

EVOLUTION OF ARTICLE 21

Written by **Rudraksh Jain**

3rd year BBA LLB Student, VIPS, New Delhi, India

ABSTRACT

“Right to life is the first among human rights”

-Pope Francis

Article 21 of the Indian Constitution guarantees to all individuals’ right to life and liberty. Adopted from the concept of due process of law as mentioned under the American Constitution, it is considered as the heart of the Indian Constitution. This article which had started with the meaning of mere freedom of human body in 1950 has evolved over the years to become a set of rights within itself to protect human life and liberty. But the judges of the Supreme Court as recently as in 2019, have commented about the need to expand the scope of article 21. This is because with changing times the human needs and priorities keep changing and the judiciary and lawmakers must keep this in mind, to make sure that the laws are equipped to serve the basic needs of the changing times.

INTRODUCTION

Article 21 of the constitution guarantees to every individual protection of life and personal liberty. It states that, “No person shall be deprived of his life or personal liberty, except by procedure established by law.” This article was originally inspired from the 5th amendment to the American Constitution, where instead of “procedure established by law” they have “due process of law”. The right to life has been considered as the most vital fundamental right. The right not only ensures you “life” but also more than just mere animal existence. The parliament has been vested with the power to amend the constitution (except the basic structure) as mentioned under article 368 of the Indian Constitution. Ever since the constitution has been implemented, this provision has been used time and again to ensure that the laws are on par with the changing times. In the famous case of *Munn v. Illinois*, Justice Field said that the word life refers to more than mere animal existence and that it also refers to the quality of life. Also, not just freedom from arrest, detention, and wrongful confinement but also all the rights and privileges that are essential to achieve happiness with freedom are considered as a part of the expression “personal liberty”. Since 26th January 1950 there have been several changes in the stated article to enhance the quality of life of the citizens.

The article 21 progressed from “procedure established by law” to “due process of law”. Procedure established by law meant that, a person can be deprived of his fundamental right, if a law enables the authority to do so. It didn’t matter whether the law was just, fair, and respected other fundamental rights. Articles 14, 19 and 21 were seen as mutually exclusive, and mere existence of a proper law with a proper procedure was enough to revoke one’s fundamental right. The same was also held in the landmark judgement of *A.K. Gopalan v. State of Madras*.

Due process of law means that Articles 14, 19 and 21 must be seen as mutually inclusive, in *Maneka Gandhi case* which marks a watershed in the history of development of constitutional law in our country, the Apex Court for the first time took the view that Article 21 affords protection not only against executive action but also against legislation and any law which deprives a person of his life or personal liberty would be invalid unless it prescribes a procedure for such deprivation which is reasonable, fair and just. The concept of reasonableness, it was held, runs through the entire fabric of the Constitution and it is not enough for the law merely to provide some semblance of a procedure but the procedure for

depriving a person of his life or personal liberty must be reasonable, fair, and just. It is for the court to determine whether in a particular case the procedure is reasonable, fair, and just and if it is not, the court will strike down the law as invalid.

EVOLUTION OF ARTICLE 21

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

-Article 21

The first landmark judgement in the process of evolution of Article 21 came in the year 1950, in *A.K. Gopalan v. State of Madras*.

A.K. Gopalan under Article 32(1) filed a petition, in pursuance of an order made under Preventive Detention Act, 1950, a writ of Habeus Corpus was filed against in detention. He argued that his detention and Preventive Detention Act was unconstitutional and in violation of the fundamental rights, Article 14, 19, and 21 respectively.

The Supreme Court in this case restricted the meaning and scope of the phrase "personal liberty" to only "freedom of the physical body". Supreme Court stated that article 21 in essence is a mere procedural right and not a substantive right. It was also held by the court that articles 14, 19 and 21 are mutually exclusive.

In *Kharak Singh v. State of U.P.*, petitioner was charged with violent robbery as a part of an armed robbery in 1941, but he was released due to lack of evidence. A "History Sheet" was opened regarding him under U.P. Police regulations. These regulations provided for surveillance powers, including powers of domiciliary visits, for habitual offenders or people likely to become criminals. He Argued that U.P. police were in desecration of Article 19 and 21.

The Apex Court considered the regulation 236 of chapter XX of the U.P. police regulation as ultra vires to article 19(1)(d) and article 21 of the constitution and apprehended that the police

conducting domiciliary visits to Kharak Singh's house every night to keep a check on his activities was violative of his right to freedom and personal liberty, as personal liberty did not mean mere animal existence.

In *R.C. Cooper v. Union of India, 1970* (famously known as the bank nationalization case), The eleven-judge bench overruled the mutually exclusive theory and the opinion presented in *A.K. Gopalan case*. In this case the fundamental rights were seen as mutually inclusive. The Apex Court held if any act or law is in desecration of any fundamental right then the stated law or act is considered in violation of the Constitution. This view was further explained and interpreted in *Maneka Gandhi case*.

In *ADM, Jabalpur v. Shavikant Shukla case, 1975* was witnessed during the period of emergency initiated in India by the then Prime Minister Indra Gandhi. In Indian democracy, the 1975 emergency period is perceived as the darkest hour witness by our Constitution. Fundamental rights were stripped away for personal political benefits and the government functioned for their own profit disregarding the responsibility of millions. During this time the judiciary was called upon to decide the famous ADM, Jabalpur case (Habeus Corpus case).

