

# International Multidisciplinary Research Journal

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## EXPANDING HORIZONS OF ARTICLE 21 OF THE INDIAN CONSTITUTION

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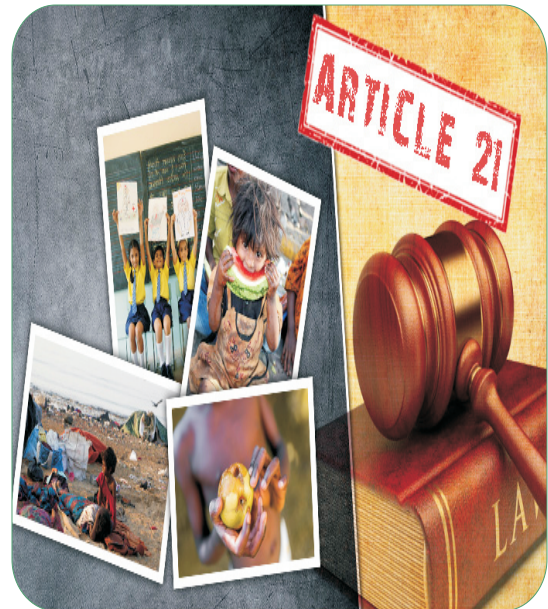
### ABSTRACT

In this paper an effort to analyses Article 21 of the Indian constitution has been made, the journey of this article from strict interpretation to present day ever expanding nature. It has been given a new meaning by judiciary by imbining into this article socio-economic causes which effects individual life. Judiciary has interpreted life in article 21 as not mere animal existence but as a humanly dignified one. It includes almost everything which concerns human life and liberty and even today it is in a process of expansion. The expansion of this article cannot be compared with any other article of our constitution.

**KEYWORDS** :Expanding Horizons , Indian Constitution , socio-economic .

### INTRODUCTION

The expansion of Article 21 guaranteed the right to life and personal liberty in the early years of PIL era, is now remarkable. When it began, the purpose of article 21 was to move beyond the perceived limitations imposed by a textual interpretation of this article, and bring in socio-economic rights into part III of the Indian constitution. The great development in the Indian constitutional jurisprudence is the extended dimension given to Article 21 by the Supreme Court; Article 21 has proved to be multi-dimensional. This extension in the dimensions of Article 21 has been made possible by giving an extended meaning to the word 'life' in Article 21. The right to life which is the most fundamental of all is also the most difficult to define. Certainly, it cannot be confined to a guarantee against the taking away of life: it must have a wider application from non-deprivation of life to its preservation, from negative to positive content; article 21 has been fundamentally transformed as a result of judicial creativity. During the last



fifty years, article 21 has quite an eventful journey. A most remarkable feature of expansion of article 21 has been that many of the non-justifiable Directive Principles have been converted into enforceable Fundamental Rights by the magical wand of judicial creativity. In the process of expanding the ambit of Article 21, the Supreme Court has interpreted many Directive Principles with Article 21. The result of this judicial activism has been that not only many Directive Principles have been activated but also many new Fundamental Rights have been added by the Supreme Court in Article 21.

Article 21 is one of the shortest articles in the Constitution, over which, the longest and most detailed discussions in the Constituent Assembly took place. The Supreme Court has asserted that Article 21 is the heart of the Fundamental Rights. It has enough

positive content and is not merely negative in its reach even though Article 21 is worded in negative terms. The Supreme Court has taken the view that in order to treat a right as a Fundamental Right, it is not necessary that it should be expressly stated as a Fundamental Right. Accordingly, the Supreme Court has implied a whole bundle of human rights out of Article 21 by reading the same along with some Directive Principles. In *Maneka Gandhi v. Union of India*, the court observed: "The attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content by a process of judicial construction."

### JUDICIAL INTERPRETATION OF ARTICLE 21

Article 21 of the constitution says, "No person shall be deprived of his life and personal liberty except according to the procedure established by law." In this way a person can be deprived of his life and personal liberty if two conditions are fulfilled, first, there must be a law and secondly, there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable. Prior to *Maneka Gandhi's* case, the word personal liberty came up for consideration before the supreme courts for the first time in *A.K. Gopalan V. State*<sup>1</sup> of Madaras in which the validity of the Preventive Detention Act, 1950, was challenged.

