



ROLE OF THE INDIAN JUDICIARY IN WIDENING THE SCOPE OF ARTICLE 21 OF THE CONSTITUTION OF INDIA:

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ABSTRACT:

Fundamental rights is a charter of rights contained in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Violation of these rights result in punishments as prescribed in the Indian Penal Code or other special laws, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste or gender. Aliens (persons who are not citizens) are also considered in matters like equality before law. They are enforceable by the courts, subject to certain restrictions. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

INTRODUCTION:

RIGHT TO LIFE AND PERSONAL LIBERTY (ARTICLE 21)

Article 21 provides “No person shall be deprived of his life or personal liberty except according to procedure established by law”. This right has been held to be **the heart of the Constitution** and the **foundation head of our laws**.

Article 21 secures two rights –

- A. Right to life
- B. Right to personal liberty

Article 21 can be claimed only when a person is deprived of his “life” or “personal liberty” by the “State”. Violation of the right by a private individual is not within the purview of Article 21.¹

Who can claim the Protection of Article 21

- The right secured by Article 21 is available to every person, citizen or non-citizen. So, even a foreigner can claim this right.
- Article 21 applies only to natural persons. It has no application to corporate bodies.
- The expression “person” includes “dead person” in a limited sense. It is held that right to life under Article 21 extends to treating the dead body of the person with respect which he would have deserved had he been alive subject to his culture, tradition and religion which he possessed.²

¹ Kumar Prof. Narender, ‘Constitutional Law Of India’, Allahabad Law Agency, Haryana, 8th edition, 2011, page305.

² Supra Note 2, page- 306



A. RIGHT TO LIFE

The expression 'life' in Article 21 has been interpreted by the Supreme Court liberally and broadly.

The Court has often quoted the following observation of FIELD J. in **MUNN V. ILLINOIS**³, an

American case : "By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.

DIFFERENT FACETS OF THE RIGHT TO LIFE

○ **Right to live with human dignity**

BHAGWATI J. has observed in **FRACIS CORALIE**: "We think that the right to life includes the right to live with human dignity and all that goes along with it namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing with fellow human beings."⁵

In **PEOPLE'S UNION FOR DEMOCRATIC RIGHTS v. UNION OF INDIA**³, the non-payment of minimum wages to the workers, has been held by the Supreme Court as violative of the "right to life".

○ **Right to reputation**

Reputation is an important part of one's life. The Supreme Court in **STATE OF MAHARASHTRA v. PUBLIC CONCERN FOR GOVERNANCE TRUST**⁴, held that a good reputation was an element of personal security and was protected by the Constitution.

○ **Right to livelihood**

In **OLGA TELLIS v. BOMBAY MUNICIPAL CORPORATION**⁹, it was held that the "right to life" included the *right to livelihood*. But no person could claim the right to livelihood by the pursuit of an illegal occupation or a nefarious trade or business like gambling, toutism or living on the gains of prostitution.

○ **Right to shelter**

The *right to shelter* has been held to be a fundamental right which springs from the *right to residence* secured in *Article 19(1)(e)* and the *right to life* guaranteed by *Article 21*.⁵

In **CHAMELI SINGH v. STATE OF U.P.**¹², the Supreme Court emphasized on the importance of the *right to shelter* as one of the basic human rights designed to ensure all facilities to the man to develop himself as a member of a civilised society. The shelter for a human being is not a mere protection of his life and limb. It is

³ AIR 1982 SC 1473.

⁴ AIR 2007 SC 777.

⁵ Supra Note 5,
page- 1233. ¹²

AIR 1996 SC
1051.



home where he has opportunities to grow physically, mentally, intellectually and spiritually. Also includes adequate living

space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads, etc.

○ **Right to live in an unpolluted environment**

The “*right to life*” under *Article 21* has been interpreted to mean *a life of dignity to be lived in a proper environment free from the dangers of diseases and infection*. Clean surroundings lead to a healthy body and healthy mind. Maintenance of health, preservation of the sanitation and environment have been held to fall within the purview of *Article 21* as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazard created, if not checked.

