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Article 21: The Heart and Soul of the Indian Constitution

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In the whole world, the foremost essential right is the right to life. Every individual has the right to live a free and full life with dignity. As for human rights, this right is just attached to mortals and one might expect the right to live by itself within the primary sense. Other rights haven't any utility without this right. The right life is simply ensured when the right sleep, food, shelter, etc. are met, it doesn't ensure the animal's existence. One of the foremost essential gifts of democracy to mankind is the right to private liberty. The Indian judiciary has from time-to-time interpreted article 21 of the Indian constitution because within the earlier trends it had been so narrower and explained the rights, so limited, but now it's too wide and grants the right in an exceedingly boundless way. The basic right to life and private liberty is the most preferred right of the judiciary because it helps to experiment and regulate the range of injustice and social wrongs. In this paper, the author will speak about article 21's meaning and ideas and also discuss how far we have come now, in the light of providing justice to each citizen or non-citizen of India. We are going to also understand some rights which are extended from time to time with some cases and precedents. Also, the author will give her point of view regarding this right.

Keywords: *life, liberty, dignity, article 21.*

INTRODUCTION

“No freeman shall be taken or imprisoned or deceased or outlawed or banished or any ways destroyed, nor will the King pass upon him or commit him to prison unless by the judgment of his peers or the law of the land.”

- English Magna Carta, 1215

The right to life is the most salient and essential right of human beings. Every citizen has the right to live a life without any unlawful interference by anyone in their personal life and liberty. The successful democracy of the country is to allow its citizens to live a life that is full of free and dignified life. This right grants the citizen to live life without the barrier of the state especially. The preamble of the constitution of India mentions the word ‘liberty’, which means the Indian constitution grants liberty to every citizen. The right to personal liberty affects the human being's physical freedom. A life without physical freedom is beyond belief. Article 21 itself becomes the source of many substantive rights and procedural safeguards for people¹. The meaning of life is provided in expanded form and the meaning of personal liberty is shown in a very wide scope that covers the various rights of citizens. The withdrawal of article 21 is relevant when it falls in with the procedure established by law. It cannot be suspended during an emergency.²

THE CONSTITUTIONAL PROVISIONS

Article 21 of the Indian Constitution:

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.³ The government of India act, of 1935⁴ established article 21 of the Indian constitution. Article 21 is given under part III⁵ of the Indian constitution. The explanation of this text is for a natural person which incorporates the citizen

¹ Kushagra Sharma & Ashish Ranjan, ‘Study on Article 21 of the Constitution of India’ [2021] Indian Journal of Law, Polity and Administration

² *Ibid*

³ Constitution of India, art 21

⁴ Government of India Act 1935

⁵ Constitution of India, part III

or non-citizen shall not prevent to live their life, on stomach dignity and unlawful interference or personal liberty i.e. physical freedom means moved one place to a different, by the state but state can prevent and violate the citizen or non-citizen's right as article 21 when it's the case of procedure established by law like accused got imprisonment for committing the illegitimate offence.

ARTICLE 21 IS PROVIDED TO THE CITIZEN OR NON-CITIZEN

Article 21 and 22⁶ ensures the rights of citizens, non-citizens, and aliens. The Supreme Court held that the protection of foreigners' rights through this text is provided. The Supreme Court also only if the aliens who come to the country have also the right to live with human dignity for the duration of their lives in this country. The state has the constitutional; dignity to shield the lifetime of the citizens yet as non-citizens or aliens equally because it's going to be a citizen or non-citizen it doesn't matter, the most purpose is that they're people at large. So, the right to live with human dignity is on the market to citizens, non-citizens or aliens, etc. it shall not be violated by the state except in line with the procedure established by law.

POSITIVE TREND BECAUSE THE EARLIER TREND

It ensures that the state shall not prevent any person's right to life. Example: Judicial Activism. Judicial activism exercises the ability of review to preserve the acts of the presidency. It means courts confirm the citizen or non-citizens etc. rights by their decisions, precedent, orders, etc. because the Supreme Court may be a guardian of our fundamental rights. Simply, we all have rights, and the way will we realize them? Obviously through bare acts etc. but how can we know that these laws are lies to us? By court judgements, decisions, etc. So, Article 21 has relevance to Judicial Activism.

