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The Scope and the Ingredients of Art.21 and Its Relevance in Covid-19 Times

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Right to Life, Article 21 of our Indian Constitution, is not restricted to the mere paperweight under our books of Constitution but is always kept alive, vibrant, pulsating which had subjectively crept into our courtroom cases. The word 'Life', the most fundamental of all the things in the world, but the most difficult to define, says the Justices who have dealt with disputed cases on Art. 21 of our very own Indian Constitution. It implies that any citizen or any non-citizen residing in the territorial boundaries of India will be granted this right, the right to work, the right to livelihood, the right to food, shelter, water, education, medical care, and a healthy environment. This is not only what our Constitution has but it is the basic inherent right of what every individual deserves. This is a step and a march towards an egalitarian society of what our Founding Fathers, the Drafters of Indian Constitution vision while writing this prestigious and glorious Constitution along with the Preamble.

Part III of the Constitution, under the heading "Right to Freedom" from Articles 19-22 of the Indian Constitution. Article 21 of the Indian Constitution guarantees the right to life and personal liberty in compliance with legal procedures established by law. In this research paper, the researcher will focus on various judicial pronouncements that have come with the passing years which had broadened the horizon of Article 21 in specific and the fundamental rights in general. The paper will also cover the recent out-set of Art.21 in COVID-19 days.

Keywords: *Article 21, constitution of India, right to health, covid-19.*

INTRODUCTION

Article 21 is one of the most significant Articles holding prime importance in Part III of Fundamental Rights of our Constitution. These fundamental rights are enforceable against the State mentioned in Article 12 of our Indian Constitution. Article 13 of our Constitution says specifically that if any law is made infringing or is inconsistent or derogatory to the Fundamental rights of citizens and or non-citizens, those laws will be held void. In *Maneka Gandhi v. Union of India*,¹ the Supreme Court brought Art. 21 a new meaning and gave it a new dimension by ruling that the right to life is not only a physical right but rather requires the right to live with human dignity.

On examining the pertinent remarks made by eminent author Justice B. L. Hansaria in the introduction of his book, *Right to Life and Liberty under the Constitution* said that:

“Article 21 forms the fundamental primary and the very soul of Part III of Indian Constitution, it has always done justice to people and given to them what they desired from it. It is capable of expanding more with the social and political changes, the drafters of the Constitution must have been happy in heaven while looking down as to how this whole Article is deeply and greatly interpreted and applied subjectively for the justice of the individuals. Law is never still; it cannot be. It has also to be moulded by deft hands to meet the challenge of time as and when the situation calls for it, as, it has been well propounded that life of the law is not logic, it is experience.”

Any individual can be denied his Right to life and personal liberty only when it under the procedure established by a VALID law, it should be done in competency with the legislative powers of the law-making authority. If the law is established as invalid that law will be ultra vires to the Constitution and will be null and void and will not any effect. Article 21 is tested and contemplated in consonance with the **Golden Triangle of the Indian Constitution**, Article 14, 19, and 21. The *A.K. Gopalan Case*² approach came when the court ruled that the process envisioned by Article 21 must be just and equitable, not arbitrary, fanciful, or oppressive,

¹ *Maneka Gandhi v Union of India* 1978 AIR 597

² *AK Gopalan v Union of India* 1950 AIR 27

thereby incorporating natural justice concepts. The golden triangle of Articles 14, 19, and 21 rights was established by the requirement that procedures depriving a person of life or personal liberty be non-arbitrary, lawful, just, and reasonable.

