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MULTIFUNCTIONAL FACTORS OF RIGHT TO LIFE AND PERSONAL LIBERTY

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ABSTRACT

Life and personal liberty are fundamental concepts that are integral to human existence and are often enshrined in constitutions and legal frameworks across the world. Right to life does not mean only breathing; it includes all the essential parts which are required for a fruitful life. These concepts are essential for ensuring that individuals can live freely and with dignity. The concept of life, in a legal and philosophical context, goes beyond mere physical existence. It encompasses the right to live in a manner that allows for personal growth, fulfillment, and the pursuit of happiness. Personal liberty is the freedom to pursue one's own choices and actions without undue restraint or interference from others, particularly the government. Personal liberty is often protected by laws that prevent unlawful detention, ensure fair trials, and protect privacy. These legal frameworks are crucial in maintaining the balance between individual freedoms and societal order. Article 21 of Constitution of India states that No person shall be deprived of his life or personal liberty except according to procedure established by law. The two parameters are life and personal liberty having a broad concept which includes various factors such as right to education, livelihood, marriage, equal pay etc. This right is not only available to citizens of India but it includes foreigners and alien enemies as well. Article 21 is available to everyone. This is very essential to know that article 21 is not absolute in nature if any provision of any act or legislation which is passed by legislature can be imposed on article 21 and restrain the right.

Justice P. Bhagwati had said that Article 21 'embodies a constitutional value of supreme importance in a democratic society'.

Justice Iyer characterised Article 21 as 'the procedural Magna Carta protective of life and liberty'.

INTRODUCTION

Article 21 of the Constitution is a fundamental right that plays a crucial role in safeguarding the life and personal liberty of individuals. It is a vital part of the legal framework, ensuring that no

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person is deprived of their life or personal liberty except according to the procedure established by law. This article is a cornerstone of human rights protection and has been extensively interpreted by the judiciary to expand its scope over time.

KEY FEATURES OF ARTICLE 21

Article 21 guarantees the right to life, which means that no person can be deprived of their life except through a legal process. This right is not merely a physical right to life but also encompasses the right to live a dignified life. It ensures that every individual has the freedom to lead their life without undue interference, except as prescribed by law. This liberty is not absolute but can be restricted under legal procedures. The article emphasizes that any deprivation of life or personal liberty must follow a procedure established by law. This means that any law affecting these rights must be fair, just, and not arbitrary.

IMPORTANCE OF ARTICLE 21

Article 21 is essential for maintaining the balance between individual rights and state power. It acts as a shield against unlawful deprivation of life and liberty. The broad interpretation by the judiciary ensures that it adapts to changing societal needs, making it a dynamic and evolving part of the Constitution. In summary, Article 21 of the Constitution serves as a fundamental protector of human rights, ensuring that every person's life and personal liberty are respected and upheld, reflecting the essence of justice and equality in society.

JUDICIAL INTERPRETATION OF ARTICLE 21

The judiciary has played a significant role in interpreting Article 21, thereby expanding its meaning and scope. Over the years, the courts have included various rights under Article 21, such as:

Right to Privacy: Recognized as a fundamental right under Article 21, ensuring that personal information and private life are protected.

Right to Clean Environment: The courts have interpreted the right to life to include the right to a healthy environment.

Right to Education: Although primarily covered under Article 21A, the right to education has been linked to Article 21 as a part of the right to live with dignity.

Right to Health: Access to health care and a healthy living environment are considered essential components of the right to life.

RIGHT TO MARRIAGE

Laxmibai Chandaragi B. and Ors. vs. The State of Karnataka and Ors.

LEGAL ISSUE

- Whether directions need to be issued for the protection of Petitioners?

DECISION

It was asserted that the approval of family, community, or clan is not required once two consenting adults decide to marry, emphasizing that their agreement should be treated with utmost importance. In this light, it was further noted that an individual's choice is fundamentally linked to their dignity, as dignity is unattainable in the absence of personal choice. This right or freedom of choice should not be compromised by societal notions of class prestige or collective ideology. In the current situation, the FIR concerning the missing daughter has been annulled with the hope that the parents of Petitioner No. 1 will come to recognize and support the marriage, fostering social connections not only with Petitioner No. 1 but also with Petitioner No. 2. The Court stated the responsibility of the state to safeguard and promote this right, ensuring that individuals can make their marriage choices freely, with dignity, and without external coercion or societal bias.

RIGHT TO LIFE

A.K. Gopalan vs. The State of Madras

LEGAL ISSUE

- Whether the detention order passed against the petitioner was valid?
- Whether the Preventive Detention Act, 1950 was Constitutional?