RIGHT TO LIFE

According to earlier interpretations, the right to life means mere existence. It was not much more comprehensive but narrower and covered only limited situations. According to the present

⁶ Constitution of India, art 22

interpretation, it means meaningful life with dignity. Earlier, you are breathing and living a life no matter with respect and dignity. But this is sufficient enough to call for the right to life. Present, you are breathing and living it does not matter but you live with respect and dignity it does matter. It does not talk about animal existence or breathing. It gives guarantees about dignified life.

Right to life includes:

- ***Right to livelihood:*** The law grants that each and each person, whether man or woman, has the right to livelihood that he or she may buy the necessities for life like water, food, etc. Not a soul deserves to live in poverty.

In *Olga Tellis and Ors. v Bombay Municipal Corporation* (1986)⁷: In this case, the facts were the petitioners were slums within the city of Bombay. They filed a writ petition against the previous decision of the State of Maharashtra and also the Bombay Municipal Corporation regarding the forcible removal of dwellers and which led to disapproval of certain dwellings.⁸ They challenged these actions because removing an individual from his slum, is considered a violation of the right to livelihood, a constitutional right. Then, the court held the slum and pavement dwellers needed the right to livelihood. So, here they should not be held as trespassers as they cover filthy places out of total helplessness. Then it had been ordered that any removal be held after the monsoon session and therefore the one that was censused before 1976 had to be resettled.

- ***Right to health and medical assistance:*** Right to life isn't just living life it also means living a life with better health and having the right facilities of medicines etc. if required. The right to life isn't valid if someone isn't given the validation for the right health and medical assistance. It is the primary source to live a life.

In *Pt. Parmanand Katara v Union of India* (1989)⁹: In this case, there was an accident faced by a scooterist and he had been admitted to the hospital but they refused treatment because there

⁷ *Olga Tellis & Ors v Bombay Municipal Corporation* [1986] SCR 51

⁸ *Ibid*

⁹ *Parmanand Katara v Union of India* [1989] SCC 286

were no legal and police formalities and gave the advice to take a scooterist to another hospital which is 20 km away from that hospital. Then a writ was filed in the public interest and challenged the obligations of doctors that they should have to look after the patient immediately without waiting for any formalities because it is about the patient's life. The court held that all medical professionals must provide health assistance immediately without pressuring for any legal formalities. It was decided that no medical professionals shall harass the patient regarding an investigation and can't be asked to testify in court unless required.¹⁰

- ***Right to sleep:*** Sleep is the basic requirement of the human body. But most of us don't know that the right to sleep is our fundamental right. So, the state shall not deprive the sleep of any citizen or non-citizen of India.

In *Re-Ramlila Maidan Incident v Home Secretary and Ors.* (2012)¹¹: In this case, in 2011 there was a yoga camp held in Ramlila maidan.¹² But on 4th June, there was a hunger strike at Ramlila maidan regarding corruption and black money which was led by Baba Ramdev. At night, protesters were sleeping and CRPF, Delhi law enforcement agency, and Rapid action force personnel came to arrest the sadhu. The court held that sleep could be a necessary and essential part of human life. Every person can sleep freely and properly as he breathes. If any person's sleep is disturbed even if he didn't do any unlawful activity and he needs to flee from the place, then it'll be held as a violation of human rights.

- ***Right to a healthy environment:*** Nature is the necessity of human existence. Due to nature we can live, breathe and have better health. Nature is the backbone of human life. And humans have a right to live a life free from pollution etc. Due to the rapid growth of technologies, and industrial development, humans lost fresh air, clean water, and trees. Global warming is also increasing. So, where is our right to a healthy environment?

