

## MEANING AND AMBIT OF ARTICLE 21: A CRITICAL ANALYSIS

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### **Introduction**

The central tenet of the Indian Constitution is the protection of rights through lawful procedures. The backbone of this constitutional philosophy is Article 21, which is both dynamic and forward-thinking in its approach. The Constitution of India safeguards fundamental rights through its charter of rights. Among these is Article 21, which enshrines principles such as the right to equality under the law, freedom to express oneself, and the right to practice one's chosen religion and culture. Article 21 is valid for every citizen of India. It is also valid for foreign citizens.

### **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 procedure established by law.<sup>2</sup>

Life and personal liberty- Marginal heading

Life or personal liberty- Main section

Marginal heading is an introduction only operative part is the main section so 'OR' word prevail.

Article 21 has two dimension-

1-Right to life.

2-Right to personal liberty

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### **Right to life:**

In the Indian constitution, every individual is entitled to the basic human rights of life, liberty, and security of person. These rights are inherent to all living beings and are of utmost importance within the framework of the constitution. Specifically, the right to life is considered foundational to all other rights enshrined in the constitution.

Can we limit the word life only to that much or do we have to give a liberal interpretation to the word life? Rule of purposive interpretation clearly suggests that the purpose of Article 21 is to protect life and personal liberty and constitution has some larger purposes.

The word “life” cannot be read as merely being alive rather it has to have so many implied things within it life always means dignified life and when you say dignified life then anything and everything which is essential or which goes in line with the dignified life all that will under the word life.

Upon whom does the restriction of article 21 apply. Does it apply upon the state only or does it apply upon private individual also? Essentially article 21 apply upon state only.

Directly it apply upon state only but indirectly you say it apply upon private individual also.

Essentially article 21 will directly apply upon the state but the state has a two fold duty-

1. The state should not by its actions deprive a person of his life or personal liberty.
2. The state shall also ensure that private persons do not deprive other private persons of his life or personal liberty. The state therefore shall make laws to prevent any such deprivation by private persons and through its executive action the state shall enforce these laws.

Ban upon smoking in public places that is duty upon me and you so this is private individual me and you who have a duty not to smoke in a public place that is related to right to health and that right to health related to dignified life so this is applicable upon individuals.

Duty of a medical practitioner to give medical aid to a person who is the victim of an accident or the victim of a crime and not to wait for police taking the matter. This is also duty upon the doctors. This is also duty upon the private individual.

Duty not to pollute the environment this is also duty upon the private individuals.

All above are dimensions of right to life.

Essentially this article 21 applies upon the state but through the state it is applicable also upon the private individuals. The state has to make laws or the courts have to pass judgments in order to implement these duties upon the private individuals; not throwing garbage on the roads, allowing ambulance to pass this is all your duty towards other individuals under article 21 and all these enforced by the laws made by the state and enforced through the executive action of the state

Poor living in backward area- loss of dignified life state has duty to change this circumstance so the people get dignified life.

Caste discrimination- dignity of life is lost and this is social injustice also. State has duty to prevent this also under article 21 and in article 14 also. It is here that you will find that social justice is implicit not only in article 14 social justice is implicit in article 21 also in the term of dignified life and that is where it is very good manifestation of the overlapping between the various articles.

There is a 3<sup>rd</sup> duty also upon the state –the state shall ameliorate the automatically existing circumstances wherein the individuals or group is automatically discriminated against or his dignity of life is lost the state has the duty to remove such circumstances also and similarly it has the duty to prevent any man made adverse effect upon dignity of life. For eg; discriminations on the basis of caste, discrimination against woman, child labour etc. These are examples of social injustice and at the same time they are examples of loss of dignity by individuals. It is here that it can be concluded that social justice is implicit in article 14 as well as article 21 and this is what becomes an examples of overlapping between the fundamentals rights, thus state has to be proactive not only in article 14, it has to be proactive even under article 21.

So in that sense article 21 applies upon private individuals as well as the state but on private individuals it applies through the state. The state will ensure that the private individuals do not violate the fundamental rights and particularly do not violate article 21 of the constitution that is do not violate life and personal liberty of the individuals.