In *Francis Coralie Mullin vs. UT of Delhi*³ (*Francis Coralie, 1981*) Bhagwati J., held and stated that: “the magnitude and the contents of this Right under Article 21, depends on the economic development rate at which the country is growing, but much more emphasis be laid that in any situation whatsoever, the right to the basic and bare necessities of life of the human self – these cannot be breached, and it is to be upheld in all circumstances”. In *Bandhua Mukti Morcha vs. Union of India*,⁴ the question that arose in front of the Supreme Court judges was regarding bondage and exploitation of labourers, where again the learned Bhagwati J., states that “Article 21 includes the right to live with human dignity which is free from all forms of exploitation, this has gained its roots from the Directive Principles of State Policy in our Constitution of Article 39 clause (e) and (f), Article 41 and Article 42, it includes protection of health and safety and strength of its workers, both men and women and children of tender age who are more susceptible to the exploitation and atrocities, opportunities be given to them to grow and learn in a healthy and safe environment with freedom and human dignity. No State has any right to deprive its citizen of enjoying these basic essentials”. The most important and landmark case, *MC Mehta vs UOI*⁵ (*Shriram- Oleum Gas*), where the Supreme Court took a favourable decision and upheld that Article 21 of the Indian Constitution, provides for relief against the leakage of oleum gas which has undoubtedly resulted in the loss of the number of lives and damage to the health of innumerable people and the traces which can be observed even today. Article 21 also covers the Right to relief from the ill effects on the human body by the X-Rays on the people working under Bharat Electronics Ltd.⁶ The sewage workers⁷ and the workers working in industries indulging in hazardous and harmful employment⁸ also had a right to work in humane working conditions and they should also get compensation from the Government in cases of any injury or death while in course of

³ *Francis Coralie Mullin v UT of Delhi* AIR 1981 SC 746

⁴ *Bandhua Mukti Morcha v Union of India* AIR 1984 SC 802

⁵ *MC Mehta v UOI* AIR 1987 SC 1086

⁶ *MK Sharma v Bharat Electronics Ltd* AIR 1987 SC 1792

⁷ *Delhi Jal Board v National Campaign for Dignity & Rights of Sewage and Allied Workers* (2011) 8 SCC 568

⁸ *Occupational Health & Safety Association v Union of India* (2014) 3 SCC 547

employment. It will be a violation of Article 21 of the Indian Constitution if any person is denied timely medical assistance⁹ in any Government hospital¹⁰, but it does not extend to private hospitals¹¹. The court has emphasized that State cannot claim a shortage of financial resources to carry out these measures and medical duties aimed at providing sufficient medical care to the citizens. Due to financial limitations, the state cannot escape its constitutional duty to provide sufficient medical care to its people. In *Pravat Kumar Mukherjee v. Ruby General Hospital & Others*¹², it was held that it is an obligation on the hospital to accept accident victims and patients in critical condition, and it cannot refuse to give them treatment on the grounds that the victim is unable to pay the fee or meet the hospital charges, or that there is no close relative of the victim who can give consent for the same.

On the expansion of Article 21, later also added the Right to livelihood as the court was of the opinion that, no person can live without having the means of living and livelihood, as in order to sustain oneself one needs money in their pockets and hence employment opportunities with a fair and reasonable basic pay are essential.¹³ On further extending the horizon of Article 21, it added that the Right to approach a suitable road for people staying in hilly areas is also a fundamental right as *Article 21 embraces not the mere life in an existing manner but also the quality of life lived by individuals* and for residents residing in hilly areas access to the road is almost synonyms to access to life in itself.¹⁴

On dealing with Right against Sexual Harassment at the workplace, the Court said that sexual harassment is without any doubt is a breach of the Right to personal liberty of an individual, and in *Vishakha v. State of Rajasthan*¹⁵, the Supreme Court of India ruled that sexual abuse of a woman at her workplace is a blatant and harsh violation of Articles 14, 15 and 21 of the

⁹ *Consumer Education and Research Centre v Union of India* (1995) SCC (3) 42

¹⁰ *Paschim Banga Khet Mazdoor Samity v State of West Bengal* AIR 1996 SC 2426

¹¹ *State of Punjab v Ram Lubhaya Bagga* AIR 1998 SC 1703; Dr B Errabi, 'The Right to Health Care: Need for its Conversion into Statutorily Enforceable Basic Human Need - An Indian perspective' (1998) XX DLR 51

¹² *Pravat Kumar Mukherjee v Ruby General Hospital & Ors* (2005) CPJ 35 NC

¹³ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545; *Narendra Kumar Chandla v State of Haryana* (1994) 4 SCC 460