¹⁰ *Ibid*

¹¹ *Re-Ramlila Maidan Incident v Home Secretary & Ors* (2012) SCC 1

¹² *Ibid*

In *Subhash Kumar v State of Bihar* (1991)¹³: In this case, the case was filed in the public interest against two iron and steel companies because they dumped the waste material into the nearby river Bokaro. So, this case challenged the state pollution control board for not taking any action and failing to prevent them. The court dismissed this plea because the petitioner filed it for his gain. But the court confirmed that the right to enjoy pollution-free air and water is our fundamental right and whenever any person's right is violated then has an absolute right to file a petition.¹⁴

- *Does the right to life include the right to die?*

No, the right to die isn't included in the right to life. How? We can understand it, in some cases.

*State of Maharashtra v Maruti Sripati Dubal*¹⁵: In this case, the Bombay judiciary held the sec. 309 of the Indian penal code, 1860¹⁶ as unconstitutional which talks about the punishment for an attempt to commit suicide. Also, remark that the right to life as article 21 of the Indian constitution act, 1949 includes numerous rights and one amongst them is the right to die.¹⁷

*P. Rathinam v Union of India*¹⁸: In this case, the Supreme Court's division bench agreed with the previous case of *State of Maharashtra v Maruti Sripati Dubal*¹⁹ that the right to life as article 21 of the Indian constitution act, 1949 also includes the right to die and held section 309 of the Indian penal code, 1860 unconstitutional which called penal offence earlier.²⁰

*Gian Kaur v State of Punjab, 1996*²¹: In this case,²² 5 judges bench of the supreme court overruled the earlier case of *P. Rathinam v Union of India*²³ and held that article 21 of the Indian Constitution, 1949 talks about the right to life and includes many rights but it's a natural right

¹³ *Subhash Kumar v State of Bihar* (1991) SCR 5

¹⁴ *Ibid*

¹⁵ *State of Maharashtra v Maruti Sripati Dubal* [1987] Bom CR 499

¹⁶ Indian Penal Code 1860, s 309

¹⁷ *State of Maharashtra* (n 15)

¹⁸ *P Rathinam v Union of India* [1994] SCC 394

¹⁹ *State of Maharashtra* (n 15)

²⁰ *Ibid*

²¹ *Smt Gian Kaur v the State of Punjab* [1996] SCC 648

²² *Ibid*

²³ *P Rathinam* (n 18)

and doesn't include 'Right to die' which is an unnatural termination of life. And held that sec. 309 of the Indian penal code, 1860 as constitutional.²⁴

- *Does Euthanasia violate the right to life?*

Euthanasia is the intentionally ending of life, it's the painless killing of a patient who faces a dangerous disease like an incurable, painful or irreversible coma. The word "euthanasia" comes from the greek "Eu" which means good and "ethanasia" which suggests death. it'd allow the patient to experience an honest death.

There are 2 types of Euthanasia:-

- Active: killing a patient by active means i.e. injecting a patient with a dose of a drug. It's illegal in India.
- Passive: It means intentionally permitting a patient to die by withholding artificial life support i.e. feeding tube or ventilator. It's legal in India.

According to *Smt. Gian Kaur v State of Punjab*²⁵, it had been held that euthanasia might be made lawful only by the legislation. The explanation was to prevent immoral actions by ill-intentioned patients.

In *Common Cause (A Regd. Society) v Union of India* (2018)²⁶: In this case, it was held by the 5 Judges bench of the Supreme Court that the right to life includes the right to die with dignity. The patient or maybe their family withdraws the medical support in case the patient faces a dangerous disease etc. just like an incurable, painful or irreversible coma. And allowed passive euthanasia with strict guidelines.²⁷ So, no euthanasia cannot violate the right o life. It happens in good faith. Allow the patient to not suffer the pain and die with painless killing.

²⁴ *Ibid*

²⁵ *Gian Kumar* (n 21)

²⁶ *Common Cause (A Regd Society) v Union of India* [2018] SC 1665

²⁷ *Ibid*

PERSONAL LIBERTY

According to the earlier trend, it was the narrower approach, which means liberty was limited to bodily/physical liberty like freedom from restraint, etc.

