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# **ARTICLE 21: THE RIGHT TO LIFE AND PERSONAL LIBERTY**

AUTHORED BY - ASTHA PRIYADARSHANI<sup>1</sup>

Article 21 read as: “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

This provision of our Indian constitution is the heart and soul of our living document. Article 21 talks about liberty and life of the person. Every citizen of India is granted with this right. Even aliens are granted with this right.

- Right to Life
- Right to Personal Liberty

## **RIGHT TO LIFE**

Life not only means inhaling and exhaling the air, it means to live a life with a quality. It does not mean mere animal subsistence. The right to life is most fundamental right. Every human being must be spending their life with fullest with quality.

- ❖ Right to live with human dignity

In *Francis Coralie v. Union Territory of India*<sup>2</sup> it was held that “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 ourselves in diverse forms, freely moving about mixing and commingling with fellow human beings”. For living life we not only need air, water, food but that entire thing which support the human life. A proper nutritionist food, roof over head, knowledge of reading as well as writing and express ourselves in huge multiplicity of India.

- ❖ Right to shelter

The Right to shelter is most basic right in article 21. This includes a roof over head but with

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<sup>2</sup> . AIR 1981 SC 746

proper housing. A shelter must provide safety to the people who are residing in it. But when we face reality is these right are really provided to all citizen of India? We might have seen those people who are living under the bridge or resides on footpath. Those people who lives under the bridge might have roof over head but do they really have a proper housing, civilized society. In *Chameli singh v. State of U.P*<sup>3</sup>, it was said that this right ensure that every one must have proper housing, ample of food and all those essential that are need to live a human life not surviving as animal.

❖ Right to privacy available to a woman of easy virtues.

Right to privacy is granted by our living document. Every citizen of India and aliens has this right. They can preserve their privacy of him/her, even their family members too. If anyone publish something without the consent of the third party related to their matrimony, child, and any defamatory statement whether it's true or not, it will lead to infringement of this provision.

In *State of Maharashtra v. Madhukar Narain*<sup>4</sup>, a police officer went to a lady house and offers to have sex with him. The lady refuses to do with him and then he tried to force her. During the trial he said that the lady was a kind of prostitute. The court said that police officer is guilty and it infringes the Right of privacy to the woman no matter what she does.

Even demanding for virginity test is violation of Article 21.

❖ Right of woman to produce a child and refuse to do intercourse

Article 21 provides personal liberty to woman to decide whether she wants to continue pregnancy or abort it. In every circumstances woman consent is needed, she is the one who will carry the child for nine months. In *Suchitra Srivastava v. Chandigarh Administration*<sup>5</sup> 19 year old girl get pregnant by rape. The high court gives permission for termination of pregnancy as she was mentally retarded with no blood relation and custodian. Doctor said that she was capable for continuance of pregnancy. She already completed 19 week, according to Pregnancy termination act 20 weeks was maximum. The high court give order to terminate pregnancy but still the girl not given her consent to it which is require according to MTP

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<sup>3</sup> .[1996]2 SCC 549

<sup>4</sup>.AIR 1991 SC 207

<sup>5</sup> AIR 2010 SC 235

1971. . The Supreme Court overruled this order by saying that a woman is granted with personal liberty under Article 21 and her consent is needed.

❖ Right against sexual harassment at workplace

In *Vishakha v. State of Rajasthan*<sup>6</sup> Supreme court held that sexual harassment at workplace is breach of gender equality, right to life and liberty. It is the infringement of Article 14, 15 and 21. The PoSH Act is also passed in 2013. This act defines any kind of sexual harassment at workplace such as demanding sexual favour, giving sexually remarks, showing and recording sexually offensive video or any kind of sexually gestures.

❖ Right to health and medical assistance

It is duty of all medical doctors and related other professionals to cure the injured and needed one immediately without waiting for completion of legal formalities. Social laws do not consider death by negligence which amount legal profession.

