

## CHAPTER 6

# JUDICIAL APPROACH TOWARDS ARTICLE 21 OF INDIAN CONSTITUTION

*Dr. Kanchal Gupta\**

*Mr. Rupendra Singh\**

### SYNOPSIS

➤ Introduction.....	97
➤ Constitutional Provision : Article 21 .....	98
➤ Application of Article 21 .....	98
➤ Rights Under Article 21 .....	99
● Right to life .....	99
● Right to Personal Liberty. ....	99
➤ Procedure Established by Law .....	100
➤ Wider Scope of Article 21 and Judicial Interpretation .....	101
➤ Conclusion .....	105

### I. INTRODUCTION

Fundamental rights enshrined under part III, Constitution of India are not merely symbolic but a guarantee provided to the citizens of India. These rights assured the security, dignity, and liberty of all persons. Among all these rights Article 21 of the Indian constitution is called the heart of fundamental rights, it is available not only to the citizens of India but also to the foreigners. This is one of the most progressive provisions.

---

\* Assistant Professor (Sel. Grade), School of Law, University of Energy and Petroleum (UPES), Dehradun, Uttarakhand. Email-kgupta@ddn.upes.ac.in

\* Assistant Professor, Amity Law School, Amity University, Noida. Email-rupendra811270@gmail.com.

According to Bhagwati, J., Article 21 "embodies a constitutional value of supreme importance in a democratic society."

Iyer, J., has characterized Article 21 as "the procedural Magna Carta protective of life and liberty."

## II. CONSTITUTIONAL PROVISION : ARTICLE 21

Article 21 "Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law".

This right can only be invoked against the state, if the state or any local body deprived any person of his life or personal liberty then that person can claim this right. Violation of this right by private individuals is not covered under the ambit of Article 21. The Article prohibits the deprivation of the right to life and personal liberty, it does not mean that right is absolute. A person can be deprived of this right but according to the procedure established by law. The Supreme Court of India in the famous *A. K. Gopalan Case*<sup>1</sup> held that protection under Article 21 is available only against arbitrary executive action and not against any arbitrary legislative action. It clarified that if the personal liberty of an individual is taken away by law, the validity of the law cannot be questioned. In the same case, the Supreme Court held personal liberty would only mean liberty relating to the person or body of the individual.<sup>2</sup>

## III. APPLICATION OF ARTICLE 21

Article 21 applies to natural persons only, including citizens and non-citizens. It means that even a citizen of other countries can claim this right and he need not become even a resident of India. The article relates to the Magna Carta of 1215, the 5<sup>th</sup> Amendment to the American Constitution, Article 40(4) of the Constitution of Eire 1937, and Article XXXI of Constitution of Japan, 1946.

The opinion of the Supreme Court is that Article 21 is governed by the principle of natural justice which includes the principle of:

1. AIR 1950 SC 27

2. "Article 21 of the Constitution of India - Discussed!" <http://www.yourarticlelibrary.com/indian-constitution/article-21-of-the-constitution-of-india-discussed/5497> (Last visited 17/7/2021)

- a. **Audi Altrem Partem:** It is that both the party to the suit must be given an equal opportunity of being heard and represented.
- b. **Reasoned Decision:** The decision of the court shall be supplemented with appropriate reasoning which must be declared in an open court
- c. **The rule against bias:** no person shall be a judge of his cause and the decision of the jury or the panel must be free and fair.

## IV. RIGHTS UNDER ARTICLE 21

It provides two rights: a). Right to life, b). Right to Personal Liberty.

### A. Right to life

In the case of *Kharak Singh v State of Uttar Pradesh*<sup>3</sup>, SC observed that the Right to life is more than a mere animal existence. The court held that "the inhibition against a person's life extends to all those limbs and faculties by which the life is enjoyed. It means a life of dignity which includes right to have a safe and secure livelihood which is an integral facet of life".

In the case of *Sunil Batra v. Delhi Administration*,<sup>4</sup> the court held that "right to life includes right to live a healthy life to enjoy all the faculties of the human body in their prime conditions and would extend to include the protection of one's culture, tradition, heritage and all that with gives meaning to a man's life. Hence, it will include the right to live in peace, sleep in peace, and right to good health."

In a recent writ petition filed before the Supreme Court in the case of *Ashwani Kumar v. Union of India and ors.*<sup>5</sup> The Court while interpreting the meaning of a life held that "right to life includes the right to live with dignity. The Court also laid down that Article 21 is the key to achieve social justice as postulated in the Preamble.

### B. Right to Personal Liberty.

According to the definition given by A.V. Dicey, the right to personal liberty as understood means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification.

3. 1963 AIR 1295

4. (1978) 4 SCC 409

5. Writ Petition (C) No. 193 of 2018 decided on 18.12.2018 [MANU/SC/1475/2018]

With continuous changes growth and progression of society, the meaning of liberty needs more wide interpretation. The term liberty as it stands today consists of all the other rights which a person is awarded to live and enjoy a decent life, including all the luxury he could avail of. Personal liberty hence includes all the freedoms which are mentioned in the other provision of the Constitution such as freedom to move freely throughout the territory of India, freedom to practice any profession, etc.