Personal liberty was first discussed in the case given below:-

In *A.K. Gopalan v State of Madras*²⁸: In this case, a petitioner as a communist leader was detained under the preventive detention act of 1950.²⁹ And he said that the government violates his fundamental right as the right to movement, which is granted under article 19(1)(d)³⁰ of the Indian constitution act, 1949 and thus, also violates the personal liberty granted under article 21 since the right to movement is considered a person's liberty. Then, the court held that the right to movement is not part of personal liberty, as not included in article 21. Personal liberty means the liberty of the physical body; it is not included in article 19(1)(d).³¹

According to the present trend, it is a broader approach, personal liberty is extended from just physical movement to travel anywhere or may go outside India. The right to personal liberty is one of the foremost essential for human existence and therefore the basic elements of the right to freedom. If the right to life is the most basic right for human beings then the right to personal liberty is also.

Personal liberty was extended within the case given below:-

In *Maneka Gandhi v Union of India*³²: In this case, it was held by the supreme court of India, that every person has the right to travel and go outside the country.³³ The right to travel abroad is now included in personal liberty as article 21 of the Indian constitution act, 1949. The scope of personal liberty has increased which incorporates all the granted rights of article 21 also with other rights which are relevant to personal liberty. Such rights are only prevented by established

²⁸ *AK Gopalan v State of Madras* [1950] SC 27

²⁹ *Ibid*

³⁰ Constitution of India, art 19(1)(d)

³¹ *Ibid*

³² *Maneka Gandhi v Union of India* [1978] SC 597

³³ *Ibid*

procedure by law, within the case of using rights for an unfair, unjustified purpose. Article 21 has both styles of aspects as positive and negative but the positive aspect is extremely clearly mentioned here. Due to the extension of the personal liberty concept, there were many rights were extended too.

- **Right to go abroad**

According to Article 13(2) of the Universal Declaration of Human Rights, —Everyone has the right to leave any country, including his own, and to return to his country³⁴. The right to movement is already granted under article 19(d)³⁵. Then after the case, *Maneka Gandhi v Union of India*'s³⁶ right to the movement was also derived under article 21 as included in personal liberty. Life doesn't mean just the mere individual physical existence of human beings but also the quality of life. Physical movement does not only include freedom from restraint and confinement it also includes various rights.

In *Satwant Singh Sawhney v D. Ramarathnam*³⁷: In this case, the question may arise that whether taking a passport in possession even on legally travel abroad can hindrance in an individual's right to travel abroad or not. Then, the supreme court held that travel abroad as well as the right to travel derived under the “Personal liberty” although it is provided under the different provisions of the constitution. It is the fundamental right of the individuals. Except for the procedure established by law, no person shall be deprived of this right. Some negative aspects are right to travel as well as travel abroad, both are lies with some restrictions too. They are not absolute.

- **Right to Privacy**

Personal liberty is not just limited to bodily/physical liberty, it is also about mental liberty. Individuals have a right to stay mentally stable. For a long time, there were no provisions for the right to privacy and there were no cases of the right to privacy discovered. When from time

³⁴ Universal Declaration of Human Rights 1948, art 13(2)

³⁵ Constitution of India, art 19(d)

³⁶ *Maneka Gandhi* (n 32)

³⁷ *Satwant Singh Sawhney v D Ramarathnam* [1967] SCR 525

to time relevant cases of privacy come out then legislation decides to make provisions regarding this. Personal liberty also means being free from infringement on his private life. It is expected from every democratic country that they should have to provide their citizen or non-citizen, with physical happiness, security, peaceful and private life.

The concept of privacy is relevant to section 377 of the Indian penal code, 1860. This section says that the “physical relationship against nature” is like a human and an animal. In simple language, it means same-sex was punishable under this sec. Due to this, conflict arose in 2009 and begins with the case of *Naz Foundation v State of NCT Delhi* (2009)³⁸ - In this case, Naz foundation a non-governmental organization filed public interest litigation in Delhi high court and challenged the constitutionality of the sec. 377, which makes it illegal to grab in any “unnatural” sexual act. The petitioner argued that sec. 377 discriminates, abuse, and harassed the gay community and significantly impaired HIV/AIDS. Even the national aid control organization (NACO) under the ministry of health supported the petitioner. Then, Delhi high court held unconstitutional section 377 of the IPC, 1860 because it violates articles 14,³⁹ 15⁴⁰, and 21.