In *Vincent Parikurlangara v. Union of India*<sup>7</sup> the Supreme Court held that maintenance and improvement of public health is included in the Article 21 under this right. Health improvement of the people is the social welfare.

❖ Right to sleep

Article 21 also included Right to sleep as fundamental right .Sleep is important for human biological cycle. A proper sleep is necessary for healthy human being. Noise is also considered as pollutant thus; Noise Pollution (Regulation and Control) Rules 2000 is recognized. It is also discussed under Article 19 (1)(a) read along with Article 21 that every citizen of India is granted to live in healthy environment, to have proper sleep that indicates the right of life and personal liberty in the Article 21.

In *Sayed Maqsood Ali v. State of Madhaya pradesh*<sup>8</sup> the court held that article 21 grant every citizen to have Right to sleep at night. No one has right to disturb anybody from their sleep as it is a fundamental right.

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<sup>6</sup> AIR 1997 SC 3011

<sup>7</sup> [1987]2 SCC 165

<sup>8</sup> AIR 2001 MP 220

❖ Right to die with dignity

Right to die is NOT a fundamental right. Under IPC section 309 tells about punishment for attempt to committing suicide. Article 21 is Right to life and taking life is held to be unconstitutional.

Euthanasia means mercy killing according to American law. In simple words we mean giving easy death or good death. As the purpose of this for patient to unbind them from their incurable sufferings.

In *Arena Ramchandra Shabaug case*<sup>9</sup> a landmark judgement was given on right to die with dignity. A nurse was attacked by the sweeper of the hospital, he tried to force himself but finding her that she was in her menstruating period, he brutally sodomised her. He used dog collar chain to wrap around her neck After finding her body next day she was taken for medical care. The oxygen supply to brain was cut-off, brain parts was vulnerable. Her condition was very vulnerable. She was in kind of permanent vegetative state.

A petition was filed under article 32 of the Indian constitution by her friend in the year 2009 after 36 year of incident. She was in abhorrent condition.

The court distinguishes two terms active euthanasia and passive euthanasia. In active euthanasia the patient is killed by lethal injection when they are suffering from incurable cancer whereas in passive euthanasia medical equipments are removed or any antibiotics at which patient are surviving.

❖ Right to get pollution free water and air

The right to have clean water and pollution free air is necessary for the healthy environment. A healthy environment supports healthy lifestyle. In *Subhash Kumar v. State of Bihar*<sup>10</sup>, the Supreme Court held that right of life is fundamental right under article 21 which also includes right to get pollution free water and air.

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<sup>9</sup> AIR 2011 SC 1290

<sup>10</sup> AIR 1991 SC 420

Destruction of natural resources somewhere leads to violation of fundamental right. Thus sustainable management is important for healthy future for human kinds for sustaining the lives. *Shiram Food and fertilizer case*<sup>11</sup>, also called *oleum gas leak case*. At winter night of December a tragic incident happened. Oleum gas leaked from one of unit of factory, which cause severe harm to the people. MC Mehta filled public interest litigation, a writ petition under article 32 and 21 of the constitution for relocation and permanent ban on this harmful factory.

❖ Right of Imams to emolument

*All Indian Imam Oraganization v. Union of India*<sup>12</sup> the supreme court held that Imams who are involved in the religious activities are entitled to get their emolument in absence of statutory provision in the Warkf Act 1954. Article 21 granted to live with human dignity. Authority has duty to pay that entire Imam for their services towards them.

❖ Right to free legal aid

It is the duty of the government to provide legal aid and must be done in fairness and reasonableness as it is provided under article 21 of Indian constitution. Accused is entitled to get free legal aid under article 21 when the accused is not able bear the expenses of the trial. In *Hussainara Khatoon v. State of Bihar*<sup>13</sup> it was held that right to get free legal aid is under Right to life under article 21 of the Indian constitution. In P.N Bhagwati observed not everyone can afford lawyer by own so its duty of the government to provide and it's not charitable.