Likewise, *smoking in any form in public places* is held to be illegal, unconstitutional and violative *Article 21* which includes maintenance of health and environment.⁶

However, mere change in environment does not per se violate rights under *Article 21*, especially when ameliorative steps are taken not only to preserve but to improve ecology and environment. Holding that care for environment was an ongoing process, the Supreme Court in **NARMADA BACHAO ANDOLAN v. UNION OF INDIA**⁷, issued directions in respect to the continuance of the construction of dam on Narmada river (*Sardar Sarowar Project*), for taking relief and rehabilitation measures, pari passu with construction of the dam for the displaced persons.

○ **Right Against Noise Pollution**

A division bench of the Apex Court **IN RE: NOISE POLLUTION**⁸, said that human life had its charm and there was no reason why the life should not be enjoyed along with all permissible pleasures. Anyone who wished to live in peace, comfort and quiet within his house, had a right to prevent the noise as pollutant reaching him. That while one had a right to speech, others had a right to listen or decline to listen. That nobody could be compelled to listen and nobody could claim that he had a right to make his voice trespass into the ears or mind of others and that nobody could indulge into aural aggression.

○ **Right to Know or Right to Information**

In the broader horizon of the right to live, in this age of our land under *Article 21*, *the right to know* has been held to be a basic right, which, citizens of a free country may aspire. Holding that the right to life has reached new dimensions and urgency, the Supreme Court in

R.P.LTD.V.PROPRIETORS INDIAN EXPRESS NEWSPAPERS, BOMBAY PVT.

LTD.⁹, observed that if the democracy had to function effectively had to function effectively, people must have a right to know and to obtain information about the conduct of affairs of the states.

○ **Right to Social Security and Protection of the Family**

⁶ Supra note 2, Page- 315.

⁷ AIR 2000 SC 3751.

⁸ AIR 2005 SC 3136.

⁹ AIR 1989 SC 190.



Right to life guaranteed under Article 21 includes within its ambit “the right to social security and protection of the family”.¹⁰

K. Ramaswamy, J. in **CALCUTTA ELECTRICITY SUPPLY CORPORATION (INDIA) LIMITED (C.E.S.C LIMITED) v. SUBHAS CHANDRA BOSE**¹¹, held that the *right to social and economic justice* was a fundamental right. The learned judge explained that rights to life and dignity of persons and status without means, were cosmetic rights.

○ Right against “Honour Killing”

A Division Bench of Allahabad High Court, in **SUJIT KUMAR v. STATE OF U.P.**¹², took serious note of harassment, ill treatment or killing of a person, who was a major, for wanting to get married to a person of another caste or who was a major, for wanting to get married to a person of another caste or community, for bringing dishonour to family. Since inter-caste or inter-community marriage was not prohibited in law, the Court said that the practice of “honour killing” was a blot on society. The Court, therefore, directed the police to take strong measures, against those who committed such “honour killing”.

○ Right to Health and Timely Medical Aid The *right to life* guaranteed under Article 21 includes within its ambit the *right to health and medical care*. It includes the right to lead a healthy life so as to enjoy all faculties of the human body. A person is free to donate organs of his body to save the life of another. In **CONSUMER EDUCATION AND RESEARCH CENTRE v. UNION**

OF INDIA¹³, the Supreme Court laid down: “social justice which is a device to ensure life to be meaningful and liveable with human dignity required the State to provide to workmen facilities and opportunities to reach minimum standard of health, economic security and civilized living. The *health* and *strength* of the worker was an integral facet of *right to life*. Denial thereof denudes the workman the finer facets of violating Article 21.