¹⁴ *State of HP v Umed Ram Sharma* AIR 1986 SC 847

¹⁵ *Vishakha v State of Rajasthan* AIR 1997 SC 3011

Constitution, as it amounts to a violation of gender equality and the right to life and personal liberty, Court also laid down certain guidelines after this landmark judgment to protect the interest integrity and dignity of the woman at workplace.¹⁶ “*Sexual harassment of a female at the place of work is incompatible and inconsistent with the reputation, integrity, and honour of a female and it needs to and must be eradicated from society.*”¹⁷ On dealing with cases of Rape, The Supreme Court in *Bodhisattwa Gautam v. Subhra Chakraborty*¹⁸ said that Rape is not only a crime against a woman victim, but it is also a crime against society as a whole. *It devastates a woman's entire psychology and causes her to have major mental breakdowns and society also looks down on her with scorn and derision.* As a result, rape remains the most despised crime on the planet. It is an offence against universal human rights, as well as a violation of the victim's most prized civil freedom, the right to live with dignity guaranteed by Art 21.” It also involves and covers within its ambit the Right to Reputation, the Supreme Court stated in *Smt. Kiran Bedi v. Committee of Inquiry*¹⁹ that the right to enjoy one's private integrity dates back to centuries and is essential to human culture.

In *MX of Bombay Indian Inhabitants v. M/s. ZY*²⁰, it was stated that you cannot deny employment to an individual on the basis of him/her being HIV positive because the Right to life has the Right to livelihood within its broader concepts. Art. 21 regarding the Right to work says that the State cannot be forced to offer sufficient means of subsistence or employment to people simply by behaving affirmatively. In other terms, no one will blame the government for failing to provide him with jobs. However, if a person's right to livelihood is taken away from him without following a legal process that is both just and equitable, he will appeal the deprivation as a violation of Article 21. In *State of Maharashtra v. Maruti Sripati Dubal*²¹, the court stated that the right to live with human dignity does not include a forced life with drudgery. People who try to attempt suicide should not be punished but rehabilitated because no person will try to take away their own life unless and until there is a threat to their being.

¹⁶ MP Jain, *Indian Constitutional Law* (5th edn, Kamal Law House, Calcutta 1998) 98

¹⁷ *Ibid*

¹⁸ *Bodhisattwa Gautam v Subhra Chakraborty* 1996 AIR 922

¹⁹ *Smt Kiran Bedi v Committee of Inquiry* 1989 AIR 714; *DF Marion v Minnie Davis* 55 American LR 171

²⁰ *MX of Bombay Indian Inhabitants v M/s ZY* AIR 1997 Bom 406

²¹ *State of Maharashtra v Maruti Sripati Dubal* 1987 Cri LJ 743

These are just a handful of areas where Art.21 has been expanded but there are other areas as well, like Right to Shelter, where the court ruled that the difference between an animal and human is that animal's need protection for their body and humans needs an accommodation to live and protect oneself too. Art. 21 includes Right against Honour Killing, as the right to get married to a person of your choice is a decision of a major and no caste or people can amidst it²². The court also ruled that the death penalty does not violate Art. 21, as it is according to a procedure established by law, and one gets the death penalty only in rarest of rare cases.²³

The scope of Art.21 has broadened itself more than what our Drafters thought or visioned while drafting this Article 21, they must be greatly proud and happy that Art.21 has always been applied in its truest and most effective sense for the justice of its people.

CAN THE JUDICIARY INVOKE THE RIGHT TO HEALTH TO DEMAND A MORE VIGOROUS RESPONSE TO COVID-19?

The crisis that not only India but the whole world is facing right now, COVID-19, has taken a toll over the entire population at this instance, the right under Art.21 needs to come up and take a stand for the protection of citizens and non-citizens, and judiciary being the custodian and the guardian for the rights of the citizens has the duty to take a stand and speak up when the Fundamental rights are getting breached or violated. Right to Health is a part of Art. 21 as stated in *Consumer Education and Research Centre versus Union of India*. The Supreme Court of India should make sure that Union Government and State Governments are responding to the current crisis with much vigilance and keep a check on the Fundamental Right of Right to Health to its people. In the landmark case of *Navtej Singh Johar*²⁴ Supreme Court held that Court can not only impose negative obligations on State to do or refrain from doing something, but it can also put positive obligations on State to take the required and adequate measures for the safety and protection of citizens, for ensuring Right to Health, State cannot say that they are not able to provide medical assistance due to lack of financial resources, because the health of its citizens is the fundamental and the most primary duty of any