❖ Right to choose life partner

Right to choose life partner is a fundamental right. It is not necessary that consent of society, community or parents needed. If two adults wanted to marry each other then no one can interfere between them. *Salamat Ansari and other versus State of UP*<sup>14</sup> the fact of this case were a case was filed against Muslim man. Priyanka married Salamat against her family.

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<sup>11</sup> [1987]1 SCC 395

<sup>12</sup> AIR1993 SC 2086

<sup>13</sup> AIR 1979 SC 1360

<sup>14</sup> 11 NOVEMBER 2020

She converted her religion from Hindu to Muslim. Her father filled a case against Salamat for kidnapping her and marrying her as she was minor. It leads to rise of debate on love jihad. It was held that right to choose partner is right of life and personal liberty as it falls under fundamental right under article 21. It was also found that Priyanaka was not minor at that time, as both were adults so there consent is needed. Religion, cast, community, society doesn't come in picture of independent country.

#### ❖ Right to education

Education is a fundamental right which essential for the exercise of the human rights provided by our Indian constitution. Right to education is universal. It also provide a duty to educate others who have not completed even basic education which is needed for the survival and make them known their fundamental rights. Right to education is also recognized by the international organisation too.

Some institution who promote Right to education around the world

- United Nation Children's Fund [UNICEF]
- World Bank
- United Nations Educational, Scientific and Cultural Organization [UNESCO]
- International Labour Organization [ILO]

In *Mohini jain v. State of Karnatka*<sup>15</sup> justice Kuldip singh and R.M. Sahai held that “the right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education”.

#### ❖ Right against handcuffing

Article 21 gives right to life and personal liberty that means it gives us freedom of movement and protection from arbitration. It is not absolute right. Section 46 of code of criminal procedure [CRPC] allows for the use of reasonable force to affect an arrest or prevent the escape of an accused person. The practice violates an individual dignity. Using of handcuffs by officers creates fearful atmosphere and it is also intimidation process.

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<sup>15</sup> [1992] 3 SCC 666

In *Sunil Batra v. Delhi Administration*<sup>16</sup>1978 it was held that handcuffs should not be used as form of punishment. Court said that handcuffs should to be used in non heinous crime. It must be used in the violence offence. It should not be used for women, juveniles.

In *Sheela Barse v. State of Maharashtra*<sup>17</sup> court said that using of handcuff is infringement of fundamental right. It creates discrimination and must not be used for non violent offences.

#### ❖ Right to privacy

In *Puttaswamy v. union of India*,<sup>18</sup> the right to privacy was acknowledge as fundamental right by the Supreme Court and protected under article 21 of Indian constitution. Right to privacy is not an absolute right it have certain restriction in it. It was held that the state can limit the right to privacy to defend legitimate state interests. The idea that people have basic right to keep some parts of their private lives, information and actions secret and shielded from unauthorised access is known as the right to privacy. It is acknowledge by many legal systems around the world and is frequently seen as a fundamental human right.

#### ❖ Right to speedy trial

One essential constitutional protection that guarantees a defendant's case gets heard quickly is that right to a timely trial. It assists in avoiding unfair postponements of court cases. A defendant's constitutional right to quick trials is intended to guarantee that criminal cases are settled without undue delay, shielding defendants from drawn out judicial proceedings. Although it differs by jurisdiction by much legal system usually view it as a fundamental right. The supreme court of India, in the case of *Hussainaira Khatoon v. Home secretary , state of Bihar*<sup>19</sup> it was held that it is an important and necessary aspect of the fundamental right to right to life and liberty .