○ Sentence of Death – Rarest of Rare Cases

In **JAGMOHAN SINGH v. STATE OF U.P.**²⁷, the Supreme Court has held that death penalty was not violative of Article 21. It was said that the Judge was to make the choice between death penalty or imprisonment for life on the basis of circumstances, facts and nature of crime brought on record during trial. In **RAJENDRA PRASAD v. STATE OF U.P.**¹³, it was held that capital punishment would not be justified unless it was shown that the criminal was dangerous to the society. The learned Judge pleaded for the abolition of death penalty and said that it should be retained only for “White Collar Crimes”. In **BACHAN SINGH v. STATE OF PUNJAB**¹⁴, a Constitution Bench of the Supreme Court explained that Article 21 recognised the

¹⁰ Supra note 2, Page- 319

¹¹ AIR 1992 SC 573

¹³ AIR 1979 SC 916.

¹⁴ AIR 1980 SC 898.



right of the state to deprive a person of his life in accordance with just, fair and reasonable procedure established by a valid law. It was further

held that death penalty for the offence of murder awarded under Section 309 of I.P.C. did not violate the basic feature of the Constitution.

B.RIGHT TO PERSONAL LIBERTY The expression "*personal liberty*" used in *Article 21* has been given a liberal interpretation. It does not merely mean the liberty of the body i.e. freedom from physical restraint or freedom from confinement within the bounds of a prison. In other words, it means not only freedom from arrest or detention, from false imprisonment or wrongful confinement but means much more than that. The term

"personal liberty" is not used in a narrow sense but has been used in Article 21 as a compendious term to include within it all those variety of rights of a person which go to make the personal liberty of a man. Liberty of an individual has to be balanced with his duties and obligations towards his fellow citizens.¹⁵ In the earlier decisions, the Supreme Court gave a narrow connotation to the expression *personal liberty* used in *Article 21*. In **MANEKA GANDHI v. UNION OF INDIA**, a Seven-Judge Bench of the Supreme Court expanded the horizons of the expression "personal liberty" and gave it the widest possible meaning. This case has categorically laid down the following propositions, overturning the majority in **GOPALAN**:

- (a) The expression of "personal liberty" in Article 21 is of the widest amplitude covering a variety of rights of which some have been included in Article 19 and given additional protection.
- (b) In the result, a law coming under Article 21 must also satisfy the requirements of Article 19. A law made by the State which seeks to deprive a person of his personal liberty must prescribe a procedure for such deprivation which must not be arbitrary, unfair or unreasonable.

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- (c) Once the test of reasonableness is imported to determine the validity of a law depriving a person of his liberty, it follows that such law shall be invalid if it violates the principles of natural justice, e.g. if it provides for the impounding of a passport without giving the person affected an opportunity to be heard or to make a representation against the order proposed.

The decision in **MANEKA'S Case** is being followed by the Supreme Court in subsequent cases.¹⁶

DIFFERENT FACETS OF RIGHT TO PERSONAL LIBERTY

○ Right to privacy

"Privacy" is defined as "the state of being free from intrusion or disturbance in one's private life or affairs."

¹⁵ Supra Note 5, page- 1190

¹⁶ Basu Dr. DD, 'Introduction To The Constitution Of India', Wadhwa and Company, Nagpur, 9th edition, 2001, page-108.



- In **MALAK SINGH v. STATE OF PUNJAB**¹⁷, the name of the petitioner was included in the surveillance register by the police under Section 23 of the *Punjab Police Act*, he not being given opportunity of being heard.

- In **R. RAJAGOPAL v. STATE OF TAMIL NADU**¹⁸, the Supreme Court held that the right to privacy meant a "right to be let alone". ○ Right to Privacy and Telephone Tapping Telephone tapping constitutes a serious invasion of an individual's right to privacy. In **R.M.**

MALKANI v. STATE OF MAHARASHTRA¹⁹, the Supreme Court stated that the telephonic conversation of an innocent person would be protected by the Courts against wrongful or high-handed interference by tapping of conversation by police. But the protection is not for the guilty against the efforts of the police to vindicate the law.

Except in cases when the Indian Telegraph Act, 1885 empowers the State to intercept messages, telephone tapping would be violative of the right to privacy.