DECISION

The term 'personal liberty' outlined in Article 21 of the Constitution solely referred to 'procedural due process,' and the preventive detention statute that led to Gopalan's confinement remains lawful, even if it infringes upon his freedom of movement. This principle is often referred to as 'procedural due process.' The contested Preventive Detention Act of 1950 is generally a legitimate statute, with the exception of Section 14 concerning the non-disclosure of reasons to the Court. The petitioner does not assert a lack of adequate grounds for his detention. Additionally, his time held under the challenged Act has not exceeded three months.

VACCINATION POLICY, PANDEMIC MANAGEMENT

In Re: Distribution of Essential Supplies and Services During Pandemic

LEGAL ISSUE

- Whether the government has prepared a road map on vaccination policy further?

DECISION

The statistics regarding the proportion of the population vaccinated (with either one dose or both doses), in comparison to those eligible during the initial three stages of the vaccination initiative. This will encompass information about the percentage of vaccinated individuals in both rural and urban settings. The comprehensive record of the Central Government's history of purchasing all COVID-19 vaccines to this point (including Covaxin, Covishield, and Sputnik V). This record should specify: (a) the dates on which the Central Government placed procurement orders for the three vaccines; (b) the volumes of vaccines requested on each specified date; and (c) the anticipated supply dates; as well as a framework detailing how and when the Central Government plans to immunize the remaining population across phases 1, 2, and 3. The measures being implemented by the Central Government to guarantee the availability of medication for managing mucormycosis.

EQUALITY BEFORE LAW, RIGHT TO LIFE

Kesavananda Bharati Sripadagalvaru vs. State of Kerala

LEGAL ISSUE

- Whether the Constitution can be amended through Constitutional (Amendment) Acts?

DECISION

The ruling was barely approved through a vote of 7 to 6, where seven judges endorsed the perspective that the Indian Constitution is amendable like other laws to address the socio-economic demands of the State. They noted that while citizens are granted fundamental rights, these rights cannot be modified through parliamentary changes. They stressed that the Constitution's fundamental structure must be preserved. In contrast, the six judges who disagreed argued that Parliament should not possess the absolute authority to amend the Constitution.

In terms of the Ratio, the emphasis was placed on the Basic Structure Doctrine, which established that while changes to the Constitution are permissible, such modifications must not disrupt its

essential framework. It was claimed that the foundational principles of the Constitution should remain unchanged, even if other sections undergo alterations.

DEPORTATION OF ROHINGYA REFUGEES

Mohammad Salimullah and Ors. vs. Union of India (UOI) and Ors.

LEGAL ISSUE

- Whether Respondents should be directed to release Rohingya refugees and not to deport them?

DECISION

The Court observed that it was acknowledged that India has not signed the Refugee Convention. It is evident that National Courts can refer to International Treaties or Agreements, as long as these do not conflict with local laws. The guarantees provided by Articles 14 and 21 of the Indian Constitution are applicable to all persons, irrespective of their citizenship. Nonetheless, the entitlement to avoid deportation is intrinsically tied to the right to reside or move freely within the territory of India, as specified in Article 19(1)(e) of the Indian Constitution. The Rohingyas located in Jammu, concerning whom this petition was filed, cannot be deported unless the established procedure for such deportation is adhered to.

RIGHT TO DIE

Common Cause (A Regd. Society) vs. Union of India (UOI) and Ors.

LEGAL ISSUE

- Does the right to die with dignity fall within the scope of the right to live with dignity guaranteed under Article 21 of the Indian Constitution?

DECISION

Certainly, the right to depart this life with dignity is encompassed within the broader right to exist with dignity as outlined in Article 21 of the Constitution. This right includes the option to refuse medical care in situations where life is ending, as facilitated by an Advance Medical Directive or a living will.

The Supreme Court concluded that the right to die with dignity is protected by the Constitution, thereby enabling the use of living wills or Advance Medical Directives. This landmark decision provided legal recognition to passive euthanasia, allowing individuals to reject life-sustaining treatments under specific circumstances.

RATIO

The rights to self-determination and bodily autonomy are fundamental elements of individual liberty. Passive euthanasia, which involves stopping life support in terminal conditions, aligns with this principle, permitting individuals to make well-informed decisions regarding their medical treatment and to die with dignity when facing irreversible medical issues.

RIGHT TO LIFE AND LIVELIHOOD

Olga Tellis v. Bombay Municipal Corporation

LEGAL ISSUE

- Whether there can be an estoppel or waiver of fundamental rights?
- Whether pavement dwellers are considered "trespassers" under the Indian Penal Code?