In the *Kharag Singh case*,<sup>6</sup> it was interpreted that 'personal liberty' is a wide term and it includes many other rights in itself. In *R.C. Cooper v. UOI*,<sup>7</sup> the court held that there can be overlapping of rights under Art 21 but that does not mean that it must not be interpreted.

#### V. PROCEDURE ESTABLISHED BY LAW

The procedure established by law is a narrow term in comparison to 'due process of law'. Before *Menaka Gandhi v. Union of India*,<sup>8</sup> the guarantee under Article 21 was only against the arbitrary actions of the executive not against legislative actions. The concept of 'Personal Liberty' first came up in *A. K Gopalan v. the State of Madras*<sup>9</sup>, where it has been argued that 'Personal Liberty' includes freedom of movement and Article 21 should be read with Article 19 of the Constitution. The Supreme court rejected both the contentions and using the meaning, given by Dicey held that "Personal Liberty is nothing more than the liberty of body i.e., freedom from arrest and detention without the authority of law." The Court further interpreted the term law as State-made law and rejected the plea that the term law in Art. 21 meant jus naturale or principles of natural justice. This interpretation was followed by Supreme Court in *Kharag Singh Case* as well.

But in the *Menaka Gandhi case* the word 'personal liberty' again came up before Supreme Court and the court widened the scope of words personal liberty. In this case, the passport of Menaka Gandhi was impugned by the authorities U/S 10(3) (c) of the Passport Act, 1967. Bhagwati, J. observed:

6. Supra note 3

7. AIR 1970 SC 564

8. (1978) 2 SCR 621

9. Supranote 1

"The expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19."

Concerning the relationship between Art. 19 and Art. 21, the Court held that Art. 21 is controlled by Art. 19, i.e., it must satisfy the requirement of Art. 19. The Court observed:

"The law must therefore now be settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty, and there is consequently no infringement of the fundamental right conferred by Article 21 such a law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenges of that Article."

Thus a law "depriving a person of 'personal liberty' has not only to stand the test" of Article 21 but it must stand the test of Art. 19 and Art. 14 of the Constitution.

The Supreme Court in *Selvi v. State of Karnataka*<sup>10</sup> asserted that substantive due process is a guarantee under the Indian Constitution. In *Union of India v. R. Gandhi's*<sup>11</sup> opinion, the Supreme Court has remarkably applied loose constitutional principles rooted in its understanding of "fairness" or constitutional "basic structure" to ordinary law, much in the same way as Justice Frankfurter would have done in the American due process cases.

#### VI. WIDER SCOPE OF ARTICLE 21 AND JUDICIAL INTERPRETATION

##### 1. Right to live with dignity

Right to Life under Article 21 is more than mere existence or survival. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981), Justice Bhagwati observed:

"The fundamental right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit to

10. (2010) 7 S.C.C. 263

11. (2010) 11 SCC 1



invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. 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, and facilities for reading, writing, and expressing oneself in diverse forms, freely moving about, mixing and co-mingling with fellow human beings."

This observation by the SC has open doors to a wider interpretation of Article 21. In *Chandra Bhan Case*<sup>12</sup>, right to minimum subsistence during the suspension, in *People's Union v. Union of India*<sup>13</sup> right against bonded labour and unfair labour conditions, in *Parmanandan v. Union of India*<sup>14</sup> right to immediate medical aid to person, all came under the ambit of Article 21, giving a right to live with human dignity.

## 2. Right to shelter

It is a fundamental right under Article 21 of the Constitution.<sup>15</sup> In a civilized society, the right to life can be ensured only by providing the basic facilities to human beings which include the right to water, food, a healthy environment, medical facility, and shelter. It includes all the necessary infrastructure which will help a person in overall development as a human being.<sup>16</sup>

## 3. Right to privacy

The right to privacy is included under Art 21 and "every citizen has right to protect the privacy of his own, family, marriage, motherhood, childbearing, procreation, and education".<sup>17</sup> The SC in "*State of Maharashtra v. Madhukar Narain*"<sup>18</sup> held that right to privacy is available to every woman including the women of easy virtue and no one can interfere with it."

12. AIR 1983 SC 803

13. AIR 1982 SC 1473

14. AIR 1989 SC 2039

15. *Shantistar Builders Vs. Narayan Khimalal Totame* AIR 1990 SC 630

16. *Ahmedabad Municipal Nagarpalika Vs. Nawabkhan* (1997) 11 SCC 121

17. *R. Rajagopal v. State of T.N.* (1994) 6 SCC 632

18. AIR 1991 SC 207

The right to privacy has now been recognized to be an intrinsic part of the right to life and personal liberty. In the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*'s<sup>19</sup> "decision preserves the sanctity of the private sphere of an individual. The right to privacy is not simply the "right to be let alone", and has traveled far beyond that initial concept. It now incorporates the ideas of spatial privacy and decisional privacy or privacy of choice. It extends to the right to make fundamental personal choices, including those relating to intimate sexual conduct, without unwarranted State interference."