Right to Privacy and Disclosure of Dreadful Diseases

In **MR. X v. HOSPITAL Z**³⁸, the question before the Supreme Court was whether the disclosure by the doctor that his patient, who was to get married had tested HIV positive would be violative of the patient's right to privacy. So a Division Bench of the Supreme Court ruled that the right to privacy was not absolute and might be lawfully restricted for the prevention of crime, disorder or protection of health and freedom of others.

○ Right to Privacy and Disclosure of Information

The right to privacy is not an absolute right. The Supreme Court in **STATE OF GUJARAT v. ANIRUDH SINGH**²⁰, observed that it was the salutary duty of every witness who has the knowledge of the commission of the crime to assist the State in giving evidence.

Section 14 of the *Prevention of Terrorism Act, 2002*, conferred power on the investigating officer to ask for furnishing information. Upholding the constitutionality of this provision in

Right to have a Live-in-Relationship

Any person who has attained majority has the right to live freely with anyone. The Allahabad High Court in **JYOTI v. STATE OF U.P.**⁴¹, ruled that a person, he or she, who has attained 18 years of age, being major according to Section 3 of the Indian Majority Act, 1875, was deemed to understand his or her welfare

¹⁷ AIR 1981 SC 760.

¹⁸ AIR 1995 SC 264.

¹⁹ AIR 1973 SC 157.

²⁰ AIR 1997 SC 2780.



and so he or she could go wherever he or she liked and live with anybody. He or she could not be restrained from doing so even by the parents

○ **Right to go Abroad**

Right to travel abroad has been held to be included in the expression “personal liberty” within the meaning of Article 21.

In **MANEKA GANDHI v. UNION OF INDIA**²¹, is the leading case in this regard.

Right against Illegal Detention

In **JOGINDER KUMAR v. STATE OF U.P.**²², the petitioner was detained by police officers and his whereabouts were not told to his family members for a period of five days. So taking serious note of the police high-handedness and illegal detention of a free citizen, the Supreme Court laid down the following guidelines governing arrest of a person during investigation:

ARTICLE 21 AND PRISONER’S RIGHTS

Protection of Article 21 is well extended to under-trials, prisoners and even to the convicts. It has been ruled that a prisoner, he be a convict, under-trial or a detenu does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the *right to life*. Free Legal aid, speedy trial, Bail, etc and Right against Bar fetters, Handcuffs, solitary confinement etc. are some of the rights recognized by Honourable Supreme Court of India in catena of cases.

○ **DEATH BY HANGING NOT VIOLATIVE OF ARTICLE 21**

In **DEENA V. UNION OF INDIA**²³, the constitutional validity of section 354(5) of the *Criminal Procedure Code, 1974*, which prescribes the execution of death sentence by hanging by rope was challenged. It was contended by the petitioner that the execution of death was penalty by hanging was barbarous, inhuman, and degrading and therefore violative of Article 21. The Supreme Court rejected the contention and held the impugned Section constitutionally valid and said that it laid down a fair just and reasonable procedure with the meaning of Article 21 for the execution of the death sentence.

○ **RIGHT AGAINST PUBLIC HANGING**

The Rajasthan High Court, by an order directed the execution of the death sentence of an accused by public hanging at the Stadium Ground or Ramlila Ground of Jaipur. It was also directed that the execution should be done after giving widespread publicity through the media.²⁴

On receipt of the certified copy of the above order, the Supreme Court in **ATTORNEY GENERAL OF INDIA V. LACHMA DEVI**⁶⁰, held that the direction for execution of the death sentence and unconstitutional and violative of Article 21. It was further made clear that *death by public hanging would be a*

²¹ AIR 1978 SC 597.

²² AIR 1994 SC 1349.

²³ AIR 1983 SC 1155.

²⁴ Supra note 5, page- 1213.



⁶⁰ AIR 1986 SC 467.

barbaric practice. Jail manual of no state in the country makes provisions for execution of death sentence by public hanging.