DECISION

The Supreme Court determined that fundamental rights protected by the Constitution cannot be subject to estoppel. These rights are inherent and cannot be relinquished, and any actions infringing upon these rights are considered unconstitutional, no matter the agreements or consent of the parties involved. The Court broadened the interpretation of Article 21, declaring that the right to life encompasses the right to earn a living. Taking away someone's ability to work equates to taking away their life, and such an action must follow a fair and just legal procedure. The Court affirmed the legality of Sections 312, 313, and 314 of the Bombay Municipal Corporation Act, 1888, asserting that these sections do not violate the principles of reasonableness or justice. Specifically, Section 314 was identified as an enabling clause that allows the Commissioner to clear encroachments with or without prior notice, depending on the situation. Moreover, while the pavement and slum dwellers were utilizing public land without permission, their actions were not classified as criminal trespassing under Section 441 of the Indian Penal Code. The Court acknowledged that their encroachments were necessitated by unavoidable circumstances, rather than a deliberate attempt to commit an offense.

RATIO

The right to life as defined in Article 21 is expansive and includes the right to sustain oneself. The guiding principles found in Articles 39(a) and 41, which instruct the State to uphold citizens' right to livelihood, play a crucial role in understanding the breadth of these fundamental rights. The State is barred from removing an individual's means of survival except through a lawful process that is both just and fair.

TRIPLE TALAQ JUDGMENT

Shayara Bano v. Union of India

LEGAL ISSUE

- Whether talaq-e-biddat (instant triple talaq) is an essential religious practice under Muslim personal law and is thereby protected under Article 25 of the Constitution?
- Whether the practice of triple talaq infringes upon the fundamental rights guaranteed under the Constitution, particularly Articles 14 and 15, and should be declared unconstitutional?

DECISION

The five-judge constitutional panel determined with a 3:2 vote that the practice of triple talaq is deemed unconstitutional. The Court asserted that it infringed on the equality right (Article 14) and the non-discrimination right (Article 15), as it arbitrarily allowed husbands the singular authority to end a marriage while denying any legal recourse for wives. Following this, the Court instructed the legislative body to formulate laws to tackle this problem and curb the potential abuse of triple talaq.

JUDGE'S OPINIONS

Majority - Supporting Opinions: Justices Rohinton Nariman, Uday Lalit, and Kurian Joseph found triple talaq unconstitutional. Justices Nariman and Lalit noted that the practice was arbitrary and breached Article 14 by enabling husbands to dissolve marriages unilaterally, thereby placing women at a significant disadvantage. Justice Kurian Joseph highlighted that talaq-e-biddat did not have any foundation in the Quran and was not a fundamental aspect of Islam. He stated that what is considered "wrong in theology cannot be acceptable in law," asserting that the Court should not endorse practices that are unfair and discriminatory.

Minority - Opposing Opinions: Chief Justice J.S. Khehar and Justice Abdul Nazeer opposed the majority opinion, arguing that talaq-e-biddat forms a part of uncodified Muslim personal law and, hence, should not be contested under the Constitution. They maintained that personal laws are exempt from judicial review concerning fundamental rights, urging that the judiciary should refrain from intervening in matters pertaining to religious freedom, which is safeguarded under Article 25. They proposed that any revisions to such laws should originate from the legislature, not from judicial authority.

Core Assertion Talaq-e-biddat is not an essential religious practice according to Muslim law and, as such, does not receive protection under Article 25.

RIGHT TO PRIVACY

Justice K.S. Puttaswamy (Retd.) v. Union of India

LEGAL ISSUE

- Whether the right to privacy is a fundamental right under Part III of the Constitution of India?

DECISION

The Supreme Court determined that the right to privacy is an essential element of the right to life and individual freedom as stated in Article 21 of the Constitution. The Court asserted that privacy constitutes a fundamental right that is vital to personal dignity and self-governance. This entitlement is not limited to a particular facet of privacy but rather broadly encompasses protections for various aspects, such as individual decisions, intellectual freedom, management of personal data, and the inviolability of one's physical and mental being. Furthermore, the Court emphasized that the right to privacy is not unconditional and can be subject to justifiable limitations. Nonetheless, any governmental intrusion into privacy must fulfill a three-part evaluation: legality, mandating a lawful basis; necessity, framed around a valid state objective; and proportionality, which guarantees a logical relationship between the methods utilized and the desired outcome.