Furthermore, the supreme court reaffirmed the importance of a prompt trial and declared that an excessive delay in the trial process breaches the right to fair and prompt trial in the *Ranjan*

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<sup>16</sup> AIR1978 SC 1675

<sup>17</sup> AIR SCC 596

<sup>18</sup> AIR 2017 SC 4161

<sup>19</sup> AIR 1979 SC 1360

*Dwivedi v. CBI*<sup>20</sup>.

❖ Public hanging

The Indian constitution's Article 21 guarantees everyone's right to life and personal freedom. Since public hanging violates the values of human decency and compassion, it is commonly regarded as breach of this fundamental right. India's legal system place a strong emphasis on protecting life and forbids the use of unusually harsh penalties.

❖ Bonded labour

“Everyone has the right to work, to free choice employment, to just and favourable conditions of work, and to protection against unemployment” read as article 21 of the Universal Declaration of Human Rights. Everyone has the right to equal compensation for equal work, free from discrimination. Every worker has the right to fair compensation that guarantees them and their families a life worthy of human Dignity and is supported, where needed, by additional social safety nets.

The right to work and fair working conditions are highlighted in this article; nevertheless, bonded labour goes against these ideals since it forces people to work in exploitative conditions often without compensation and under duress.

❖ Child rights

A fundamental right guaranteed by Article 21 of the Indian constitution is the following “No person shall be deprived of his life or personal liberty except according to the procedure established by law”. This implies that everyone, including minors, has the right to life and the freedom to pursue their own interests, and the these rights may only be curtailed or removed in accordance with the law.

This article places a strong emphasis on protecting children's lives and liberties while making sure that any limitations or deprivation adhere to the law. It shows a dedication to defending children's rights and welfare in line with the values of justice and equity. Furthermore, the Indian Supreme court has constructed Article 21 liberally, expanding purview to encompass

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<sup>20</sup> AIR 2012 SC 3217

the rights to healthcare, education and dignified life for children.

❖ Homosexuals are constitutional

The Indian constitution's Article 21 addresses the right to life and individual freedom. In the historic ruling *Navtej Singh Johar v. Union Of India*<sup>21</sup>, the Supreme court of India declared that consensual gay acts between adults are protected by Article 21's basic rights, decriminalising them. The court ruled that the constitution's guarantees of equality, privacy and dignity were infringed by making same sex partnerships illegal. This ruling was a major step in the right direction for the LGBTQ+ community's recognition and protection in India.

❖ Compensation for violation of Article 21

One significant case involving compensation for its breach is "*Nilabati Behera vs. State of Orissa*"<sup>22</sup>. According to Supreme court, a person's right to compensation for unlawfully losing their life or their personal freedom is a part of their right to life. In the instance the court stressed that one remedy available under Article 21 for the infringement of fundamental rights is compensation. It stated that in the event that this constitutional right is violated, the state is responsible for compensating the victim or their family. Consequently, the precedent established by the Nilabhati Behra case supports the claim for compensation in situations when Article 21 is infringed.

## CONCLUSION

Article 21 is a fundamental right of the constitution of India that guarantees protection of life and personal freedom. A pillar of fundamental rights, Article 21 ensures the preservation of individual freedom and life. It states that no one may be deprived of their life or personal freedom other than in compliance with the legal process. This clause emphasises justice and fairness in court procedures, which is in line with the notion of due process.

The courts have construed Article 21 broadly throughout time, extending its reach to include substantive rights as well as procedural protections. It is believed that the rights to privacy, a dignified existence and freedom from torture and harsh treatment are essential elements.

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<sup>21</sup> AIR 2018

<sup>22</sup> AIR 1993

Article 21 serves as a safeguard against unwarranted state action and demonstrates a commitment to individual liberty. Its sweeping interpretation has given citizens more power and a foundation for the law.

This ensures that no one can be deprived of life or personal liberty otherwise than according to law. Judiciary has interpreted this article broadly, covering several aspects, including the right to privacy. In conclusion, article 21 serves as essential safeguards for individuals against arbitrary state action and emphasizes the importance of due process and human dignity.

