ABSTRACT

Article 21 is one of the shortest in the Constitution over which there took place one of the longest and most thoroughgoing discussions in the Constituent Assembly. It enacts that "no person shall be deprived of his life or personal liberty except according to procedure established by law". The Article as it stands now is a revised version of what it originally was in the Draft Constitution, according to which "no person was to be deprived of his life or liberty without due process of law". The Drafting Committee gave two reasons for this change. First, the word "liberty" should be qualified by the word "personal" in order to avoid the possibility of too wide an interpretation, which might include even the freedom already dealt with under Article 19. Secondly, the expression "procedure established by law" is more definite and such a provision finds place in the same context in the Japanese Constitution of 1946. The very concept of 'vicarious liability under article 21' is new one. It is emerging as an indispensable part of law. Article 21 provides the right to life and personal liberty, in a very broad sense, and vicarious liability deals with providing the compensation to injured, by the master for the wrong committed by his servant.

Key Words: Personal Liberty – Deprived – Interpretation – Due process of Law – Constitution of India - Vicarious Liability

INTRODUCTION:

The Emergency clamped on the people of India by the then Prime Ministers and subsequently the 42nd amendment has been the starting point for many discussions. Some questioned the status of Articles 19, 20 and 21 during the proclamation of Emergency. It is basically these fundamental rights, especially Art 21, which the authors set out to explore. Written in a very technical language, you cannot simply browse though this book. With all watershed cases being covered, the reader has to follow each word. The authors mention in the preface that Art 21 is "the fundamental of fundamental rights." In their research, they acquaint us with various aspects of this right, whether it is the right to live in a healthy environment or the right to live with dignity. One reassuring point highlighted is that the right to life does not only mean “mere physical existence, but includes the right to essential means and facilities which make life worth living with comfort and dignity. An atmosphere where a person can grow physically as well as mentally without fear or restrictions”.

THE ARTICLE 21 AND THE JUDICIAL REVIEW:

The key word in Article 21 is "law". What does it mean, law enacted by a competent legislative body or fundamental or natural law? This question confronted the Supreme Court soon after the inauguration of the Constitution. The question was discussed at length in A. K. Gopalan vs. the State of Madras. The Supreme Court of India said that there was no ambiguity in the meaning of the Article: "Normally read, and without thinking of other Constitutions, the expression 'procedure established by law' must mean procedure prescribed by the law of the State.

To read the word 'law' as meaning rules of natural justice will lead one in difficulties because the rules of natural justice as regards procedure are nowhere defined and in my opinion, the Constitution cannot be read as laying down a vague standard. This is particularly so when in omitting to adopt 'due process of law' it was considered that the expression 'procedure established by law' made the standard specific."

Four other Judges of the Court supported this opinion of the Chief Justice. The importance of the right embodied in Article 21, even if it does not place limitations on legislative power, is indicated by Justice Mukherjea in the same case in the following words:

"The fundamental rights not merely impose limitations upon the legislature, but they serve as checks on exercise of executive powers as well, and in the matter of depriving a man of his personal liberty, checks on the high-handedness of the executive in the shape of preventing them from taking any step, which is not in accordance with law, could certainly rank as fundamental rights.

In the Constitution of various other countries, the provisions relating to protection of personal liberty are couched very much in the same language as in Article 21.

It is all a question of policy as to whether the legislature or the judiciary would have the final say in such matters and the Constitution makers of India deliberately decided to place these powers in the hands of the legislature. Article 31 of the Japanese Constitution, upon which Article 21 of our Constitution is modeled, also proceeds upon the same principle."

Article 21 gives protection to life and personal liberty to the extent therein mentioned. It does not recognize the right to life and personal liberty as an absolute right but limits the
scope of the right itself. The absolute right is, by the definition in the article, qualified by the risk of its being taken away in accordance with the procedure established by law.

**RIGHT TO LIFE AND PERSONAL LIBERTY: VICARIOUS LIABILITY:**

The Supreme Court of India has extended the scope of article 21 of the Indian Constitution (Protection of life and personal liberty) to foreign nationals visiting India. But the liability under the law of tort arises only when the act complained of was performed in course of performing duty. Until now, there are numerous cases on infringement of Article 21 and on vicarious liability, but merging of these both is a new concept and must be appreciated.

**RELATION BETWEEN VICARIOUS LIABILITY AND ARTICLE 21:**

Vicarious liability means that one person takes or supplies the place of other so as far as liability is concerned. This doctrine has its roots in the earliest years of common law. We can say that it is the liability of one person for the act done by another person. But there are certain rules according to which liability can be considered.

These are based on the principle "Qui facit per alium facit per se" which means that the act of an agent is the act of the principal or in general "he who does an act through another is deemed to law to do it by himself". Liability arises only when the act is done by the servant under the course of employment. As Lord Pearce has shortly exclaimed "vicarious liability is based on, social convenience and rough justice". That is why sometimes this liability is explained on the basis of maxim respondent superior, which means the superior is responsible for the providing answer. Anyway, it is a vast topic but after getting a general idea about vicarious liability, we are concerned with "vicarious liability in relation with Article 21."

There are number of cases in which some how the right of life or the right of personal liberty is infringed by a person who was working as a servant or the agent of somebody when the act was committed and hence in these cases the superior authority was held liable and the compensation was granted.

The authority may be a personal company or the state. Custodial deaths and violence are reaching the courts regularly even as the courts have been imposing compensation holding the state vicariously liable for the wrong committed by the police or the other employees. In Moheela Moran v. State of Assam. These trends can also be seen even in the Encounter Killings the task is not that easy now as asserted by the Gowhati High Court in Gopal Ch Sharma v. State of Assam?

**CONCLUSION:**

This is the case when this idea of indulging right to life with vicarious liability had not taken its place in the arena. The person died in the accident that was infringement of his right to live and as far as his right to personal liberty was concerned it vanished with the man, but the thing that is material is that a person died and there was no discussion about his right to life. This is the time of relativity i.e. relating one indispensable idea with another to get a better or we can say a hybrid idea, an idea without flaws, and an idea which is complete, complete in every sense. On one hand this concept brings down the essence of constitutional law and on the other hand it brings the law of torts. So in this way we can say that we are heading towards what we thought while making this thing called 'LAW' that "NO CONVICT SHOULD REMAIN FREE AND NO INNOCENT SHOULD BE CONVICTED".

**REFERENCES:**