The principle Right to privacy is a fundamental right within the Indian Constitution, deeply rooted in the right to life and individual freedom as assured by Article 21.

RIGHT TO FREE LEGAL AID

Hussainara Khatoon & Ors. v. State of Bihar

LEGAL ISSUE

- Whether the prolonged detention of under-trial prisoners without trial violated their fundamental rights under Article 21 of the Constitution of India?

DECISION

Indeed, the extended holding of individuals awaiting trial without having a hearing infringed upon their essential rights as outlined in Article 21 of the Constitution. The Supreme Court mandated the prompt release of all detainees who had remained in custody for durations exceeding what their sentences would have been if found guilty. Moreover, the Court highlighted that Article 39A of the Constitution requires the government to offer free legal assistance to guarantee that no individual is denied the chance to obtain justice due to financial constraints or other limitations;

this is a key constitutional directive. As a result, the Court instructed the State of Bihar to provide comprehensive lists of all prisoners awaiting trial and confirm compliance with the stipulations of Section 167(2) of the CrPC.

In addition, Article 21 of the Constitution, which protects the right to life and personal freedom, encompasses the entitlement to a timely trial. The government holds a constitutional duty to supply free legal assistance to make sure justice is available to everyone, regardless of financial status or other barriers.

WHETHER MENSTRUAL LEAVE SHOULD BECOME A RIGHT UNDER ARTICLE 21 OF CONSTITUTION OF INDIA?

It is observed that the work laws of India do not explicitly say approximately the menstrual clears out or giving them paid or unpaid takes off amid the monthly cycle and there is no obligatory commitment on the bosses to give the menstrual takes off to their female staff.

In the State of Bihar, the government in 1992 allowed two days of extraordinary take off each month to their female workers working in the state. The State of Kerala gives the menstrual clearances out to the understudies amid their examination and licenses them to deliver the exam at the afterward. In the year 2022, Budget Session in Arunachal Pradesh MP Shri Ninong Ering once more tabled the charge but unfortunately was pulled back. Presently the questions are inquired from the Central Government with respect to the menstrual takes off since this issue is truly critical to sort out day by day. Ladies are interfacing with the working environment and elevating herself, making her possess personality so it is imperative that the parliament ought to be arranged for the modern establishments in work laws.

Day by day the individuals are more mindful of their rights and necessities so it is vital to be prepared with the changes for the upliftment of the nation and today's era. It is critical that associations ought to make changes from time to time since the staff will work in an appropriate way and menstrual take off or giving clean cushions is one of the basic changes which has to be actualized by the organisation. Managers and working staff ought to be prepared to bargain with such circumstances viably. Managers guarantee the secure and sound environment of female staff in the work environment to be able to communicate viably without any wavering and boundaries. Implementation of menstrual take off will be advantageous for women's upliftment. It is vital to adjust to modern changes in the working environment. Menstrual take off. This will make a great environment for both men and ladies employees. In today's situation there is the requirement for

uniform respectful law administered by Parliament for its legitimate usage. There are as it were a few companies in India who have presented menstrual take off arrangements.

THE RIGHT OF WOMEN TO MENSTRUAL LEAVE AND FREE ACCESS TO MENSTRUAL HEALTH PRODUCTS BILL, 2022

SECTION 3

RIGHTS OF WOMEN:

Every women shall be entitled to the following rights:—

- (a) In case of working women— Right to paid leave and absence from work for three days during her menstruation in any establishment registered with the appropriate Government;
- (b) In case of female students— Right to leave of absence from educational institution for three days during her menstruation; and
- (c) Right to access to free menstrual health products.

SECTION 4

Establish of the Female Menstrual health products price regulating authority:

- (1) The Central Government shall, by notification in the Official Gazette, establish on an Authority to be known as the Female Menstrual Health Products Price Regulating Authority for carrying out the purpose of this Act.
- (2) The Authority shall consist of,—
 - (a) Union Minister of Health and Family Welfare, Chairperson, ex-officio;
 - (b) Union Minister of Women and Child Development, Vice-Chairman, ex-officio;
 - (c) Union Minister of Finance, Education and Labour and Employment, Member, ex-officio; and
 - (d) six other member to be nominated by the Central Government in such manner as may be prescribed:

Provided that out of six nominated members, four shall be women.

(3) The salary and allowances payable to and other terms and conditions of service of members nominated under clause (d) of sub-section (1) shall be such as may be prescribed.

(4) The Authority shall meet at least once in a month and shall regulate its own procedure.