In this case, the petitioner, AK Gopalan, a communist leader, was detained under the Preventive Detention Act 1950. The petitioner challenged the validity of his detention under the Act on the ground that it was violative of his right to freedom of movement under art 19(1) (d) which is the very essence of personal liberty guaranteed by art 21 of the Constitution. He argued that the words 'personal liberty' includes the freedom of movement also, and, therefore, the Preventive Detection Act 1950 must also satisfy the requirement of art 19(5). It was argued that arts 19(1) and 21 should be read together because art 19(1) dealt with substantive rights, and art 21 dealt with procedural rights. Rejecting both the contentions, the Supreme Court held that the personal liberty in 'art 21' meant nothing more than liberty of the physical body, i.e. freedom from detention without the authority of law.

On behalf of Gopalan, an attempt was made to persuade the Supreme Court to hold that the courts could adjudicate upon the reasonableness of the Preventive Detention Act, or for that matter, any law depriving a person of his personal liberty. A three pronged argument was developed for this purpose-

1. 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 incorporates these principles in the procedure laid down by it.
2. The reasonableness of the law of preventive detention ought to be judged under Article 19.
3. The expression 'procedure established law' introduces into India the American concept of procedural due process which enables the courts to see whether the law fulfils the requisite elements of a reasonable procedure.

But the attempt failed as the Supreme Court rejected all these arguments. The Supreme Court rejected the contention giving several reasons-

1. The word 'due' was absent in Art. 21. This was a very significant omission for the entire efficacy of the procedural due process concept emanates from the word due.
2. The draft constitution had contained the words 'due process of law' but these words were later dropped and the present phraseology adopted instead. This was strong evidence to show that the Constituent Assembly did not desire to introduce into India the concept of procedural due process. This was done mainly to avoid the uncertainty surrounding the due process concept in the U.S.A
3. If the doctrine of due process were to be imported into India then the doctrine of police power might

also have to be imported which would make things very complicated.

Thus, the Supreme Court ruled in Gopalan case that in Article 21, the expression "Procedure established by law" meant the procedure as laid down in the law as enacted by the Legislature and nothing more. The ruling thus meant that to deprive a person of his life or personal liberty-

1. There must be a law.
2. It should lay down a procedure.
3. The executive should follow this procedure while depriving a person of his life or personal liberty.

In Gopalan case, the Supreme Court interpreted the 'law' as "state made law" and rejected the plea that by the term 'law' in Article 21 meant not the state made law but jus natural or the principles of natural justice. Fazal Ali, J., however, in his dissenting judgment held that the act was liable to be challenged as violating the provisions of Article 19. He gave a wide and comprehensive meaning to the words 'personal liberty' as consisting of freedom of movement and locomotion. Therefore, any law which deprives a person of his personal liberty must satisfy the requirements of Article 19 and 21 both.

But this restrictive interpretation of the expression 'personal liberty' in Gopalan's case has not been followed by the Supreme court in its later decision. In **Kharak Singh V. State of U.P, case**<sup>2</sup>, it was held that 'personal liberty' was not only limited to bodily restraint or confinement to prisons only, but was used as a compendious term including within itself all the varieties of right which go to make up the personal liberty of a man other than those dealt with article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, 'personal liberty' in Article 21 takes in and comprise the residue.

The way the majority handled Article 21 in Gopalan case was not free from criticism. Gopalan was characterized as the high-water mark of legal positivism'. Court's approach was very static, mechanical, and purely literal and was too much coloured by the positivist or imperative theory of law. The Court treated the Constitution as merely another statute.

In **Maneka Gandhi v Union of India**<sup>3</sup>, the supreme court has overruled the view expressed by the majority in Gopalan's case and held that Article 21 is controlled by the Article 19, that is , it must satisfy the requirement of Article 19 also. The court observed:

"The law must therefore now be settled that Art. 21 dose not exclude Article 19 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 under article 19 would have to meet the challenges of that Article (Art. 19). 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 article 19 and 14 of the constitution."