In *Suresh Kumar Koushal v Naz Foundation*⁴¹: In this case, the Supreme Court struck down the decision by the High Court in the NAZ Foundation Case. This project deals with the constitutionality of Section 377⁴² of the Indian Penal Code which criminalizes sexual issues ‘against the order of nature i.e. criminalizes any sexuality apart from the heterosexual penile-vaginal. Homosexuality is the sexual propensity of persons of one’s sex.⁴³ The cultural construction of sexuality discredits any sexual activity that’s ‘not beneficial to the male semen.⁴⁴ Homosexuality is condemned and penalized because it ends up in the loss of the semen which

³⁸ *Naz Foundation v State of NCT Delhi* [2009] Delhi Law Times 277

³⁹ Constitution of India, art 14

⁴⁰ Constitution of India, art 15

⁴¹ *Suresh Kumar Koushal v Naz Foundation* [2013] Civil Appeal No 10972

⁴² Indian Penal Code 1860, s 377

⁴³ *Suresh Kumar* (n 41)

⁴⁴ *Ibid*

holds the seed for procreation. ⁴⁵The court also held that sec. 377 is constitutional. It is just a sensitive issue and parliament would make appropriate laws.

In *NALSA v Union of India*⁴⁶: In this case, it was held that the popularity of the rights of transgender and also transgender is considered as the third gender by the Supreme Court of India. Fundamental rights which are granted under the constitution of India apply equally to males, females, and transgenders.

In *Justice K.S. Puttaswamy v Union of India*⁴⁷ : In this case, the 9 judges bench by J.S. It was said that the right to privacy is an integral component of part III of the Indian constitution, which is guaranteed under the fundamental right of all the citizens. Justice DY Chandrachud said the decision of 2013 was a serious step backward by the Supreme Court, so, it's our responsibility to rectify the mistake.

In *Navtej Singh Johar v Union of India*⁴⁸, 2018 in this case, there was a 5 judges bench headed by Justice DY Chandrachud. There was overruled the case of Suresh Kumar Koushal v Naz foundation⁴⁹ or struck down the sec. 377 of the Indian penal code, 1860 as the 158 years old provision which is against sexual intercourse between the identical sex and was called a criminal offence. And held unconstitutional as a violation of articles 14,15 and 21 of the Indian constitution.

- *Live in a relationship*

A live-in relationship means cohabitation between two partners, who are still unmarried and in a long-term relationship. It is an arrangement in some countries, that two unmarried partners live together and have a sexual relationship. It has also been legalized in India. In India, no law binds anyone if every one of the partners wants to steer out of a relationship. The legal definition

⁴⁵ Oindrilla Mukherjee, 'Suresh Kumar Kaushal vs Naz Foundation: A Critical Analysis' (*Academike*, 21 July 2014) <<https://www.lawctopus.com/academike/suresh-kumar-koushal-vs-naz-foundation-critical-analysis/>> accessed 05 August 2022

⁴⁶ *NALSA v Union of India* [2014] SC 1863

⁴⁷ *J Puttaswamy v Union of India* [2012] Writ petition (Civil) no 494

⁴⁸ *Navtej Singh Johar v Union of India* [2018] SC 4321

⁴⁹ *Suresh Kumar* (n 41)

of live-in-relationship remains unconfirmed, there's no legal definition. But the right of a wife to induce maintenance grants under the protection of women under the domestic violence act, 2005, is set by the court. The protection of females who lived in a very relationship, shielded from domestic violence is granted under the Protection of women from domestic violence Act, 2005, which offers maintenance and protection by providing alimony for an aggrieved live-in partner.

- If a male partner is already married and he is live-in-relationship too with another female and if her wife knows about it then, she has a right to file a divorce under adultery and if a female who is live-in-relationship, have known about it that the male is already married, then she can file a suit at court regarding getting a share from his property.
- A child born from a live-in-relationship is called an illegitimate child and he/she has every right same as a legitimate child except he has no right on ancestral property but has right in a self-acquired property (father's property).
- If a live-in-relationship is on an agreement basis then a party has a right to file a suit in court if any of the partners breach the agreement.

