

STUDY ON ARTICLE 21 OF THE CONSTITUTION OF INDIA

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Abstract

Article 9 of the Universal Declaration of Human Rights (UDHR) provides for the 'protection for life and personal liberty' of every person which influenced the framers of the Constitution of India. The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how the framers of the Constitution understood the nature at the time when the Constitution was being adopted. Right to live is only ensured when basic necessities of life such as food, water, shelter, medical aid, education, decent environment are met, it does not mean mere animal existence. The word 'life' used in Article 21 of the Constitution seeks to achieve all these objectives to all those citizens and non – citizens living in the country. The right to life guaranteed under Article 21 is a living element which is necessary for a society to march towards the development where both men and women have equal right in decision making. Article 21 is undoubtedly the heart and soul of the Constitution of India which occupies a unique place in the Constitution. The Article 21 guarantees to the citizens as well as the aliens right to life and personal liberty and is enforceable against the state. The Supreme Court of India has defined the Article 21 of the Constitution dealing with Right to Life as the 'heart of the fundamental rights'. The right to life is not just a right to survive instead it requires being able to live a dignified and meaningful life.

Keywords : Article 21, personal liberty, fundamental rights, arbitrary, procedure established by law, right to life.

Introduction

Article 21 of the Constitution says that:

“No person shall be deprived of his life or personal liberty except according to the procedure established by law”.

Prior to Maneka Gandhi's decision, Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The State can interfere with the liberty of citizens if it supports the action by a valid law. But after Maneka Gandhi's decision Article 21 now protects the right to life and personal liberty of citizens not only from the Executive action but from the Legislative action also. A person can be deprived of his life and personal liberty if there is a law and a procedure prescribed by the law, and that procedure must be just, fair and reasonable.¹

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Article 21 itself becomes the source of many substantive rights and procedural safeguards to people. It also assures every person right to life and personal liberty. The meaning of 'life' has been provided in an expanded form. The term 'personal liberty' has been provided a very wide scope which covers a variety of rights which constitutes the personal liberty of a citizen. The deprivation of Article 21 is only relevant if it is complied with the procedure established by law.

Article 21 of the Constitution is available to both Citizens and Non citizens

In a number of cases, the Supreme Court has held that foreigners are entitled to the protection of Article 21 and 22.² On the question of applicability of Article 21 of the Constitution to aliens or non-citizens, the Supreme Court has provided that even the aliens who come to India have the "right to live with human dignity" throughout their duration of stay in the country. The State has the constitutional obligation to protect the life of every citizens of the country as well as the non-citizens or aliens equally.³ Right to live with human dignity is available to every person and even the state has no authority to violate that right except according to procedure established by law.

The Traditional Approach of the Supreme Court

It is hard to fully appreciate the extent of development of right to life without an overview of the traditional approach. Immediately after the Constitution became effective, the question of interpretation of Article 21 arose in the famous *A. K. Gopalan v. Union of India*⁴ case, where the validity of the Preventive Detention Act, 1950 was challenged. The question was whether Article 21 provided any procedure laid down by law which was enacted by a legislature, or whether the procedure should be just, fair and reasonable.

An attempt was made in *Gopalan's* case to induce the Supreme Court to decide that whether the Court can adjudicate upon the reasonableness of the Preventive Detention Act, or any law depriving a person of his personal liberty. For this purpose three arguments were raised, they were:

The word 'law' in Article 21 does not mean merely enacted law but incorporates principles of natural justice so that a law to deprive a person of his life or personal liberty cannot be valid unless it includes the principles of natural justice in the procedure laid down by law.

The reasonableness of the law of preventive detention ought to be judged under Article 19.

The expression 'procedure established by law' was introduced in India for Courts to see whether the law fulfils the requisite elements of a reasonable procedure.

Thus, in *Gopalan's* case, an attempt was made to provide for a better procedural safeguards than that were available to him under the relevant detention law and Article 22 of the Constitution. But the attempt was failed as the Supreme Court rejected all these arguments.

