

Article 21 is the perfect demonstration of the transformative character of our constitution.

Justice Iyyer

In every civil society, it is the obligation of the state to provide a meaningful and dignified life to its citizens. In our country, this right has been provided under Part III of the constitution, which deals with **fundamental rights**. **Article 21 of Indian constitution** has a very wide amplitude and can't just describe in a single sentence.

In this article, we will explore the various facets of Article 21 with the help of legislative intent and judicial pronouncement that expanded its horizon with each passing day.

Meaning of Article 21

Article 21 is the heart of our constitution. A bare reading of this Article states that

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

While defining this Article, Justice P.N Bhagwati stated that **Article 21** is an embodiment of constitutional values in a democratic society. It is the basis on which our society can progress in the right direction.

Article 21 appears to be a negative right. A person thus can be deprived of his life and personal liberty according to the procedure established by the law. **Article 21 of the Constitution** is written in negative language but by a process of creative and innovative interpretation, today Article 21 has become the source of many positive rights by extraordinary interpretation of the expression of life, personal liberty, and procedure established by law occurring in Article 21.

However, it is important to note that **Article 21** only comes into play when a person is deprived of his 'life or 'personal liberty' by the 'State' as defined in Article 12. So, **violation of the fundamental right** by private individuals will fall outside the purview of Article 21.

What is the meaning of the term "Person"

As per this Article, the **definition of a person** is not confined only to citizens but extends to every person regardless of nationality or the circumstances in which a person is placed. It is important to note that **article 21 applies to both the citizens as well as foreigners**. Further, protection is guaranteed under Art 21 extends even to persons who are undergoing imprisonment in jails.

What is the meaning of the term "Deprived"

Art 21 comes into the picture only when there is deprivation of life or personal liability of a person. The literal meaning of the term **"deprived"** is to take away someone's legal right.

The definition of Deprive came into consideration in the famous case of **Gopalan v. State of Madras. (AIR 1950 SC 27)**. The Hon'ble Supreme court held that Art 21 gets attracted only in case of deprivation in the sense of 'total losses and that the said article had no application in case of restriction upon the right to move freely.

In the case of **Ramcharan v. Union of India (AIR 1989 SC 549)**

The **Supreme court** held that to constitute 'deprived' there must be a direct and tangible act that threatens the feelings of life of a person or member of the community. Use

Article 21 of the constitution guarantees two kinds of rights, namely -

1. Right to life
2. Right to personal liberty.

Right to Life

The creator of the constitution of India made article 21 and put the line Right to life under the article which means every person has the right to live his or her life without any restrictions. The Supreme Court has recognized and enforced various socio-economic rights such as the right to food, health, education, and means of livelihood, etc. by integrating non-enforceable DPSP into enforceable [fundamental rights](#).

Undoubtedly, The right to life is fundamental to all the rights available to a human being. We must have basic life and only on that basis, we can enjoy our other rights provided under part III of the constitution. If this right is taken away, all the others will lose their significance. The primary thing is that we should be alive to enjoy the rights and freedom available to us.

Life' in Article 21 doesn't merely mean the physical act of breathing or mere animal existence. It has a much wider scope including the right to live with human dignity, Right to livelihood, Right to health, Right to pollution-free air, etc.

This right makes a man's life meaningful, complete, and worth living. Thus, the bare necessities, minimum and basic requirements for a person from the core concept of the right to life.

In Kharak Singh v. State of Uttar Pradesh, the Hon'ble [Supreme Court of India](#) held that the term 'life' is something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision restricts the mutilation of the body by amputation of an armoured leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

In Sunil Batra v. Delhi Administration, It was observed that the **right to life** include the right to lead a healthy life wherein one can enjoy all faculties of the human body in their prime conditions. This right would even include the right to protect one's tradition, culture and heritage. It would even extend to live and sleep in peace and the Right to repose and health.

Bandhua Mukti Morcha v Union of India (1984)

The right to live with human respectability freed from abuse gets its life breath from the given guidelines of State technique, for instance, restorative administrations, enlightening workplaces, other cognizant conditions of work, and maternity mitigation.

Right to Pollution Free Environment

Vellore Citizens Welfare Forum v Union of India

- A PIL drawing the attention of the court towards the pollution caused by the enormous discharge of untreated effluent by the tanneries and other industries in the State of TN making the subsoil unfit for agricultural purposes.
- Right to the unpolluted environment, right to life includes a variety of rights such as protection of wildlife, forests, lakes, ancient monuments, fauna and flora, unpolluted air, protection from noise, air, water contamination, support of biological parity and maintainable improvement”

Right Against Sexual Harassment at Workplace

As per our Hon'ble Supreme Court in **Vishakha vs the State of Rajasthan**, the sexual harassment of women at the workplace is a violation of our most cherished **Article 21 of the constitution**. Article 21 of the Indian constitution guarantees a protective environment to each and every person of the society to live and enjoy.