○ **RIGHT AGAINST DELAYED EXECUTION**

Prolonged detention to await the execution of a sentence of death has been held to be unjust, unfair and unreasonable, violative of Article 21.

In **T.V. VATHEESWARAN V. STATE OF TAMIL NADU**²⁵, the appellant was sentenced to death, but his death sentence was not executed for eight years. He contended that to take away his life after keeping him jail for ten years, eight of which in illegal solitary confinement, would be gross violation of the fundamental right guaranteed by Article 21. The Supreme Court accepted the contention of the appellant and held that the only way to undo the wrong done to him would be to quash the sentence of death.

○ **RIGHT TO DAMAGES FOR VIOLATION OF ARTICLE 21**

To provide teeth to new dimension and the dynamic approach given to the fundamental right contained in Article 21, the Supreme Court has recognised the right of the aggrieved person, to claim monetary compensation for the violation of his right thereunder.

The Privy Council in **MAHARAJ V. ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**⁶², ruled that an individual could not be deprived of his right to life, liberty and security of person except by due process of law.

The above view was accepted by the Supreme Court in **NILABATI BEHERA V. STATE OF ORISSA**²⁶, wherein the Supreme Court granted Rs. 1, 50,000/- to the petitioner for the death of her son in police custody.

PROCEDURE ESTABLISHED BY LAW

The expression “*procedure established by law*” came to be interpreted by the Supreme Court in **A.K. GOPALAN v. STATE OF MADRAS**²⁷. The petitioner, a Communist leader, detained under the *Preventive Detention Act, 1950*, contended that the Act was violative of Article 21 since it did not prescribe the deprivation of his personal liberty in accordance with procedure established by law, which was the essence of Article 21. The term “law” in Article 21 should be understood as signifying the universal principles of natural justice. It was further argued that the expression “procedure established by law” meant the same thing as the American phrase “*due process of law*”.

“*Due process of law*” means which is just, fair. Not every procedure of law is fair and just. It may be unjust also.

But the Supreme Court rejected the above contentions and said that the framers of the Constitution deliberately adopted the expression “*procedure established by law*” which was held to be more specific than the American phrase “*due process of law*”. Thus it was held that the expression meant *procedure prescribed by the law of the State* and did not mean the principles of natural justice.²⁸

But in **MANEKA GANDHI v. UNION OF INDIA**⁶⁶, the Supreme Court overruled A.K. GOPALAN case and

held that in order to comply with the mandate of Article 21, the mere prescription of some kind of procedure was

²⁵ AIR 1983 SC 361.



²⁶ AIR 1993 SC 1960.

²⁷ AIR 1950 SC 27.

²⁸ Supra note 2, page- 358.

⁶⁶ AIR 1978 SC 597.

not enough. *The procedure must be just, fair and reasonable* and not arbitrary, fanciful or oppressive. *Natural justice was a great humanising principle intended to invest law with fairness. In order that the "procedure" was just, fair and reasonable, it should conform to the principles of "natural justice"*.

CONCLUSION: *Maneka Gandhi v. Union of India* is a landmark case of the post-emergency period. Since *Maneka* the Supreme Court has shown great sensitivity to the protection of personal liberty. The Court has reinterpreted Art. 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 Art.21, broader and broader interpretation so as to imply many more Fundamental Rights. In course of time, Art. 21 has to be proved to be a very fruitful source of rights of the people. *Maneka Gandhi*'s case has been exerting multidimensional impact on development of Constitutional law in India. Art. 21 which had lain dormant for nearly three decades has been brought to life by *Maneka*. According to Bhagwati J., Art. 21 embodies a Constitutional value of supreme importance in a democratic society. The truth is that Art. 21 has been emerging as the Indian version of the American concept of "due process of law". *Maneka* has brought the Fundamental Right of life and personal liberty into prominence; it is now regarded as the heart of Fundamental Rights. To any civilized society, there are no attributes more valuable than the life and personal liberty of its members. That is why the Supreme Court has now given pride of place to Art. 21.

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