¹ *Maneka Gandhi v. UOI*, (1978) 1 SCC 248

² *Louis De Raedt v. UOI*, (1991) 3 SCC 554

³ *Chairman Railway Board v. Chandrima Das*, AIR 2000 SC 988

⁴ *AK Gopalan v. State of Madras*, AIR 1950 SC 27

The reason came out of the case was that Fundamental Rights were silos in themselves and were not interconnected and constituted as independent articles. In this case, the Supreme Court also said that personal liberty can only be curtailed under two ways, coercion and physical restraint.

Gopalan's case held the field for almost three decades, i.e., 1950 to 1978. Gopalan settled two major points in relation to Article 21. One, Articles 19, 21, and 22 were mutually exclusive and independent of each other and that Article 19 was not to apply to a law affecting personal liberty to which Article 21 would apply. Two, a 'law' affecting life or personal liberty could not be declared unconstitutional merely because it lacked natural justice or due procedure. The legislature was free to lay down any procedures for these purposes. As interpreted in Gopalan, Article 21 provided no protection or immunity against competent legislative action.

Maneka Gandhi Case : The New Approach

Maneka Gandhi v. Union of India,⁵ is a landmark case of the post-emergency period. This case tells us how broad thinking has influenced the Supreme Court in the matter of explaining the Fundamental Rights, particularly, Article 21 of the Constitution. A great change has occurred in the judiciary with respect to protection of personal liberty after the shocking and distressing experience of the emergency during 1975-1977 when personal liberty was at its lowest, as became clear from the Supreme Court judgement in *ADM Jabalpur's case*.⁶ This case showed that Article 21 as interpreted by the Court in Gopalan's case could not play an active role in providing any safeguard against any arbitrary law which seeks to deprive a person of his personal liberty and life. Whereas, in *Maneka Gandhi's case* the Supreme Court has laid a great emphasis on the protection of personal liberty of the citizens.

In *Maneka Gandhi case* the Supreme Court has shown great sensitivity to the protection of personal liberty. The Court has re - interpreted Article 21 and practically overruled Gopalan in *Maneka Gandhi* which can be regarded as a highly creative judicial pronouncement on the part of the Supreme Court. Not only that, since *Maneka*, the Supreme Court has given to Article 21, broader and broader interpretation so as to employ many more Fundamental Rights. Eventually, Article 21 of the Constitution has proved to be very effective source of rights of the people.

In *Maneka Gandhi*, the facts of the case were as follows: Section 10(3)(c) of the Passport Act authorises the passport authority to seize a passport if it deems it necessary to do so in the interest, security, integrity and sovereignty of the country or its relation with any foreign country. In that case, the petitioner's passport was seized by the Government under the Passport Act. *Maneka Gandhi*, the petitioner challenged the order on the ground of violation of her Fundamental Right of personal liberty under Article 21 of the Constitution. The order was challenged on the ground that the order seizing the passport was null and void as it did not comply with the principle of natural justice, *audi alteram partem*. The leading opinion in *Maneka* was pronounced by Justice Bhagwati.

⁵AIR 1978 SC 597

⁶*ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207

The Court laid down a number of thesis which seeks to make Article 21 of the Constitution more meaningful than it was before:

The Court reiterated that Article 14, 19 and 21 of the Constitution are mutually inclusive. A link or network has been established between these three articles (popularly known as Golden Triangle) provided that a law prescribing a procedure for depriving a person of his personal liberty has to meet not only the requirements of Article 21 but it must also meet the requirements of Article 14 and 19 of the Constitution.⁷

The expression 'personal liberty' in Article 21 was given an expanded interpretation. The Court interpreted that the word 'personal liberty' has a very wide scope covering a number of rights which goes on to include the personal liberty of a man. Some of these features and elements has been recognised as a distinct fundamental right and have been given additional protection under Article 19 of the Constitution.