It is here that the concept of dignity of human life and social justice these are two are overlapping with each other and that is why we say that in article 14 and article 21 both social justice is implicit.

**Due process:**

Except according to procedure established by law- means if there is a procedure established by law then by that procedure you can deprive a person of his life and personal liberty.

Can it be any kind of procedure? Even if the procedure is arbitrary? Even if the procedure is unreasonable? Even if the procedure is unjust, inequitable, unfair, can you deprive a person of his life and personal liberty with the help of such procedure which is unreasonable, unfair, unjust, arbitrary?- procedure that they talking about is cannot be unjust and unfair procedure.

**Maneka Gandhi v. UOI (1978sc) 7judge bench** So in this case for the first time the court categorically stated that the procedure provided in article 21 has to be reasonable, just, fair, and non arbitrary procedure.

This requirement of the procedure being just, fair, and reasonable and non arbitrary this is what is called due process.

The procedure of deprivation of life and personal liberty should be just, reasonable, fair and non-arbitrary this requirement is what is called due process.

Due process means fairness in state action.

**Mithu v. State of Punjab(1983sc)** in this case it was held that section 303 of the IPC is unconstitutional.

303IPC- if a person is life convict and he is in jail and he causes the death of someone then he will always be hanged he will punished death sentence.

In this case it was clearly realized that not only the procedure has to be reasonable rather the substantive law also has to be reasonable, just, fair, and non-arbitrary.

“Due process is an assertion of or affirmation of the constitutional spirit”

In the US constitution due process was added by the 8<sup>th</sup> amendment and on similar lines in India also at the time of framing of the constitution it was proposed to add the due process clause but due to the experience in the US constitution the framers of the Indian constitution rejected that proposal and did not add the due process clause to the Indian constitution instead, in article 21 they added the phrase procedure established by law and before the word liberty the word personal was added in the American constitution due to the phrase due process the US supreme court had acquired immense powers to itself and it was making excessive interference in executive and legislative action of the state. Several welfare related laws had been set aside by the supreme court due to the phrase due process and also the liberty of the people to freely enter into contractual relations in a free market was curtailed to a great extent by the US supreme court in India the framers wanted to avoid such consequences therefore they did not include the phrase due process.

Due process means reasonable procedure.

### **Rustom Cawasjee Cooper v. UOI(1970,SC) 11 judge bench**

In this case two major aspect were emphasized

1. The various fundamental rights are not mutually exculsive and therefore article 14 has to be read together with Article 21 and if any violation of article 14 is alleged then article 21 also shall be examined.
2. The words procedure established by law is no more just a formalistic requirement rather now the focus should be upon the quality of procedure that is the procedure now has to be fair, just, and reasonable.

There after the above development was finally concretized in-

**Maneka Gandhi v. UOI (1978SC) 7 judge bench**

It was held that the procedure of deprivation of life and personal liberty of an individual has to be reasonable, just, fair and non-arbitrary procedure and also that the fundamental rights are not mutually exclusive.

With the above judgment the due process clause which was otherwise rejected in the Indian constitution was brought into the Indian constitution through judicial interpretation due process for the Indian constitution would mean procedural fairness and non-arbitrariness this is the same meaning as due process has.

**Sunil Batra v. Delhi administration (1978 SC) 5 judge bench**

“True, our constitution does not have any due process clause as in the 8<sup>th</sup> amendment of the American constitution but with the RC Cooper and Maneka Gandhi the consequences are the same.”

After Maneka Gandhi and RC Cooper even if we not included the due process then also due process clause was included in India.

In America they are using the term due process and here in India we are not using the term due process rather we are using the term through judicial interpretation, we are using the term reasonable, fair, just, and non-arbitrary procedure.

In Maneka Gandhi judgement essentially it was procedural protection which was guaranteed in the sense that there has to be reasonable, fair, just and non-arbitrary procedure so basically it was procedural fairness which was talked about in Maneka Gandhi but with subsequent interpretational and perceptual changes towards the constitution we extended the procedural fairness to substantive fairness and now it is not only that the procedure has to be reasonable, just, fair, and non-arbitrary rather now the substantive law also has to be reasonable, just, fair, and non-arbitrary.

