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# INTRA-CONFLICT OF FUNDAMENTAL RIGHTS FLOWING FROM ARTICLE 21, IN CONSONANCE WITH P. GOPALAKRISHNAN V. STATE OF KERALA, (2020) 9 SCC

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## INTRODUCTION

Part III of the Indian Constitution lays down the Fundamental Rights that are guaranteed to every person in India. It is often referred to as the Magna Carta and embodies the very core and essence of this code. Since the Constitution came into force, the Indian Judiciary has dynamically interpreted the rights under Part III. In doing so, the Supreme Court of India; in a plethora of judgments, has consistently expanded the scope of Article 21 and continues to do so. The widened ambit of Article 21 has led to the inclusion of a bundle of rights such as the right to live with human dignity<sup>1</sup>, the right to reputation<sup>2</sup>, the right to privacy.<sup>3</sup> The process of interpretation of fundamental rights, often leads to a conflict between 2 fundamental rights. This causes 2 competing interests of parties to arise. Generally, these conflicts may be classified into

- i. an inter-conflict between rights guaranteed by two Articles: or
- ii. an intra-conflict between rights guaranteed under one Article.

The Court has to overcome multiple complexities in having to choose between these 2 competing interests. While construing the interests of both parties by choosing one right, it is the duty of the Court to keep in mind that the other right cannot be completely extinguished or denied. No fundamental right is above and beyond the other. In *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat*<sup>4</sup>, it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment. There exists no straitjacket solution to determining which right should prevail over the other. It changes on a

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<sup>1</sup> Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors, AIR 1981 SC 746

<sup>2</sup> Subramanian Swamy v. Union of India, Ministry of Law & Ors. (2016) 7 SCC 221

<sup>3</sup> Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India And Ors, (2017) 10 SCC 1

<sup>4</sup> 1975 SCR (2) 317

case-to-case basis upon the facts. The test that the Supreme Court follows when a conflict of rights ensues, is to examine where lies the larger public interest while balancing the two conflicting rights. The Court's duty is to strike a balance between competing claims of different interests.<sup>5</sup> It is the *paramount collective interest* which would ultimately prevail. One of the leading authorities in determining the intra-conflict of rights under Article 21 is *Asha Ranjan v. State of Bihar*.<sup>6</sup> When there is a conflict between two individuals qua their right under Article 21 of the Constitution and in such a situation, the test that is required to be applied is the test of larger public interest and further that would, in certain circumstances, advance public morality of the day or "sustenance of public confidence in the justice dispensation system." The right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay.<sup>7</sup>

In *P. Gopalkrishnan v. State of Kerala*<sup>8</sup>, The appellant/accused has approached the Supreme Court to gain access to the contents of the memory card/pen drive in question to enable his defense during trial. The pen drive in question contains contents of the alleged incident thereby putting the dignity and privacy of the victim in turmoil. The Lower Courts had quashed the requests of the Appellant as it would be a *serious blow to the supreme honour of the woman*.<sup>9</sup> However, he was allowed to view the contents at the discretion of the Lower Court. In this appeal, the Supreme Court has a duty to balance the right of fair trial as sought by the accused and the right to privacy of the victim, both of which are enshrined in Article 21.

In *J. Jayalalithaa & Ors v. State of Karnataka & Ors*<sup>10</sup> the right to get a fair trial is not only a basic fundamental right, but a human right also. Fair trial is the main object of criminal procedure, and such fairness should not be hampered or threatened in any manner. It was further laid down in the same judgment, that denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law.<sup>11</sup>

## ANALYSIS OF THE GOPALAKRISHNAN DICTUM

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<sup>5</sup> *Ibid*

<sup>6</sup> (2017) 4 SCC 397

<sup>7</sup> Mr. 'X' v. Hospital 'Z', AIR 1999 SC 495.

<sup>8</sup> (2020) 9 SCC 161

<sup>9</sup> *Ibid*

<sup>10</sup> (2014) 2 SCC 401

<sup>11</sup> Smt. Triveniben v. State of Gujarat, AIR 1989 SC 1335

Drawing parallels to the *Gopalkrishnan*<sup>12</sup> dictum, as established above the accused has a fundamental right to have a fair trial under Article 21 of the Constitution. Similarly, the victims who are directly affected and also form a part of the constituent of the collective, have a fundamental right for a fair trial. Thus, there can be two individuals both having legitimacy to claim. The factum of legitimacy is a primary consideration. The test of primacy which is based on legitimacy and the public interest has to be adjudged on the facts of each case and cannot be stated in abstract terms.<sup>13</sup> Article 21 in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. It is pertinent to note that no fundamental right is absolute, and it can have limitations in certain circumstances.

When the balancing act is done, the right to fair trial is not totally crippled, but it is curtailed to some extent by which the accused gets the right of fair trial and simultaneously, the victims feel that the fair trial is conducted, and the court feels assured that there is a fair trial in respect of such cases. That apart, the faith of the collective is reposed in the criminal justice dispensation system and remains anchored.<sup>14</sup> The right to fair trial is not singularly absolute, as is perceived, from the perspective of the accused. It takes in its ambit and sweeps the rights of the victim(s) and the society at large. These factors would collectively allude and constitute the Rule of Law, i.e., free and fair trial.<sup>15</sup> When there is an intra-conflict in respect of the same fundamental right from the true perceptions, it is the obligation of the constitutional courts to weigh the balance in certain circumstances, the interest of the society as a whole, when it would promote and instill Rule of Law.<sup>16</sup> Total extinguishing of a right is not balancing, and one right cannot completely prevail over another.

The Apex Court in the judgment of the *Gopalkrishnan*<sup>17</sup> allowed the appeal to partially succeed. The Lower Courts in their judgments completely quashed the plea of the Accused who wanted to obtain a copy of the contents of the pendrive, in the interest of upholding the privacy of the victim. Total extinguishing of a fundamental right is not balancing. There must be a harmonious balance between both rights of the parties. The Supreme Court in its judgment has strived to do the same and allows the appellant and his authorised representative to inspect the contents of the memory card/pendrive so that he may effectively defend himself in the trial

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<sup>12</sup> *Supra* Note 8.

<sup>13</sup> *Supra* Note 6.

<sup>14</sup> *Supra* Note 6.

<sup>15</sup> *Supra* Note 6

<sup>16</sup> *Supra* Note 6.

<sup>17</sup> *Supra* Note 8.

with certain conditions imposed whilst also taking into account the possibility of misuse of said contents. It allows the appellant to seek second expert opinion from an independent agency such as the Central Forensic Science Laboratory (CFSL), on all matters which the appellant may be advised. At the same time, the Court also upholds the rights of the victim and protects her chastity and dignity by issuing sufficient directions so that her privacy is intact.

In *Common Cause v. Union of India*<sup>18</sup> it was held that Courts in upholding their judicial duties come across cases that may be broadly classified into i) easy cases, ii) intermediate cases and iii) hard cases. In these hard cases, the Court is faced with a number of possibilities, all of which appear to be lawful within the context of the system, and generally have to exercise their discretion between the lawful and lawful. In this scenario, the Court is supposed to ultimately choose that solution which is in larger public interest. Likewise, the Supreme Court in the *Gopalkrishnan*<sup>19</sup> was faced with a *hard case* and within the framework of limitations has laid down a dictum which imperative balances out the rights of both parties.

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<sup>18</sup> (2018) 5 SCC 1

<sup>19</sup> *Supra* Note 8.