According to Krishna Iyer J, "*the spirit of man is at the root of Article 21; personal liberty makes for the worth of the human person and travel makes liberty worthwhile*". Thus, no person can be deprived of his fundamental right to travel abroad except according to procedure established by law.

The most significant and creative aspect of Maneka Gandhi's case is the re-interpretation of the expression 'procedure established by law' used in Article 21 by the Court. The Court gave a new appearance to this expression. Article 21 would no longer mean that a law could prescribe a skeleton of procedure to deprive a person of his personal liberty. Instead, it now means that the procedure depriving a person of his personal liberty must satisfy the condition of being just, fair and reasonable. Therefore, the expression 'procedure established by law' is synonymous with the word 'due process of law' which is in the United States of America. This makes sure that not only the procedure established by law has to be 'just, fair and reasonable', but also the law has to be fair, reasonable and rational as Article 21 have now to be read in accordance with Articles 14 and 19 of the Constitution.⁸

Present View of Article 21

The Supreme Court in Maneka Gandhi v. Union of India⁹ overruled the majority view expressed in A.K. Gopalan's case and held that Article 21 must satisfy the requirements mentioned in Article 19. In other words, Article 21 is controlled by Article 19. The Court made the following observations :-

"It is now settled that Article 21 include Article 19 and if there is a law prescribing a procedure for depriving a person of personal liberty and there is no infringement of fundamental right mentioned in Article 21, then that law which takes away the fundamental right mentioned in Article 19 have to meet the requirements mentioned under Article 19. Therefore, a law depriving a person of personal liberty has to not only meet the requirements of Article 21 but it must also meet those mentioned under Article 19 and Article 14 of the Constitution."

⁷ Also known as Golden Triangle Rule

⁸ Mohd Arif v Supreme Court of India, (2014) 9 SCC 737

⁹ AIR 1978 SC 597

Extended View of Article 21

The Supreme Court post Maneka Gandhi gave an extended to Article 21 of the Constitution. In Maneka Gandhi's case, the Supreme Court has also held that the word 'law' in Article 21 does not merely mean an enacted piece of law but it must be fair, just and reasonable law. Article 21 of the Constitution has both positive and negative aspects in it, the positive rights are very clearly mentioned in it.

Right to travel abroad

The Supreme Court in *Satwant Singh v. Assistant Passport Officer, New Delhi* held that right to travel abroad is a person's fundamental right under Article 21 of the Constitution, and it is also a person's personal liberty. The Court also held that except according to the procedure established by law, no person can be deprived of his fundamental right to travel abroad.

Right to live with human dignity

The Supreme Court in Maneka Gandhi's case held that right to live is not restricted to only physical existence but it also includes right to live with human dignity. The same view was elaborated in *Francis Coralie v. Union Territory of Delhi*¹⁰, wherein the Court said that right to live is not limited to mere animal existence but more than physical survival. The right to live is not restricted to protection of body parts through which life is enjoyed or soul which communicates with the outside world but includes "right to live with human dignity" and along with it, the bare necessities of life such as, clothing, shelter, freely moving, adequate nutrition, expressing ourselves.

Right to livelihood

The five Judges Bench of the Court in *Olga Tellis v. Bombay Municipal Corporation* ruled that the word 'life' in Article 21 of the Constitution includes the 'right to livelihood' also, wherein the court said that, if right to livelihood is not treated as part of right to life which is a constitutional right then the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. The most important aspect of right to life is right to livelihood because survival of a person without means of livelihood becomes impossible. Article 39(a) and Article 41 of the Constitution require the States to secure to citizens an adequate means of livelihood and it would be sheer dogmatic to exclude right to livelihood from the ambit of the right to life.

