PROTECTION OF LIFE AND PERSONAL LIBERTY

under Article 21 of the Indian Constitution with special reference to accused persons

(By Intiyaz Ahmed, State Information Commissioner, Government of Andhra Pradesh)

Article 21 of the Constitution of India guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. It means a person’s life or personal liberty cannot be curtailed except according to the procedure established by law, which must be fair, just and reasonable. Where there is a deprivation of a person’s life or personal liberty, it is allowed only when it is done under a valid law and such law must be fair and reasonable procedure prescribed by law. The object of this paper is to examine the scope of Article 21 of the Constitution of India, with reference to its application in criminal law, more particularly for the protection life and personal liberty of accused persons.

Personal Liberty

Article 21 requires that any law which takes away the rights guaranteed in this provisions must be valid law, it must provide procedure, the procedure must be fair and reasonable and it must satisfy the requirements of Articles 14 and 19 of the Constitution of India.

In A.K. Gopalan v State of Madras (AIR 1950 SC 27) it was held that ‘personal liberty’ was said to mean only liberty relating to, or concerning the person or body of the individual and in this sense it was antithesis or physical restraint or coercion. It was further limited to freedom from punitive and preventive detention. The narrow or restrictive interpretation of the expression ‘personal liberty’ in Gopalan’s case has not been followed by the Supreme Court in Kharak Singh v State of U.P. and Others (AIR 1963 SC 1295). In Kharak Singh’s case Supreme Court held that domiciliary visits by police in night is an invasion on the petitioner’s personal liberty.

In Smt. Maneka Gandhi v Union of India and Another (AIR 1978 SC 597), the Supreme Court has not only overruled Gopalan’s case but has widened the scope of the words ‘personal liberty’ considerably. Justice Bhagwati in this case observed that “the expression ‘personal liberty’ in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19”.

A KLJ PUBLICATION

16-30 November, 2013
In D. K. Basu v State of West Bengal (AIR 1997 SC 610) it is held that the precious rights guaranteed under Article 21 of the Constitution of India cannot be denied to convicts, under trials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. In the following paragraphs different facets of Article 21 of the Constitution of India have been examined in the light of judicial decisions.

Police Surveillance

In the case of Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others v Sahningoo Ram Arya and Another (2002 Cri.L.J. 2942), Supreme Court held that right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law-abiding citizen.

Right to Bail

In Smt. Akhtari Bi v State of M.P. (2001 Cri. L.J. 1727) it is held that to have speedy justice is a Fundamental Right which flows from Article 21 of the Constitution. It further observed that the prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail.

The Right to Privacy

The right to privacy as a Constitutional right recognized from the case of Kharak Singh v State of U.P. (AIR 1963 S.C. 1295), wherein the Apex Court held that the word “liberty” under Article 21 was comprehensive enough to include privacy also. In State of Maharashtra and Another v Madhukar Narayan Mardikar (AIR 1991 S.C. 207), the Supreme Court held that even woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes and that she is equally entitled to the protection of law. In R. Rajagopal alias R.R. Gopal and Another v State of Tamil Nadu ((1994) 6 SCC 632) the Supreme Court unequivocally stated that the right to privacy is implicit in the right to life and liberty guaranteed to the citizen of this country by Article 21.

Right to Speedy Trial

A fair trial includes speedy trial and it is implicit in the content of Article 21 of the Constitution. No procedure can be reasonable, fair and just unless the procedure ensures a speedy trial for determination of the guilt of a person. Long pre-trial detention of an individual in prison jeopardize his personal liberty, speedy trial is an integral part and essential
part of the fundamental right of life, liberty enshrined in Article 21 of the Constitution.

In *Hussainara Khatoon v Home Secretary, State of Bihar, Patna* (AIR 1979 SC 1360) the Supreme Court, while dealing with delay in trial, held that the State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, the law does not permit any Government to deprive its citizens of Constitutional rights on a plea of poverty or administrative inability.

Supreme Court in *Abdul Rehman Antulay v R.S. Nayak* (AIR 1992 SC 1701), laid the guidelines in regard to speedy trial. It is also forewarned that these propositions are not exhaustive as it is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. The salient features of the propositions laid down in this case are as follows;

1. **Fair, just and reasonable procedure implicit in Article 21 of the Constitution and it creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused.**

2. **Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, Trial, appeal, revision and retrial;**

3. **The concerns underlying the Right to speedy trial from the point of view of the accused are:**
   
   (a) the period of remand and pre-conviction detention should be as short as possible, in other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
   
   (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
   
   (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise;

4. **At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, “delay is a known defence tactics”. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for**
the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay;

5. While determining whether undue delay has occurred, one must have regard to all the attendant circumstances, including nature of offence, number of accused and witness, the work-load of the Court concerned, prevailing local conditions and so on what is called, the systemic delays;

6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage;

7. The ‘demand’ rule cannot be recognised or given effect to. An accused cannot try himself. He is tried by a Court at behest of the prosecution. Hence, an accused’s pleas of denial of speedy trial cannot be defeated by saying that the accused did, at no time, demand for a speedy trial.