In *Payal Katara v Superintendent Nari Niketan Kalindri Vihar Agra and Others*⁵⁰: In this case,⁵¹ it was said by Allahabad high court that a lady who is of the age of 21 years as a major has a right to go anywhere and with anyone. If a man and woman are married and they want to live together then they can.

In *Chanmuniya v Virendra Kumar Singh*⁵²: In this case,⁵³ partners were living together as husband and wife, and a presumption would arise in favour of wedlock. A respondent started living with the petitioner in 2008 and after 2011 she filed suit for a decree of divorce. Later it was revealed that the petitioner was already married and then the court gave an indication to the

⁵⁰ *Payal Katara v Superintendent Nari Niketan Kalindri Vihar Agra & Ors* [2001] Writ Petition No 16876

⁵¹ *Ibid*

⁵² *Chanmuniya v Virendra Kumar Singh* [2011] SCC 141

⁵³ *Ibid*

petitioner to provide the maintenance to the respondent under sec. 125 of CrPc,⁵⁴ because they are presumed to be married.

*Bharatha Matha & Anr v R. Vijaya Renganathan & Ors*⁵⁵: In this case, the court held that the child born from the live-in-relationship is not entitled to claim inheritance right in ancestral property but has a claim share in the self-acquired property.⁵⁶

PROCEDURAL ESTABLISHED BY LAW

Where the right to life is violated but it is allowed and legal like capital punishment granted to, who is the accused in rarest of rare cases. The state shall not be deprived of the right to life and personal liberty where the act is fair, just, and reasonable but not where the action is not arbitrary, oppressive, and fanciful. Article 354(4)⁵⁷ is executing capital punishment for the rarest of rare cases and here right to life infringement but it is allowed by law. So, no person files any case regarding this type of situation.

In *Jagmohan Singh v State of Uttar Pradesh*⁵⁸: In this case, the validity of the death sentence was challenged because it violates article 19 and article 21 of the Indian constitution act, 1949 and it didn't provide any death penalty procedure. Then,⁵⁹ the Supreme Court held that it's accordance with the procedure established by law, capital punishment is awarded to the accused. it's the circumspection of the judge to determine the capital punishment or life incarceration, based on facts brought from the case. The 5 judge5-judge held that the cap punishment is constitutionally valid as not violate articles 14, 19, and 21.

*Bachan Singh v State of Punjab*⁶⁰: In this case, the Supreme Court by 4:1 majority held that the availability of sec. 302 of the IPC,⁶¹ 1860 is the substitute punishment for murder and it doesn't

⁵⁴ Code of Criminal Procedure 1973, s 125

⁵⁵ *Bharatha Matha & Anr v R Vijaya Renganathan & Ors* [2010] SC 2685

⁵⁶ *Ibid*

⁵⁷ Constitution of India, art 354(4)

⁵⁸ *Jagmohan Singh v the State of Uttar Pradesh* [1973] SCR 541

⁵⁹ *Ibid*

⁶⁰ *Bachan Singh v The State of Punjab* [1979] CrI appeal no 273

⁶¹ Indian Penal Code 1860, s 302

violate article 21 of the Indian constitution act, 1949. India is that the party of the international covenant on civil and political rights since 1979 but it's not abolished the imposition of the capital punishment.⁶² There are some conditions that, capital punishment shouldn't be awarded casually and it should incline to those accused who commits the foremost serious and rarest of rare cases.⁶³

CONCLUSION

It has been seen that the Supreme Court of India gave great importance to article 21 and held it because of the heart and soul of the Indian constitution act, of 1949 undoubtedly. Article 21 because the right to life and personal liberty ensures each and each individual, that the right because the right to life and personal liberty shouldn't be infringed by the state except procedural established by law. Article 21 was narrow and from time to time, when new cases were discovered, it became broader. It said that depriving a human right to life and personal liberty must be fair, reasonable, and justified.

⁶² *Bachan Singh* (n 60)

⁶³ *Ibid*