Right to Shelter

Right to shelter was recognised as the fundamental right under Article 21 of the Constitution in the case of *Chameli Singh v. State of Uttar Pradesh*¹¹ where the relationship between right to livelihood and need of a proper shelter was discussed. Right to live is not fulfilled only by a mere physical existence but it is only assured when facilities like right to food, water education, medical care is provided. Therefore, shelter for human being is not a mere space for protection of his body parts but a place where he had opportunities to grow physically and mentally and includes amenities like sufficient light, air and water, electricity, sanitation, living peace, decent structure, etc. But right to shelter does not mean a mere roof over one's head but a right to minimum infrastructure necessary for him to live and develop as a human

¹⁰AIR 1981 SC 746

¹¹(1996) 2 SCC 549

being. It is because of this importance of the right to shelter, the Court has held that the State is duty bound to provide housing facilities to Dalits and Tribes, so that they can come into the orthodox of national life.

Right to Privacy

The issue of privacy was first raised in *Kharak Singh v. State of Tamil Nadu*¹² wherein Justice Subha Rao in his minority judgement said that the right to privacy is a part of personal liberty and it flows from it. It was this minority judgement later paved way for further development.

Later the Supreme Court in *R. Rajagopal v. State of Tamil Nadu*¹³ held that “right to privacy” is guaranteed and a part of Article 21 of the Constitution. A citizen has a right to safeguard the privacy of himself and his family and other matters. No one can publish anything about his family, education, marriage without his consent whether true or not. If he does so, he would be violating the right to privacy of the person concerned and that person would be liable for the damages so caused.

This right is subject to an exception that if any publication of such matters are for public record and court record then it will be unobjectionable and the right to privacy no longer exists.

Right to speedy trial

The Supreme Court in *HussainaraKhatoon (No.1) v. Home Secretary, State of Bihar*¹⁴ held that ‘right to speedy trial’ is a fundamental right which is understood in the guarantee of life and personal liberty under Article 21 of the Constitution. Speedy trial is the essence of criminal justice and any procedure which does not ensure speedy trial can be regarded as ‘reasonable, fair and just’. If any accused who is denied of this right of speedy trial may under Article 32 of the Constitution approach the Supreme Court for the purpose of enforcing such right, and in discharge of its constitutional obligation, the Supreme Court has the power to give directions to the State.

Death Penalty – Not a violation of Article 21

The validity of death sentence was challenged in the case of *Jagmohan Singh v. State of Uttar Pradesh*¹⁵ on the ground that it was violative of Article 19 and 21 of the Constitution as it did not provide any procedure for death penalty. The Supreme Court in that case held that it is in accordance with the procedure established by law, the death penalty is awarded to the accused. It is on the discretion of the Judge to decide between death penalty or life imprisonment on the basis of nature of crime and facts brought during the trial. The 5 Judge bench held that death penalty is constitutionally valid and is not violative of Article 14, 19 and 21 of the Constitution.

Later in *Bachan Singh v. State of Punjab*, the Supreme Court by 4:1 majority held that the provision of death penalty under Section 302 of Indian Penal Code is an alternative

¹²AIR 1963 SC1295

¹³(1994) 6 SCC 632

¹⁴AIR 1979 SC 1360

¹⁵AIR 1973 SC 947

punishment for murder and is not violative of Article 21 of the Constitution. Article 21 of the Constitution confers the right on the State to deprive a person of his life or personal liberty. India is party of International Covenant of Civil and Political Rights from 1979 but it has not abolished the imposition of death penalty. It requires conditions that, death penalty should not be awarded arbitrarily and it should be given only in most serious and rarest of rare cases.

Delay in execution of death penalty is a violation of Article 21

The 2 judge bench of Supreme Court held that prolonged delay (2 years) in execution of death penalty is a violation of protection under Article 21 and the death penalty would be reduced to life imprisonment¹⁶.