SECTION 7

Grievances Redressal Forum:

The Central Government shall for the purposes of redressal of complaints under this Act establish grievance redressal mechanism in such manner as may be prescribed.

SECTION 8

Central Government to provide adequate funds:

The Central Government shall, after due appropriation made by the Parliament by law on this behalf, provide adequate funds, from time to time, to the State Governments for the effective implementation of the provisions of this Act.

LIST OF COUNTRIES HAVE IMPLEMENTED MENSTRUAL LEAVE POLICY

SPAIN

Spain stands as the first European country to adopt a menstrual leave policy at the state level. This initiative allows employees to take paid menstrual leave and includes additional healthcare rights. Currently, workers are entitled to three days of menstrual leave each month, which has recently been extended to five days.

JAPAN

In Japan, the concept of menstrual leave began to gain traction among workers and unions in the 19th century, leading to the establishment of labor laws in 1947. Under Article 68, employers are prohibited from requiring female employees to work during their menstrual discomfort.

INDONESIA

In 1948, Indonesia enacted a policy regarding menstrual leave, which was later amended in 2003. This policy grants employees experiencing pain during their menstrual cycle the right to take leave for the first two days.

PHILIPPINES

In the Philippines, employees are entitled to two days of leave each month specifically for menstrual-related issues.

TAIWAN

Taiwan has enacted the Gender Equality in Employment Act, which allows employees to request a day off for menstrual leave at half their daily wage. The Act permits three such leaves per year, with any additional days classified as medical or sick leave.

ZAMBIA

Zambia, an African nation, has introduced a policy allowing one day of unpaid leave each month without the need for a reason or medical documentation. This leave is referred to as Mother's Day leave rather than menstrual leave.

SOUTH KOREA

In South Korea, labor laws permit female employees to take leave during menstruation. Women have the option to either take this leave or work as usual, and employers are obligated to provide payment regardless of the employee's choice.

OTHER NATIONS

Additionally, countries such as the United Kingdom, China, and Wales have also proposed menstrual leave policies. In conclusion, the right to life and personal liberty are cornerstones of human rights that promote human dignity, freedom, and equality. It is imperative for governments, organizations, and individuals to work collaboratively to uphold and protect these rights, ensuring a just and equitable society for all.

WHAT CHALLENGES FACING BY MENSTRUAL LEAVES BILL, 2022

Offering paid leave for menstruation may deter businesses from recruiting women, as they might associate it with frequent absences. Employers could see female staff as a risk due to the recurring obligation of monthly paid time off.

Discrimination at Workplace: Allowing menstrual leave might interfere with regular operations, increase the workload for other colleagues, or foster bitterness among workers who lack similar entitlements.

Enforcement Issues: Instituting menstruation-related paid leave presents hurdles such as identifying valid claims, preventing abuse, and outlining acceptable enforcement tactics for businesses. This was demonstrated by events like those in Bhuj in 2020, where 66 girls were compelled to undress to confirm their menstrual status, along with comparable occurrences in Muzaffarnagar. It is essential to prioritize sensitivity and respect when creating policies regarding menstruation.

Reinforcing Stigma: Special leave policies might amplify the perception of menstruation as a negative factor, possibly resulting in period shaming and bias.

CONCLUSION

Article 21 is the most precious right in the constitution of India. As a democratic country it is the duty of legislation to implement certain laws which protect the rights of the people and menstrual leaves is one of the rights which comes under article 21 but still no specific law is made for them. The right to life and personal liberty ensures that every individual has the inherent right to live without fear of arbitrary deprivation. It is essential in safeguarding human dignity, as it acknowledges the intrinsic value of each person. This right extends beyond mere survival, encompassing the right to a life of quality, where individuals can pursue their own paths and fulfill their potential. The right to life and personal liberty are essential for the preservation of human dignity and freedom. They are the foundation upon which all other rights are built and must be vigorously protected and promoted to ensure a fair and just society for everyone. Many Private companies and organizations have already implemented menstrual leaves policy in their workplace but they must adopt strategies that ensure a secure and healthy workplace for female employees which will enhance the comfort of women in office settings and subsequently boost their involvement in the workforce. The Parliament has enacted a range of laws aimed at advancing women's rights, such as the Maternity Benefit Act of 1961, the Prohibition of Child Marriage Act of 2006, the Special Marriage Act of 1954, the National Commission for Women Act of 1990, the Equal Remuneration for Women Act of 1976, and the Indecent Representation of Women (Prohibition) Act of 1986 etc. These laws were established to safeguard and promote the status of women. To encourage active participation of women, we must support them through their menstrual cycles without stigma.

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