8. Ultimately, the Court has to balance and weight the several relevant factors – ‘balancing test’ or ‘balancing process’ and has to determine in each case whether the right to speedy trial has been denied in a given case.

9. Ordinarily speaking, where the Court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed;

10. It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to speedy trial, it is primarily for the prosecution to justify and explain the delay; and

11. An objection based on denial of Right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on priority basis.

In Kartar Singh v State of Punjab (1994 Cri. L.J. 3139), the Constitutional Bench of Supreme Court considered the concept of speedy trial. The Constitutional Bench held that: ‘The concept of speedy trial is read into Article 21 as an essential part of fundamental right to life and liberty guaranteed and preserved in Indian Constitution. The right to
speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continuous at all stages namely the stage of investigation, inquiry, trial, appeal, and revision.

Quashing of Criminal Trial: A two Judge Bench of the Supreme Court in Common Cause a Registered Society Through its Director (I) v Union of India (AIR 1996 SC 1619) laid down following two sets of directions: one, regarding bail, and the other, regarding quashing of trial.

Regarding Bail: Depending on the quantum of imprisonment provided for several offences under the IPC and the period of time which the accused have already spent in jail, the under-trial accused confined in jails were directed to be released on bail or on personal bond subject to such conditions as the Court may deem fit to impose in the light of Section 437 of Cr.P.C.

Regarding Trial:- It is directed that the trial in pending cases to be terminated and the accused to be discharged or acquitted depending on the nature of offence by reference to (i) maximum sentence infictable — whether fine only or imprisonment, and if imprisonment, then the maximum sentence set-out in the law, and (ii) the period for which the case has remained pending in the Criminal Court. The Supreme Court further directed the Trial Courts to close such cases on the occurrence of following event and the period of delay. However, the said time limit has no application to the offences involving corruption, misappropriation of Public funds, smuggling, FERA, NDPS, Essential Commodities Act, Food Adulteration Act, Arms Act, TADA and some specific offences from the Indian Penal Code.

Right to legal aid in the Constitution of India

In Madhav Hayawadanrao Hoskat V. State of Maharashtra AIR 1978 SC 1548, the Supreme Court held that the right to free legal aid service is an essential ingredient “of the reasonable, fair and just procedure” for a person accused of an offence and is also implicit in Article 21 of the Constitution. The majority of the judges observed that free legal aid is a Constitutional right of every accused person who is unable to engage a lawyer and secure legal services due to the reasons, such as, indigence or incommunicado situation.

In Hussainara Khatoon and Others (No.1). Home Secretary v State of Bihar, Patna, (AIR 1979 S.C. 1369) the Supreme Court observed that: “An alarmingly large number of men and women, children including are behind prison bars for years awaiting trial in Courts of Law, the offences with which some of them are charged are trivial, which even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet these unfortunate forgotten specimens of humanity are in jail, deprived of their freedom, for periods ranging from three to ten years without even their trial having commenced.”

A KLJ PUBLICATION

16-30 November, 2013
In Khatri and Others v State of Bihar and Others (AIR, 1981 SC 928) the Supreme Court reiterated the above view by saying that the rights of the accused person which are available to him either under Article 21 or 22 or 39(a) of the Constitution accrue to such an accused not after conviction, not only during the trial, but immediately after he is first produced before the Magistrate. It further held that the State cannot escape from its Constitutional obligation to provide free legal aid to poor person who cannot afford legal service on the ground of financial or administrative inability.

In Sheela Barse v Union Territory of India and Another ((1993) 4 SCC 204) the custodial violence to women prisoners confined in police lock-up was complained of. The Supreme Court held in this case that Constitutional obligation to provide to the indigent persons free legal aid emanates from Articles 14, 21 and 39-A.

Handcuffing of Prisoners

The Supreme Court of India on several occasions has made weighty pronouncements decrying and severely condemning the conduct of escort police in handcuffing the prisoners and under trials without any justification.

In Sunil Batra (I) v Delhi Administration and Others (AIR 1978 SC 1675), it was held that imprisonment does not spell farewell to fundamental rights. It further observed that: “Part III of the Constitution does not part company with the prisoners at the gates, and judicial oversight protects the prisoner’s shriniken fundamental rights, if flouted, frowned upon or frozen by the prison authority”.

In Sunil Batra (II) v Delhi Administration (AIR 1980 SC 1579) the human rights conscious Court expressed its concern against the police atrocities over putting fetters by saying that “to fetter prisoners in irons is an inhumanity unjustified save where safe custody is otherwise impossible. The routine resort to handcuffs and irons bespeaks a barbarity hostile to our goal of human dignity and social justice”.