The facts of Maneka Gandhi's case is, that the S. 10(3) (c) of the Passport Act authorizes the passport authority to impound a passport if it deems it necessary to do so in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interest of the general public. Maneka's passport was impounded by the Central Government under the Passport Act in the interest of the general public. Maneka filed a writ petition challenging the order on the ground of violation of her fundamental rights under Art. 21. One of the major grounds of challenge was that the order impounding the passport was null and void as it had been made without affording her an opportunity of being heard in her defence.

The Court laid down a number of propositions seeking to make Article 21 much more meaningful than hitherto-

- 1) The Court reiterated the proposition that Article 14, 19 and 21 are not mutually exclusive. A nexus has been established between these three Articles. This means that a law prescribing a procedure for depriving a person of 'personal liberty' has to meet the requirements of Art. 19. Also, the procedure

established by law in Art. 21 must answer the requirement of Article 14 as well.

2) The expression 'personal liberty' in Article 21 was given an expansive interpretation. The Court emphasized that the expression 'personal liberty' is of the "widest amplitude" covering a variety of rights "which go to constitute the personal liberty of man".

3) The most significant and creative aspect of Maneka, is the re-interpretation by the Court of the expression 'procedure established by law' used in Article 21. The Court now gave a new orientation to this expression. Article 21 would no longer mean that law could prescribe some semblance of procedure, however arbitrary or fanciful, to deprive a person of his personal liberty. It now means that the procedure must satisfy certain requisites in the sense of being fair and reasonable. The procedure "cannot be arbitrary, unfair or unreasonable".

In **Francis Coralie v. Union Territory of Delhi**<sup>4</sup> case, the Supreme court further expanded the scope of Article 21 by this statement, "That any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21."

The judiciary has expanded the scope of article 21 of the constitution out of the expectation. Many things regarding basic human right, ecology environment, prisoners' rights and right to information have been included in the article 21 of the constitution. Even some of the directive principles of state policy have been converted into fundamental rights, some of them are as follows:

### RIGHT TO EDUCATION

The constitution (86th Amendment) Act, 2002 has added a new Article 21A after article 21 and has made education for all children of the age of 6 to 14 a fundamental right it provides that "The state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may by law, determine."

In **Unni Krishnan v. state of A.P.**<sup>5</sup>, the court recognised a fundamental right to education in the right to life under article 21. Taking help from article 41 and 45 it held that "every child citizen of this country has a right to free education until he completes the age of 14 years. Therefore his right to education is subject to the limits of economic capacity and development of the state." But this right does not include the right to participate in the student union activities and to contest elections<sup>6</sup>. In view of the Unni Krishnan case, the parliament has done 86 amendments in the constitution and added article 21A.

It is well known that education is a basic human right. For the success of democrat system of government, education is one of the basic elements. An educated citizen has to choose the representatives who form the government. Education gives a person human dignity who develops himself as well as contributes to the development of his country. The framers of the constitution realizing the importance of education have imposed a duty on the state under Art. 45 as one of the directive policy of state to provide free and compulsory education to all children until they complete the age of 14 year within 10 years from the commencement of the constitution. The object was to abolish illiteracy from the country. It was expected that the elected government of the country would honestly implement his directive. But it is unfortunate that even after the lapse of 60 years from the commencement of the constitution they did not take any concrete steps to implement this directive and 40% population of the country is still illiterate. The framers perhaps were of the view that in view of the financial condition of a new state it was not feasible to make it a fundamental right under part III of the constitution, but included it in chapter IV as one of the directive principles of state policy. But the politicians of our country belied the hope of the framers of the constitution.

In the meantime, the Supreme court in Unni Krishnan case, declared that the right to education

for the children of the age of 6 to 14 is a fundamental right. Even after this there was no improvement. A demand was being raised from all corners to make education a fundamental right. Consequently, the government enacted constitution (86th Amendment) Act 2002 which would make education a fundamental right.

