them by law and this has resulted in violation of the right to life of the citizens, it will be the duty of the Court to intervene. The Supreme Court held that the writ was maintainable and directed the Government and the authorities concerned to perform their statutory duties under various Acts-Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, as amended up to date, Air (Prevention and Control of Pollution) act, 1981 and Hazardous Wastes (Management and Handling) Rule, 1989. The Court held that the respondents were responsible for all the damage to the soil, to the underground water and the village in general.

4.2. Who can apply

In *S.P. Gupta & others v. Union of India & others*³¹ his Lordship Bhagwati. J observed on this aspect

“It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case

of breach of any fundamental right of such person or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the community are concerned, such as undertrial prisoners languishing in jails without a trial, inmates of Protective Home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This court will readily respond even to a letter addressed by such individual acting pro bono public.

In ***Bandhua Mukti Morcha v. Union of India***³² an organization dedicated to the cause for release of bonded labors informed the Supreme Court through a letter that there were a large number of labors working in the stone quarries situated in Faridabad District under inhuman and intolerable condition and many of them were bonded labors. The Court treated the letter as a writ petition. The court after inquiry ordered release and rehabilitation of bonded labors.

The Court now permits public interest litigations or social interest litigations for the enforcement of Constitutional and other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.

In ***Subhas Kumar v. State of Bihar***,³³ it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the "right to live" under Article 21 of the Constitution

5. Kinds of Writs

Writs are available in the nature of *Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo warranto*.

5.1. Habeas Corpus

"*Habeas Corpus*" is a latin term which literally means "you may have the body". This writ is issued in form of an order calling upon a person's by whom another person is detained to bring that person before the Court and to let the Court know by what authority he has detained that person. If the cause shown discloses that detained person has been detained illegally the Court will order that he be released. Thus the main object of the writ is to give quick and immediate remedy to a person who is unlawfully detained by the person whether in prison or private custody.

In ***Sunil Batra v. Delhi Administration***,³⁴ it has been held that the writ of *habeas corpus* can be issued not only for releasing a person from illegal detention but also for protecting prisoners from inhuman and barbarous treatment. The dynamic role of judicial remedies imports to the habeas corpus writ a versatile vitality and operational utility as bastion of liberty even within jails. Wherever the rights of the prisoner either under the Constitution or under other law are violated the writ power of the court can run and should run to rescue, declared.

5.2. Mandamus

The word "*mandamus*" means "the order". The writ of mandamus is thus an order by a superior court commanding a person or a public authority(including the Government and public corporation) to do or forbear to do something in the nature of public duty or in certain cases of a statutory duty.

In ***M.Subbiah v. The Commissioner, Kumbakonam Municipality***,³⁵ writ petition was filed under Article 226 of the Constitution of India 'praying for issuance of writ of mandamus.' The petitioner was employed as a Revenue Assistant or Bill Collector and retired under voluntary Retirement Scheme. At the time of retirement, his retirement benefits were not settled and the gratuity amount was withheld. The Court held that, right for payment of interest for the delayed payment even in the absence of any statutory Rules or guidelines arises from Article 14, 19, 21 since the retirement benefits are not in the nature of bounty.

5.3. Prohibition

A writ of *prohibition* is issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction, or acting contrary to the rules of natural justice. It is issued by a superior Court to inferior courts for the purpose of preventing inferior Courts from usurping a jurisdiction with which it was not legally vested, or in other words to compel inferior courts to keep within the limits of their jurisdiction. It is issued in both cases where there is excess of jurisdiction and where there is absence of jurisdiction.

5.4. Certiorari

A writ of *certiorari* is issued by a Superior Court to an inferior court or body exercising judicial or quasi-judicial functions to remove a suit from such inferior court or body and adjudicate upon the validity of the proceedings or body exercising judicial or quasi-judicial functions. It may be used before the trial to prevent an excess or abuse of jurisdiction and remove the case for trial to higher Court. It is invoked also after trial to quash an order which has been made without jurisdiction or in violation of the rules of natural justice.

In *Dr.S. Loganathan v. Tamil Nadu Agricultural University*³⁶ writ petition was filed under Article 226 for issuance of writ of Certiorari. It was held that law is well settled that if there are administrative instruction guidelines or norms provided for purpose, petitioner may claim benefit of interest on that basis. But, even in absence of statutory rules, etc, an employee can claim interest under Part III of the Constitution relying on Article 14,19 and 21.

5.5. Quo warranto

The words '*quo warranto*' means 'what is your authority'. By this writ a holder of an office is called upon to show to the court under what authority he holds the office. The object of the writ of quo warranto is to prevent a person to hold an office which he is not legally entitled to hold. If the inquiry leads to the finding that the holder of the office has no valid title to it, the Court may pass an order preventing the holder to continue in office and may also declare the office vacant.

6. Compensation for violation of Human Rights Article 21

Article 9(5) of the International Covenant on Civil and Political Rights, 1966 provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation." According to that the Supreme Court has judicially evolved a right to compensation in cases of violation of Article 21, by expanding its Writ jurisdiction under Article 32 which also provides for appropriate directions, orders.

The Court also held that under Article 32 it has power to grant remedial relief which includes the power to grant compensation in appropriate cases where the fundamental rights of the poor and disadvantaged person are violated. However, Article 32 cannot be used as a substitute for claiming compensation for the infringement of fundamental rights through the ordinary process of a Civil court. It can only be done where the violation of fundamental right of poor is "gross and patent" and "affects persons on a large scale" or where it appears to be "unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantage position to seek remedy in the Civil Court."³⁷ Based on this principle the Court has awarded compensation in the following cases.

In *Rudal Shah v. State of Bihar*,³⁸ the Court awarded Rs. 30,000 as compensation to the petitioner who had to remain in jail for 14 years because of the irresponsible conduct of the State authorities.

In *Peoples Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarter*,³⁹ one of the labourer was taken to the police station for doing some work, when he demanded wages he was beaten and as a result of which he died. It was held that the State was liable to pay compensation of Rs.70,000 to the family of the deceased.

In *Kewal Pati v. State of Uttar Pradesh*⁴⁰ the Court awarded compensation to the petitioner, the wife of a convict who was killed by a co-accused in jail while serving out his sentence under S.302, IPC. It was held that the killing in jail resulted in deprivation of his life contrary to law.

Not only in the above cases in so many cases the Supreme Court and High Courts has awarded compensation as a remedy under writ jurisdiction.

7. Conclusion

In the present era, the Human Rights refer to more than mere existence with dignity. Article 21 of the Indian Constitution has to be interpreted in conformity with the international law as India is a signatory to the International Covenant on Civil and Political Rights 1966. The frontiers of Article 21 are expanding and its new dimensions are still being explored by the courts because the word 'Life and Liberty' included in Article 21 of Indian Constitution with the international law as India is a signatory to the International Covenant on Civil and Political are very important.⁴¹

Therefore with the expansion of scope of Human Rights under Article 21 the ambit of safeguarding the rights also increases, as a result, the Judiciary should toil more to prevent the violation of human rights. Judiciary is the only organ which can translate these rights into reality. So in India we have not only included the Human Rights in our Constitution but also our judiciary has played an active role in protecting the human rights available under Article 21 by exercising its writ jurisdiction under Article 32 and Article 226.

The Writ jurisdiction of the judiciary has not only made the Human Rights real and effective but also expanded the scope of several fundamental rights. In doing so, the Court has evolved new human rights jurisprudence in India.⁴²

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