In Prem Shanker Shukla v Delhi Administration (AIR 1980 SC 1535) Justice Krishna Iyer held that handcuffing should not be used; in routine, and they were to be used only when the person was ‘desperate’, ‘rowdy’ or the one who was involved in non-bailable offence. He further observed that handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first blush, arbitrary.

Award of Compensation in Criminal Cases

Section 357 of the Code of Criminal Procedure, 1973 empowers the Court to direct the guilty person to pay compensation to the victim. It may
also order for payment of costs of prosecution. Section 358 of the Code enables the Court to award compensation to persons groundlessly arrested and Section 359 deals with award of compensation in non-cognizable cases.

Payment of Compensation for Illegal Detention

The Supreme Court of India for the first time, in Rudul Sha v State of Bihar and Another ((1983)4 SCC 141), articulated the concept of ‘compensatory jurisprudence’ for the flagrant infringement of fundamental rights implicit in Article 21 of the Indian Constitution. The Court ruled that a person whose right to life and personal liberty when violated by the State is entitled to compensation which can be awarded both in a Habeas Corpus petition and in a civil suit for damages.

In Smt. Nilabati Behera alias Lalitha Behera v State of Orissa ((1993)2 SCC 746) the Supreme Court clearly pointed out that the State’s plea of sovereign immunity for tortuous acts of its servants upheld by the apex Court in Kasturi Lal v State of U.P. (AIR 1965 SC 1039) is distinct from the liability for contravention of Fundamental Rights to which the doctrine of sovereign immunity has no application in the Constitutional scheme and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution for contravention of fundamental rights. In this case the Supreme Court was approached by Nilabati Behera with a complaint that her son Suman Behera, aged 22, died in police custody and prayed the Supreme Court to intervene. The petitioner also claimed compensation for violation of the fundamental rights to life guaranteed under Article 21 of the Indian Constitution. The Supreme Court held the police officers responsible for the death of Suman and directed the State of Orissa to pay compensation of Rs.1.5 lakhs to the mother.

Death in Judicial Custody

The Andhra Pradesh High Court in Challa Ramakonda Reddy and Others v State of Andhra Pradesh by District Collector, Kurnool (AIR 1989 A.P.235), has awarded Rs.1,44,000/- as damages against the State Government when an undertrial prisoner in jail lost his life due to failure or neglect of its officers to perform their duties.

In Bhabu Devi v State of Bihar and Others (2002 Cri. L.J. 2505), the accused died in judicial custody and the cause of death has not been sufficiently proved by the jail authorities, in such circumstances Jharkhand High Court held that an adverse inference must be drawn against the respondents particularly when the deceased left behind a widow and minor children and respondents are directed to pay a sum of Rs. 50,000/- as compensation to the petitioner within a month from the date of receipt/production of copy of this order.
Award of Compensation in case of Wrongful Confinement

In *Smt. S. Swathi and Others v The SHO* and others (2003 Cri.L.J. 1404), police has wrongfully confined an Advocate, who has filed a private complaint on behalf of a lady whom the police has beaten-up and stripped of her clothes. The High Court of Andhra Pradesh held that the action of police official in this case is resulted in restraining Advocate from discharging his lawful duties and brought down his prestige in society, therefore, directed the State to pay Rs. 50,000/- as compensation to Advocate and recover the same from its erring officials.

**Conclusion**

Through various judicial decisions it is well-established that right to life and personal liberty is guarantees bundle of rights, it extends to all situations, wherever a person’s life and personal liberty is deprived. Through the judicial decisions this article is extended in cases of police surveillance, speedy trial in criminal cases, quashing of criminal proceedings, right to legal aid, legal aid in criminal cases, handcuffing of prisoners, award of compensation in criminal cases, such as death in judicial custody, illegal detention and wrongful confinement.

In a recent decision the Kerala High Court held that where there is an infringement of fundamental rights, power of High Court to direct state to grant monetary compensation, Courts have obligation to satisfy social aspirations of citizens because Court and Law are for people and expected to respond to their aspirations. Thus notwithstanding right to remedies under civil suits or criminal proceedings, High Court can grant compensation in exercise of jurisdiction under Article 226 of constitution under public law to victims who suffered infringement of their right to life and personal liberty guaranteed under constitution of India. Existence of alternate remedy would not bar jurisdiction of a High Court under Article 226 of Constitution [*Vibha P.V. v State of Kerala and Others* (AIR 2013 Kerala 67)]. The investigation power of police is not unlimited, power should be exercised within limits prescribed by Code of Criminal Procedure, should not result in destruction of personal freedom (AIR 2013 SC 1952).