Later, in *Triveniben v. State of Gujarat*¹⁷, the 5 judge bench of the Supreme Court held that the condemned prisoner is entitled to procedural fairness till the last breath and in case of long delay in execution of death penalty, the person is entitled to approach the Supreme Court for the commutation of death sentence into imprisonment for life and before doing so the Court will examine the facts of the case and nature of delay.

Right to life does not include right to die

The Bombay High Court in *State of Maharashtra v. Maruti Sripati Dubal*¹⁸, struck down Section 309 of Indian Penal Code which provides punishment for attempt to commit suicide and held it unconstitutional, as right to life under Article 21 of the Constitution includes right to die.

A Division Bench of Supreme Court in *P. Rathinam v. Union of India*¹⁹, agreed with the view of Bombay High Court held that Article 21 of the Constitution “right to life” also includes “right to die” and decalred Section 309 of IPC as unconstitutional which makes “attempt to commit suicide” a penal offence.

Finally, the 5 Judge Bench of the Supreme Court in *Gian Kaur v. State of Punjab*²⁰ overruled the *P. Rathinam*’s case and held that “right to life” under Article 21 of the Constitution is a natural right and does not include “right to die” which is an unnatural termination of life.

Right to Health and Medical Care

In the landmark judgement of *Parmananda Katara v. Union of India*²¹, the Supreme Court held that it is the professional obligation of the doctors to provide medical assistance to the injured person so that his life may be saved and the guilty may be punished, without waiting for the legal formalities to be complied by the police under the Criminal Procedure Code.

¹⁶T.V. Vatheeswaran v. State of Tamil Nadu, AIR 1981 SC 643

¹⁷AIR 1989 SC 142

¹⁸AIR 1997 SC 411

¹⁹(1994) 3 SCC 394

²⁰(1996) 2 SCC 648

²¹AIR 1989 SC 2039

Following the judgement of ParmanandaKatara's case, the Supreme Court in Paschim Bang KhetMazdoorSamiti v. State of West Bengal²² held that preservation of live of a human being is of paramount importance and therefore denial of medical help on the ground of non-availability of beds is a violation of fundamental right of right to life under Article 21 of the Constitution.

Right to Education

The Division Bench of Supreme Court in Mohini Jain v. State of Karnataka²³, held that right to education is a fundamental right under Article 21 of the Constitution which should not be denied to a citizen on the ground of charging higher fee. Right to education is a part of right to life. The Court also held that denial of this right is a violation of Article 14 of the Constitution for being arbitrary, unfair and unjust.

The 5 Judge Bench of the Supreme Court in Unni Krishnan v. State of A.P.²⁴ partly overruled the Mohini Jain's case and held that right to free education is only available to the children's upto the age of 14 years and after that it depends on the economic capacity and development of the State.

Later, the 11 Judge Constitution Bench of the Supreme Court in TMA Pai Foundation v. State of Karnataka²⁵, partly overruled the decision of Unni Krishnan and held that the policy of fixing the fee and the scheme relating to admission were not correct, hence they are overruled.

Conclusion

To conclude, it has been seen that the Supreme Court of India has given great importance to Article 21 of the Constitution. Article 21 is undoubtedly the heart and soul of the Constitution. The Supreme Court has played an active role while interpreting the Article 21 of the Constitution. It is seen that initially the scope of Article 21 was narrow and with the passage of time it's widened. It provided a procedure for depriving a person his personal liberty and right to life which must be just, fair and reasonable and such depriving a person of his personal liberty should not be arbitrary. The State depriving a person of his fundamental right to life and personal liberty would be against the provision of Article 21 of the Constitution. It has been held in the famous Maneka Gandhi's case that a law depriving a person of his personal liberty has not only to be tested under Article 21, but it must also be tested under the ambit of Article 14 and Article 19 of the Constitution as well, which later came to be known as the 'Golden Triangle'.

²²(1996) 4 SCC 37

²³(1992) 3 SCC 666

²⁴(1993) 1 SCC 645

²⁵AIR 2011 SC 3361