The question arises as to how know this gigantic project would be implemented? The population of the country has considerably increased and the number of children of age from 6 to 14 years are in crores. The government does not have money, at present to run its own educational institutions. In the area of education it is emphasizing on privatization. Majority of higher secondary schools are run by private person where there is no provision for free education. They charge high fees. Only rich persons can afford to send their children to these schools. When the education will become fundamental rights a citizen would go to the court for enforcement of his right and the court would be obliged to give an order for its enforcement but if there are no schools how would the government implement it? Making education compulsory would not solve the problem. The only alternative is to encourage non-governmental organization to come forward and to participate in it to fulfillment the mandate of the constitution. Of course, the government must help them and see that teacher and employees working in these private education institutions get minimum salary to survive and make the scheme successful.

### RIGHT TO SLEEP

Recently, the hon'ble Supreme Court has broadened the ambit of right to life to bring a citizen's right to sleep peacefully under it. A citizen has a right to sound sleep because it is fundamental to life. In the **Ramlila maidan incident v. home secretary and others**<sup>7</sup>, a bench of justice B.S Chauhan and Swatanter Kumar unanimously held the right to sleep is a fundamental right 'crucial' to life and it is own part as right to privacy and right to food as a part of right to life under article 21 of the constitution. The court further said, "sleep is essential for human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is therefore, a fundament and basic requirement without which the existence of life itself would be in peril".

### RIGHT TO REPUTATION

The court said that the right to free speech cannot be used to undermine an individual's right to dignity and reputation.

The supreme court in **Subramaniam Swami v. Union of India**<sup>8</sup>, in a challenge to section 499 and 500 of Indian Penal Code recently held that reputation of individual is a basic element of article 21 of constitution and criminal defamation does not have a chilling effect of freedom of speech and expression while upholding their constitutional validity section 499 criminalizes defamation and section 500 lays down the punishment. A judgement authorised that right to reputation is a constituent of article 21, in a case of collusion between two fundamental rights, it was deemed fit by the bench to supplant another right to reputation as a fundamental right.

### EMERGENCY AND ARTICLE 21

Before to the 44th amendment the constitution provided for suspension of the right guaranteed by article 21. Under article 359 the president was empowered by order to suspend the right to move any court for the enforcement of right conferred by article 21. For the first time article 21 was suspended during the emergency arising out of the Chinese attack in 1962 in 1971, it was suspended for the second time when Pakistan attacked India. In 1976 this article was again suspended when the government headed by Prime Minister Indira Gandhi declared emergency on the ground of international

disturbance.

In **A.D.M. Jabalpur v. S. Shukla**<sup>9</sup>, Popularly known as the habeas corpus case, it was held that article 21 was the sole repository of the right to life and personal liberty and if the right to move to any court for the enforcement of that right was suspended by the presidential order under article 359 the detinue had no locus standi to file a writ petition for challenging the legality of their detention.

The 44th amendment has amended article 359 which now provides that the enforcement of the right to life and liberty under Article 21 cannot be suspended by the presidential order. This amendment is intended to prevent the re- occurrence of the situation in future which arose in the habeas corpus case.

## CONCLUSION

The right to life and personal liberty is the most important fundamental human rights around which other rights of the individual revolve. The study of right to life is indeed a study of the Supreme Court as a guardian of fundamental human rights. Article 21 is the celebrity provision of the Indian Constitution and occupies a unique place as a fundamental right. It guarantees right to life and personal liberty to citizens and aliens and is enforceable against the State. The new interpretation of Article 21 in Maneka Gandhi's case has ushered a new era of expansion of the horizons of right to life and personal liberty. The wide dimension given to this right now covers various aspects which the founding fathers of the Constitution might or might not have visualized. The Supreme Court has asserted that article 21 is the heart of the fundamental rights under part III of the constitution.

The apex court led a great importance on reasonableness and rationality of the provision and it is pointed out that in the name of undue stress on fundamental rights and individual liberty, the ideas of social and economic justice cannot be done away. Thus it is clear that the provisional of article 21 was constructed narrowly at the initial stage but law in respect of life and personal liberty of a person was developed gradually and liberal interpretation was given to these words. New dimension have been added to the scope of article 21 from time to time. It imposes limitation upon a procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure must be fair and reasonable.