**Justice K.S. Puttaswami(retd) v. UOI (2017SC) 9 Judges bench**

It was held in this case that the quality of reasonableness does not attach only to the procedure established by law rather also to the content of the law itself that is also to the substantive law as well.

**Personal Liberty:**

In the US the word personal has not been used but in India we have qualified the word liberty by the word personal. Does that mean it is the liberty only of the limbs, arms, and legs. Since we are writing personal does that mean that liberty is limited only to the limbs the arms and legs of an individual or do we have to give it a broad interpretation? It is not just personal liberty of freedom of your legs and arms rather it is the freedom which is much broader.

Personal liberty for example- speedy trial, free legal aid, go abroad.

If given a very broad construction article 21 have included most of the other explicit fundamental rights for example- equality, freedom of speech and expression, freedom to move freely, freedom to form unions and associations, freedom of religion, educational and cultural rights etc; however we wrote these fundamental rights separately and expressly in the constitution just in order to make them explicit so that peoples faith in the constitution and the governance system can be developed as these fundamental rights were the express demands in the freedom struggle moreover many of these fundamental rights are subject to specific restriction and in article 21 it would not have been possible to specify all those different condition for different fundamentals rights and therefore it was in express articles that these fundamentals rights were provided whatever remains will fall under article 21 and many would fall under the other express fundamental rights also. Also there may be an overlapping of fundamental rights and other principles in these various articles.

Any approach or principles evolved for one fundamental right may cut across the other fundamental rights also for examples- the principles of substantive and procedural fairness evolve under article 21 will also apply upon the other fundamental rights for example article 14, 19, 25 etc

**Cases -**

**Chameli singh v. state of Uttar Pradesh(1996SC)**

This is related to right to shelter and basic amenities of life.

**Parmanand Katara v. UOI(1989 SC)**

- It is related to health particularly medical aid to a person after accident.
- Be it a government hospital or a private hospital they should give immediate medical treatment.

**Consumer education and research centre v. UOI (1995 SC)**

This is related to right to good health and pollution free environment.

**Vellore citizens forum v. UOI (1996 SC)**

This is also related to environment. Court particularly talk about the doctrine of public trust.

Public trust- when you have elected the government so the government which comes into the power becomes a trustee of all the natural resources. It is the duty of the state to protect natural resources. Other individuals also have to protect natural resources for example- polluter pay's principle.

**M.S. Hoscott v. State of Maharsahtra (1978 SC)**

**Maharashtra v. Manubhai Prag ji Vashi (1995 SC)**

Both related to free legal aid.

**Hussainara Khatun v. State of Bihar(1979 SC)**

This is on right to speedy trail.

**Prem Shankar v. Delhi Administration(1980 Sc)**

This is on freedom from hand cuffing.

**Bhagwan Das v. State of NCT of Delhi (2011 SC)**



This was related to honour killing. You cannot do honour killing. This is related to choice of marriage. Two different people from different caste if marry each other then state shall provide protection to them and no one has right to do honour killing of these persons.

**Amar Singh v. UOI (2011 SC)**

It is related to telephone tapping. Telephone tapping can be done as per guidelines laid down in telegraph Act and it cannot be arbitrarily done.

**Budhadev Karmaskar(3) v. West Bengal (2011 SC)**

This one is related to sex workers and talks about right to dignity of sex workers and that sex workers have the right to education and re-habilitation and the sex workers have the right to education and re habilitation.

**Sunita tiwari v. UOI (2018SC)**

This case is related to female genital mutilation in Dawoodi Bohra community.

Clitoral hood or the skin cover outside vagina in Dawoodi Bohra community at the age 7 they mutilate the skin cover and that is basically to prevent any sexual pleasure that the women may have now it was held in this case that this causes great mental and health issues and this is violative of the right to privacy, health and dignity it amounts to cruelty therefore it should be stopped.

It was held that the above practices was violative of right to privacy health and dignity of women and it amount to immense physical torture and mental torture to women and it will invite posco this case is referred to larger bench.

**Right to die:**

If a person has the right to live then he also has the right to die-this was thought behind this.