Sexual harassment of women has been held by the Supreme Court to be violative of the most cherished of the [fundamental rights](#), namely, the Right to Life contained in Art. 21.

Right To Livelihood

Initially, our courts were of the view that **the right of livelihood** is not covered under Article 21 but later on it got changed.

In the landmark judgement of The Olga Tellis v. Bombay Municipal Corporation, a 5 judge bench of the Supreme court held that the right to livelihood is the basic essence of the **right to life**. The bench said so as no person can live without the means of living, that is, the means of livelihood. The **right to livelihood** is the part and parcel of Article 21 of the constitution of India.

Right to Health

Consumer education and Research Centre v. UOI

- Relief against the ill effect of asbestos exposure on the health of workers in asbestos industries – the right to health is a part of the right to life.-duty to provide medical aid and to protect the health and vigour of a worker while in service or after retirement.

Right To Live with Human Dignity

In **Maneka Gandhi v. Union of India**, the Supreme Court awarded a new dimension to **Article 21** wherein it held that **the right to life** is not merely a physical act of living but includes within its ambit the right to live with human dignity and all that goes along with it i.e., the bare necessities of life, such as adequate nutrition, clothing and shelter, etc. It also covers the facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities.

In our country, It is the [fundamental right of everyone in this Country](#) to live with human dignity, which shall be free from all sorts of exploitation.

In **Peoples Union for Democratic Rights v. Union of India**, the Supreme court held that if minimum wages are not paid to the workers in various Asiad projects, it would be a denial of the right to have a dignified life under Article 21 of the constitution.

In **Chandra Raja Kumar v. Police Commissioner Hyderabad**, it was stated that the right to life includes a life with basic human virtues and decency.

Right to die?

Gian Kaur v StateofRajasthan (1996) 2 SCC 648

- Right to life does not include the right to commit suicide or die

ArunaRamchandraShanbaug v UnionofIndia (2011) 4 SCC 454

Active Euthanasia and assisted death are offences but non-voluntary euthanasia is permissible subject to certain conditions and safeguards

Right to Shelter

In **UP Avas Vikas Parishad v. Friends Coop. Housing Society Limited** the right to shelter was recognised as a [fundamental right](#) that emanates from the right to residence secured under [Article 19\(1\)\(e\)](#) and the right to life guaranteed under Article 21. The state has an obligation to provide facilities and opportunities to build houses to make this right means for the poor.

Right to Personal Liberty

The liberty of the person is one of the oldest principles which was recognised at the time of growth of mankind. It is a part of the Magna Karta.

In India, the concept of 'liberty' has been accorded a very far fledge interpretation. In a catena of judgements, the Supreme Court of India has rejected the view that liberty talks merely freedom from bodily restraint, but held that it includes those **rights and privileges** that have been recognised as being integral to the orderly pursuit of happiness by free men.

- In its widest amplitude include rights like Right to travel abroad, Right of a prisoner to Speedy trial (Hussainara Khatoon v. Home Secretary)
- The SC has interpreted the word “Life” and “Liberty” liberally.
- Article 21 is now being invoked almost as residuary rights.
- It has led to many directive principles being enforced as FRs.

A K Gopalan v. State of Madras (1950)

- The right to personal liberty means freedom from physical restraint.

Procedure Established by Law

- A reading of Art 21 shows that a person may be deprived of his life or personal liberty only by the procedure established by law.
- The most celebrated judgment under Art 21 is Maneka Gandhi v. UOI.
- However, one must look at the journey 1950-1978, where Art 21 was at its weakest phase.

A.K. Gopalan v. State of Madras (1950)

- Gopalan, a communist leader, was detained under the Preventive Detention Act, 1950.
- He challenged the validity of his detention, 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.
- It was argued that Art 19(1) (d) and Art 21 should be read together because **Art 19(1) dealt with substantive rights and Article 21 with procedural rights.**
- He said that the procedure **was not reasonable fair and just.** His claim was based upon the American notion of due process. In the U.S. system, no person shall be deprived of his life and personal liberty and property without due process of law.

Due Process of Law v. Procedure established by Law

- The V Amendment to the US Constitution says, inter alia, that “no person shall be deprived of his life, liberty or property, without due process of law”. This provision is the source of judicial review. The word “due means” just, proper, reasonable according to judicial review.
- The procedure established by law is taken from article 31 of the Japanese Constitution.