²² *Surjit Kumar v State of UP* AIR 2002 NOC 265

²³ *Bachan Singh v State of Punjab* AIR 1980 SC 898

²⁴ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1

Government. And Right to Health is synonymous with the Right to life. But today at the current crisis patients are dying due to critical conditions which are somewhat hampering their Right to Health, as the country's healthcare facilities are not able to meet the margin to reach each and every individual. Hospitals are facing the issue of lack of beds, lack of PPE kits for doctors, and lack of medicinal assistance is becoming an obstacle for people to get their Right to Health. But apart from these obstacles, private hospitals are denying this right to health on a purposive basis, for instance, in Jharkhand, a 61-year-old woman died because she needed to undergo urgent dialysis, but the private hospital waited for her covid report before giving her medical assistance which resulted in her death. The Alappuzha Government Medical College Hospital denied treatment to a person, who was in urgent need to undergo cardiac surgery because of the non-availability of COVID reports, which violated her Right to life under Art.21 as she died due to such negligent behaviour. The reports reveal that in every State more than 50 patients have died due to non-timely treatment or due to non-availability of Covid reports. The people who have suffered the most among this counting are the pregnant women, who undergo labour pain and many died because of shifting from one hospital to another. When it comes to assigning obligations to Private Hospitals, it is clear that the Central Government and State Governments are both responsible for compensating Private Hospitals for delays in supplying oxygen and crucial drugs caused by Government officials. Though private/non-government hospitals are not controlled by the government, they serve public duties and responsibilities and are subject to the government's deep and persuasive supervision, as evidenced by the current COVID-19 pandemic crisis. Supreme Court in *R.D. Shetty v. International Airport Authority of India & Ors.*²⁵ and *Ajay Hasiav v. Khalid Mujib*²⁶ has held that under Article 12 of the Constitution, Private Hospitals can be construed as an instrumentality of State, and they can be held accountable and also liable to pay compensation by the Supreme Court or the High Courts while exercising writ jurisdiction for any form of medical negligence on their part. Besides that, the victim has the right to seek compensation and damages from the Consumer Forum or Civil Courts.

²⁵ *RD Shetty v International Airport Authority of India & Ors* (1979) 3 SCC 489

²⁶ *Ajay Hasiav v Khalid Mujib* (1981) 1 SCC 722

Supreme Court urged the State to make more testing labs available for COVID-19 and large-scale quarantine centres for the COVID patients. The vaccination drive should be expanded to increase the availability of vaccines and to make them available to the maximum number of people. And if the Government does not make any representation in full speed for the implementation of such steps, then Court will be forced to take vigorous response under Constitutional responsibility towards its citizens in order to protect the right to health under Art.21. Delhi High Court also stated that health is not a privilege of only a few and it is no luxury and hence poor should not be denied the tests and vaccines just because of them being incapable of paying the amount. Bombay High Court stated that no individual even a non-COVID patient who is in critical need of medical assistance should be denied treatment.

The Government needs to realise that while giving attention to COVID patients they cannot ignore the non-COVID patients who are in urgent need of medical assistance, *life is a life and we cannot discriminate as to whose life is more important than the other*. The right to health is a fundamental right and each individual deserves that right. The fear of COVID is one issue but the Government should not go to that level where they have to question democracy and Fundamental Rights.

CONCLUSION

The researcher wants to conclude on a note, that Art. 21 is the heart and soul of Fundamental Rights and definitely one of the most important human rights. The relevance and its ever-increasing importance can be seen even in COVID days where the Supreme Court and High Courts have upheld the importance of Art.21 saying that Life is Life, and the Life of all individuals is equal and you cannot decide whom to save and whom not to. Art 21 covers within its ambit, the right to reputation, right to noise-free environment, right to a healthy environment, right against sexual harassment and Rape, right to life, personal liberty, and dignity, right to medical care, right to livelihood, right to shelter, right to social security, right to privacy, right against illegal detention, right to a fair trial, and even more which have been explored when the cases come and the Courts look through them from all perspectives providing justice and a fair trial.

Many lives would have been saved to date, if the government had devised a systematic mechanism to deal with the current scenario in advance, being a welfare State. Failures and gaps in delivering medical treatment constitute a breach of Article 21 of the Constitution, Right to life. To summarise, it is safe to emphasize that it is the Government's primary responsibility to ensure proper medical treatment; failure to do so for any reason would constitute a violation of Article 21, entitling the victims (family members) to monetary compensation. Though no amount of compensation will compensate for the victims' trauma, pain, and suffering, sadly monetary compensation is the only legal means of reparation for family members.