**Bijoe Emmanuel v. State of Kerala (1986SC)**

It was held that if article 19(1)(a) gives you the right to speech and expression then it is implicit that it has the right not to speak.

On the basis of **Bijoe Emmanuel v. State of Kerala (1986SC)** it was held in **P. Rathinam v.**

**UOI(1994SC)**

1. That if a person has the right to live then he also has the right to die which is implicit in article 21. Whenever there is a positive right to do something the negative of that right is also implicit.
2. There is need to humanize the law- if a person is already under so much of distress that he decides to end his life then he should not be punished for trying to end his life.

On these grounds in this case in P. Rathinam the SC held that right to life includes the right to die.

**Gian kaur v. State of Punjab(1996 SC)**

Question was on the logic of P.Rathinam. Is not 306 also unconstitutional.

P.Rathinam judgment was overruled in this case.

1. The court held that right to life is not there because it is conferred by the state rather right to life is perse because a person exist the constitution simply declares and protects that right. It is not a freedom of action so that a person may refrain from acting the negative is not implicit in article 21 thus the SC rejected the very logic of P.Rathinam.
2. If suicide is allowed then it will create a suicidal alarm in the society people will start committing suicide for very small causes and the will be detrimental to the society for the societal well being.

**Aruna Ramchandra Shan baug v. UOI (2011SC)**

This is related to euthenesia. Whether euthanasia was allowed or not. Whether euthanasia was constitutional or not.

Court held euthanasia is of two types.

1. Active euthanasia
  - Voluntary- He has given his consent to die.
  - Involuntary- He has not given his consent.

Active means to kill someone by doing an act, by shooting, by poison, by drowning someone. Active euthanasia is always unconstitutional. This will be the offence of either section 299 or 300 Indian Penal Code. Active euthanasia is not allowed.

2. Passive euthanasia- you are not doing anything to cause death you have just withdrawn from the support the medicine the support that you are given to the person. Stop giving medicine and remove the ventilator and let the person naturally die.

The decision to withdraw the life support system can be taken only by the parents, spouse, some of the very close relative, the next friend of the person( Guardian) or by doctors attending the person. The above named person will apply to the chief justice of the high court and the chief justice will appoint a committee of two sitting high court judges. The committee will consult three expert reputed doctors related to that field and then only it will make its recommendations.

If there is chance of revival then you cannot kill the person.

In passive euthanasia you withdrew the medical support system it is with consent and without consent of person.

### **Common Cause v.UOI (2018 SC)**

This case was related to living will.

An individual has the right to die a natural death with dignity as a part of his right to life if a person is kept alive in the case of some illness or accident only due to some advanced medical facilities then he does have the right to die a natural death with dignity by removing those facilities. When the state cannot guarantee in totality the right to health then how can it deny the right to die with dignity moreover the engagement of the life care facilities unnecessarily for one person whereas there may be some other person in the need of such facilities will be improper.

Also a prolonged existence of person merely due to advanced medical facilities without his willingness is against human dignity.

A person of a sound mind and health can make a living will that in case he fall into a situation of persistent incurable vegetative state then the medical support shall be withdrawn and he shall be allowed a natural death such a will is quite valid he can even authorize his friend or relative to decide the same in consultation with the doctors.

In passive euthanasia- he not made will in common cause case there is will.

In common cause case the court did not get into any kind of comments upon or any kinds of alteration. In Aruna shaun baug case rather they held about they held separately concept of living will.

### **Conclusion:**

Thus I draw a conclusion that Article 21 is the heart and soul of the constitution, if article 21 violated by public official or government then whose right are violated can approach supreme court and supreme court is protector and guardian of Indian constitution. And one thing I would like to add passive euthanasia is fine but I draw attention towards active euthanasia and court has to take a bold step and allow active euthanasia also. The Indian judiciary, which is included in the Indian Constitution, is responsible for enforcing the law.

According to the Indian Constitution, every Indian citizen is treated equally. Every right guaranteed by the Indian constitution is open to all. No one shall be subjected to discrimination on the basis of caste, creed, or religion. The government of India has a fundamental responsibility to protect rights.

### **References:**

- Constitution of India- Bare Act.
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- Universal Declaration of Human Rights.