## 4. Right to livelihood

The SC in *Olga Tellis v. Bombay Municipal Corporation*<sup>20</sup> held that "right to life includes right to livelihood as no one can survive without the means of livelihood". If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood.

## 5. Right to live in a healthy environment

The SC and HC have given wider interpretation to Art 21 and states that it includes the right to a wholesome environment. Life can be enjoyed only if nature's gift will be protected.<sup>21</sup> The court held that for the protection of fundamental rights under Art. 21 there is a need of maintaining a balance between development and the use of natural resources.<sup>22</sup> The SC in *Subhash Kumar V. State of Bihar*<sup>23</sup> held that right to enjoy a pollution-free environment is included in Art. 21. The court held that "a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life."<sup>24</sup>

The court has taken a step forward and included noise pollution in right to life and liberty. In *Re: Noise Pollution*<sup>25</sup> "the court held that

19. Writ Petition (Civil) No. 494 Of 2012

20. AIR 1986 SC 180

21. *T. Damodar Rao v. Municipal corporation of Hyderabad*, AIR 1987 AP 171

22. *Kinkri Devi v. State of HP*, AIR 1988 HP 4

23. AIR 1991 SC 420

24. *Ibid*

25. Writ Petition (civil) 72 of 1998

everyone has the right to speak but the other one is having the right to listen or decline to listen. No one can be bound to listen to someone, it will amount to trespass into the ears and mind. If anyone increases his volume of speech and that too with the assistance of artificial devices to compulsorily expose unwilling persons to hear a noise rose to unpleasant or obnoxious levels, it will amount to a violation of the right of others to have a peaceful and comfortable life which is guaranteed under Art. 21."

### 6. Right to education

This right has been added to the constitution by 86<sup>th</sup> Amendment. It states "The State shall provide free and compulsory education to all the children between the age of 6 and 14 years in such manner as the state may, by law, determine."

"In *Bandhua Mukti Morcha, etc. vs. Union of India*<sup>26</sup>, SC took reference to the past judgments. "In *Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi*<sup>27</sup>, right to education at the secondary stage was held to be a fundamental right."

"The constitutional bench, in *J.P. Unnikrishnan V. State of Andhra Pradesh*<sup>28</sup>, held education up to the age of 14 years to be a fundamental right. It is, therefore, an obligation on the state to make arrangements for same and to prevent exploitation of their childhood due to indigence and vagary."

The UDHR<sup>29</sup> declares: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and Professional education shall be generally available and higher education shall be equally accessible to all based on merit".

### 7. Right against exploitation

Every person is having liberty and freedom according to the provisions of the constitution and if there is a violation of this liberty he is having a right to constitutional remedies under Article 32. But if

26. 1997 (5) SC 285

27. 1991 (2) SC 296

28. 1993 (1) SC 474

29. Article 26

the victim or the aggrieved person is not allowed to move to court then how this right can be exercised. The Supreme Court taking into regard such circumstances has in the case of *Bandhua Mukti Morcha v. Union of India*<sup>30</sup> while dealing with the provisions under the Bonded Labour System (Abolition) Act, held that "...liberty is no doubt a fundamental right guaranteed to every person under the Constitution. There cannot be any manner of doubt that any person who is wrongfully and illegally detained and is deprived of his liberty can approach this Court under Art. 32 of the Constitution for his freedom from wrongful and illegal detention, and for being set at liberty. Whenever any person is wrongfully and illegally deprived of his liberty, it is open to anybody interested in the person to move this Court under Article 32 of the Constitution for his release. It may not very often be possible for the person who is deprived of his liberty to approach this Court, as, under such illegal and wrongful detention, he may not be free and in a position to move this Court."

### 8. The Right to Health

Article 21 of the Constitution recognized the right to health as a fundamental right. The Supreme Court in *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr.*<sup>31</sup> observed that the Constitution of India envisages the establishment of a welfare state at the center and state level. In a welfare state the primary duty of the Government is to secure the welfare of the people, and therefore providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government. Preserving the life of humans should be the most important task for the government. To provide this right government is running government hospitals at center and state levels.

## VII. CONCLUSION

The right to life and personal liberty is the same as Natural rights and Human rights. The major challenge is about its wider interpretation as to the spirit and soul of this Article. Indian Judiciary has interpreted it in a very wide manner and expanded its horizons. Several rights had been made part of this Article according to the need and change in the

30. 1984 AIR 802

31. AIR 1996 SC 2426; (1996) 4 SCC 37.

circumstances. There is a lack of legislation on certain points, their judiciary came forward and include them as an integral part of the right to life and personal liberty, for example, right to privacy, right to shelter, and right to education, etc.

The apex court always endeavored to safeguard the interest of people by giving a beneficial interpretation to Article 21, on the same side court should also look into the matter of enforceability as well, so that the rights enshrined in the constitution or covered under the ambit of Article 21 should be protected realistically.

---