A.K. Gopalan v. State of Madras (1950)

- The term ‘due’ signifies just, fair and reasonable and the term ‘process’ signifies the ‘procedure’. There are two kinds of the due process i.e. 1) substantive due process and 2) procedural due process.
- When one questions the law that lays down a certain procedure on the standards of just, fair and reasonable then one is talking about substantive due process.
- On the other hand when one is making a specific reference to the procedure not considering the law that laid it, one is referring to procedural due process.
- He invited the Indian SC to follow the American notion of due process which includes the principle of natural justice.

- But the founding fathers never intended to follow their notion of due process and therefore it was held in the case that **21 protect against the 'executive action' and not against the legislature.**

Held-

- "Personal Liberty" in art 21 means nothing more than the liberty of the physical body, ie. **Freedom from arrest (punishment) and detention without the authority of law**
- "Law" meant "state made laws" and rejected the plea of the Principle of Natural Justice.
- Rejected the contention that 'procedure established by law' did not mean 'due process of law' as understood in the American Constitution. (American constitution covers both substantive and procedural law.
- 'Personal liberty' under Art. 21 mean only "freedom from arbitrary arrest". Since the arrest was made under the *procedure established by preventive detention laws*, thus, it is not an arbitrary arrest and thereby not violative of Art. 21.
- The court refrained from reading articles 19 and 21 together. According to the court, article 19 could only be invoked by a free person and not one under arrest (article 19 covered a distinct and separate ground).

Khonak Singh v. State of UP(1963)

- UP Police Regulations provided for Domiciliary Visits. The police had the power to go to the house of the history sheeters, suspects, and could conduct surveillance about movement, picketing, whereabouts.
- This was challenged as **violating Article 21 of the Indian constitution on 'personal liberty.**
- The SC, in this case, expanded the meaning unlike in the case of Gopalan, which was just a casual remark on personal liberty.

Maneka Gandhi v. UOI (1978)

- The petitioner's passport was impounded by the Central Govt under Sec. 10(3) (c) of the Passport Act, 1967.
- The GoI declined in the interest of the general public to furnish the reasons for its decision.
- The pet challenged the validity of the said order and claimed it to be violative of Art 21 since it did not follow the procedure established by law.
- Challenged under Art 14 as conferring an arbitrary power since it didn't provide a hearing of the holder of the passport.
- Violative of Art 19(1) (a) and (g) since it permitted the imposition of restrictions was not provided in cl (2) or (6) of Art 19.

Held

- The court overruled the narrow view of 'personal liberty as given in *Gopalan*.
- It was held that. A. 14 (reasonable classification), A. 19 (reasonable restrictions) and A. 21 (procedure established by law) were interrelated.
- The judgment proved to be a landmark in the sense that it introduced procedural due process by reading out A. 21 with the other two articles i.e. it laid the foundation of procedural fairness.

- If a law deprives an individual of his life and personal liberty then it must satisfy the test of 'reasonableness' under A. 14 and A. 19.
- The procedure must be fair, just and reasonable and not oppressive or arbitrary.
- Impounding her passport without giving her a hearing is not according to 'procedure established by law'. By giving such a wider interpretation of the expression, the court almost equated the expression to the U.S. notion of 'due process of law'.

Right To Privacy

In the present times, privacy has become a very hot topic. There is a buzz in the market that our personal data is used by the companies and other stakeholders to satisfy their own motives.

In a landmark judgement of K.S Puttuswami vs Union of India, it was held that the right to privacy is the essence of the right to life and personal liberty guaranteed under Article 21.

Right to Education- Article 21A of the Indian constitution

- Education forms the backbone of the development of a country.
- Article 21A-The State shall provide compulsory education to the children who are under the age of 6 and 14 years in such matter as the State may, by law, determine.
- Added by the **Constitution 86th Amendment 2002.**
- It casts a duty on a State to provide free and compulsory education to all children between the ages of 6-14 years.

Mohini Jain v. State of Karnataka (AIR 1992 SC 1858)

- The apex court sweepingly held that the **right to education** for all is included within Article 21.
- However, the zeal demonstrated by the Supreme Court in *Mohini Jain* was all too impracticable, and to make the right to education an enforceable right for all the people in India would require innumerable resources that are scarcely available with the state.
- Realizing the impracticability of the proposition laid down in the case, the later constitutional bench in *Unni Krishnan* restricted the scope of the right only up to fourteen years.

Unni Krishnan v. State of A.P. (1993) 1 SCC 645

- The Supreme Court observed that the right to life under Article 21 includes the right to *primary education*.
- The court placed reliance on Articles 41 and 45 and ruled that it is high time and the state must comply with the directive under Article 45 and provide 'free and compulsory education for all children until they complete the age of fourteen years.'

Conclusion

Article 21 is the most important right enshrined in our constitution. It is the premises on which the entire building of **fundamental rights** is constructed. The supreme court has constantly increased

the horizon and growth of this Article by providing progressive interpretation. We can safely assume that new facets are going to be added in this infallible Article.

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