The Constitution said Woodrow Wilson, is "not a mere lawyer's document." It is, he said, "the vehicle of a nation's life. The Indian Supreme Court has created major reforms in the protection of human rights. Taking a judicial activist role, the Court has put itself in a unique position to intervene when it sees violations of these fundamental rights. In India the guardian of democracy is not the legislative wisdom but the wisdom of the highest court of the land. The court has acted as protector of the workers, and at time played the role of legislator where labour legislation is silent or vague.

The Supreme Court, as the arbiter and interpreter of the Constitution, serves not merely the negative purpose of checking excesses in judicial practice, but also the vital and dynamic function of modulating the life of the nation. The Supreme Court is the guardian of the Constitution under whose protective wings the nation has prospered and grown to greatness. Thus, the law as seen in the wordings of the enactment gets a dynamic and wider scope in day to day events by the legal processes advanced by judicial creativity.

'Right to life' and 'personal liberty' is the modern name for what have been traditionally known as 'natural right.' It is the primordial rights necessary for the development of human personality. It is the moral right which every human being everywhere at all times ought to have simply because of the fact that in contrast with other beings, he is rational and moral. It is the fundamental right which enables a man to chalk out his own life in the manner he likes best. Right to life and personal liberty is one of the



rights of the people of India preserved by the Constitution of India and enforced by the High Courts and Supreme Court under article 226 and 32 respectively.

Through various judgment of Apex court many of the justifiable directive principal embodied under part IV of the constitution such as right to pollution free water and air, right of every child to a full development, protection of under trial, right to free legal aid and right to education of a child up to the age of 14 years etc. have been converted into fundamental rights.

Article 21 has been fundamentally transformed as a result of judicial creativity. During the last fifty years, Article 21 has had quite an eventful journey. A most remarkable feature of expansion of Article 21 has been that many of the non-justifiable Directive Principles have been converted into enforceable Fundamental Rights by the magical wand of judicial creativity. In the process of expanding the ambit of Article 21, the Supreme Court has integrated many Directive Principles with Article 21. The result of this judicial activism has been that not only many Directive Principles have been activated but also many new Fundamental Rights have been implied by the Supreme Court from Article 21. Article 21 is couched in negative phraseology. But by its creative interpretation of Article 21 in various cases, the Supreme Court has come to impose positive obligation upon the state to take steps for ensuring to the individual a better enjoyment of his life and dignity.

## SUGGESTIONS

At present, the article 21 of the Indian constitution has been expanded by the judiciary out of the expectation. Some articles embodied in part IV of the constitution have been transformed into the part III of the constitution by the judicial interference. Many critiques of this judicial movement have been focused how this expansion reached absurd level. If all the things related with the human life are declared fundamental rights then the chapter of directive principles will be of no relevance and economic and social balance may not be maintained. In this connection following suggestions may be given.

Firstly, the honorable Supreme Court, instead of converting legal rights into the fundamental right may give direction to the state to create the climate among members of the society belonging to different faiths, caste and creed live together to protect their life, liberty, dignity and worth of an individual. In the absence of government's initiatives, it is doubtful that the constitutional mandate to protect life and personal liberty of our citizen would be successful.

Secondly, the state government must implement laws to protect life and personal liberty very carefully and effectively, so that no one could infringe the fundamental rights provided under article 21. In case of the violation of this right the state government should provide effective remedy.

Thirdly, non-governmental organizations must do something to protect life and personal liberty of a person. Of course, some NGO's are working in this direction but the result is not satisfactory. To avoid judicial interference, the state government, and the NGO's should work simultaneously to protect life and personal liberty under article 21 of the constitution.

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1. AIR 1962 CAL 632.

2. AIR 1963 SC 1295

3. AIR (1978)1 SCC 248

4. AIR 1978 SC 597

5. (1993) 1 SCC 645, 732.

6. University of Delhi v. Anand Vardhan Chandal (2000) 10 SCC 648

7. (2012) SC 3217.

8. W.P. (CrI) 184 of 2014.

9. AIR 1976 SC 1207

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