During the period of emergency, the right of citizens and foreigners to approach the court to enforce Articles 14, 19 and 21 was suspended for the duration of emergency. Under preventive detention laws, anyone who was perceived to be a political threat was taken into custody without trial. Many political leaders such as Atal Bihari Vajpayee, Moraji Desai and many others were arrested. The Supreme Court agreed that right to approach the court under article 32 and 226 of the constitution also stand suspended during emergency even in case of violation of right to life and personal liberty, However, Hon'ble Mr. Justice H.R. Khanna delivered a dissent judgment by disagreeing with the majority that Art. 21 can be suspended by the declaration of Emergency. He held that if the right to enforce Art. 21 is suspended then there would be no remedy against deprivation of a person's life or liberty by the State even though such deprivation might be without the authority of law or even in flagrant violation of the provisions of law. Observing that such a position would be against rule of law, J. Khanna noted that, "*without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning.*"^[1] But H.R. Khanna, judge had to pay heavy price for his dissent view as he was not elevated to the office of Chief Justice of

India, though his dissent view was as per Constitution, which was even recognized by the Apex Court by setting aside the ADM Jabalpur case.

Next key case in the evolution of Article 21 is Maneka Gandhi v Union of India, the Supreme Court in this case interpreted the meaning of “liberty, mutually exclusive theory and procedure established by law”.

Maneka Gandhi was restricted from travelling abroad as her passport was confiscated by the police without proper explanation. Maneka Gandhi challenged the mutually exclusive fundamental rights under Articles 14, 19 and 21 as held by the Supreme Court in A.K. Gopalan case, she also demanded the interpretation of “Procedure established by law”.

The Apex Court overruled the doctrine of mutually exclusivity and held that Articles 19 and 21 are not mutually exclusive. A law must satisfy Article 14, 19 and 21 inclusively to be constitutional. This case led the Judiciary to import the feature of “due process of law” from the American Constitution. A whole new chapter of rights were opened by the proper interpretation of Article 21. The Apex court in several cases had referred to these rights as implied fundamental rights. One of the most famous implied fundamental right was witnessed in *Puttaswamy v. India (The right to privacy case)*.

Puttaswamy v. Union of India case was brought by 91-year-old retired High Court Judge Puttaswamy against the Union of India (the Government of India) before a nine-judge bench of the Supreme Court which had been set up on reference from the Constitution Bench to determine whether the right to privacy was guaranteed as an independent fundamental right following conflicting decisions from other Supreme Court benches.

Case had concerned a challenge to the government’s Aadhaar scheme (a form of uniform biometrics-based identity card) which the government proposed making mandatory for access to government services and benefits. The attorney general on behalf of Union of India argued that in the history of judiciary, right to privacy was never reflected as a fundamental right. Furthermore, in the Famous landmark judgement of *M.P. Sharma case*, right to privacy was not considered a fundamental right. The petitioner argued, since the birth of our Constitution, right of privacy has always been concealed in “personal liberty”. He requested the Apex Court

to illuminate the nature of fundamental rights, constitutional interpretation, and the theoretical and philosophical bases for the right to privacy as well as the nature of this right.

The nine-judge bench of the Supreme Court unanimously recognized that the Constitution guaranteed the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21. The Court overruled *M.P. Sharma*, and *Kharak Singh* in so far as the latter did not expressly recognize the right to privacy. Further, it found that the right to privacy included the negative right against State interference, *as in the case of criminalization of homosexuality*, as well as the positive right to be protected by the State.

This judgement gave new interpretation to “right to life and personal liberty” like: Legalising homosexuality, right to consume beef, right to refuse medical treatment, need to introduce data protection regime, right to display religion symbols, and many more.

A whole new chapter of rights had opened due to the interpretation of article 21. The Supreme Court in numerous cases had described to these rights as implied fundamental rights. The following are some of the implied fundamental rights and the judgements which led to establishing these rights:

1. RIGHT TO LIVE WITH HUMAN DIGNITY (*Maneka Gandhi v. Union of India*)
2. RIGHT AGAINST SEXUAL HARASMENT AT WORK-PLACE (*Vishakha v. State of Rajasthan*)
3. RIGHT TO CLEAN ENVIRONMENT (*Vellcore v. Union of India*)
4. RIGHT TO KNOW (*Reliance ltd. V. Proprietors of Indian Express*)
5. RIGHT AGAINST LEGAL DETENTION (*D.K. Basu v. State of West Bengal*)
6. RIGHT TO LEGAL AID (*Khatoon v. State of Bihar*)
7. RIGHT TO SPEEDY TRAIL (*Khatoon v. State of Bihar*)
8. RIGHT OF PRISONERS (*Sunil Batra v. Delhi Administration*)
9. RIGHT TO COMPENSATION (*Rudal shah v. State of Bihar*)
10. RIGHT TO DIE WITH DIGNITY (*Aruna Ramachandra Shanbaug v. Union of India*)
11. RIGHT TO CHOOSE LIFE PARTNER (*Shakti Vahini v. Union of India*)
12. RIGHT TO SLEEP
13. RIGHT TO EDUCATION (*Mohini Jain v. State of Karnataka*)

14. RIGHT TO PRIVACY (*K.S Puttuswamy (retd.) v. Union of India*)

CONCLUSION

“Right to life” and “personal liberty” is the modern name for what traditionally has been known as “natural rights”. Every individual is entitled to these fundamental rights gifted by our Constitution since their birth, Article 21 was not interpreted the way it was introduced from the beginning of our Independent country’s history. *A.K. Gopalan case, M.P. Sharma case, ADM Jabalpur case* are living instances of the imperfection portrayed by the Indian judiciary and law makers.

Maneka Gandhi case, Puttaswamy case, Kharak Singh case and other cases assisted in the growth of Article 21, and it witnessed heaps of amendments and changes to be the just law it is today.

Thereby it was rightly said that “*the Indian Constitution is known as a living document because it is not static and ever evolving and having survived after 103 amendments and still moving ahead to match up the needs and requirements of the society.*”