

Protection of Life and Personal Liberty [Article 21]

- Article 21 provides that no person shall be deprived of his life and personal liberty except according to procedure established by law.
- Right under this article is available to citizens **as well as non citizens.**
- **Difference Between Procedure Established By Law And Due Process Of Law**
- American constitution follows due process of law. it checks whether any law in question is fair and not arbitrary. The due process of law gives wide scope to the court to Grand protection to the rights of its citizens. Under due process, it is a legal requirement that states must respect all of the legal rights that are owed to a person and laws that state and act must confirm to the laws of the land.
- Procedure established by law means that a law that is duly enacted by the Legislature of the body in question is valid if the procedure to establish it has been correctly followed, following of the procedure established by law may rise the risk of compromise to life and personal liberty of individual due to unjust laws made by the law making authorities.
- The scope of article 21 was expanded by the Supreme Court in **Maneka Gandhi VS Union of India 1978**. Therefore, for the purpose of convenience we will study the scope and Ambit of article 21 from a standpoint.
 1. Position prior to Maneka Gandhi case.
 2. position after Maneka Gandhi case

Position prior to Maneka Gandhi's case

- Scope of article 21 came up for consideration in **A K Gopalan Vs Union of India 1950.**

- **AK Gopalan vs State of Madras 1950**

He was a communist leader who was detained under preventive detention act 1950, he challenged his detention on the ground that his civil liberty was being hampered, Supreme Court held that he was detained according to the procedure established by law.

At the time of this case the Supreme Court only provided remedy against arbitrary action of the executive as long as the law was made by procedure established by law it was a valid law. this was a narrow view taken by the Supreme Court but this was changed in the case of Maneka Gandhi.

- The court in the **AK Gopalan v Union of India** held that ‘personal liberty’ under article 21 means nothing more than Liberty of the physical body that is freedom from arrest and detention without authority of law.

- The court held that law means a state made law and does not include *jus natural*. The court further held that articles 19 and 21 deal with different aspects of Liberty.

- Thus, the court in A K Gopalan case gave a restrictive interpretation of ‘personal liberty’ and ‘law’

- **Kharak Singh vs. State of UP 1963**

Supreme Court has defined the expression life and liberty in a broad term and followed the definition of life and liberty given by **Justice field** in the case of **mann vs Illinois 1876** and held that the expression used here is something more than mere animal existence and it contains all those rights by which life can be enjoyed

- ✚ **Position after to Maneka Gandhi’s case**

- In Maneka Gandhi's case the Supreme Court overruled A.K. Gopalan case and widened the scope of article 21.

- **Maneka Gandhi vs. Union of India 1978**

- The passport of Gandhi was impounded under passport act 1967 and she was not given any reason for the impounding. Without a passport one can travel outside of India, so Maneka Gandhi filed a writ petition under article 32 for violating her personal liberty under article 21.

The seven judge bench of the Supreme Court involved not just article 21 but also article 19 and 14, the Court was of opinion that article 19 and 21 go hand in hand and the procedure established by law restricting these rights should stand the scrutiny of other provisions of the Constitution as well including Article 14.

- The Supreme Court overruled AK Gopalan case and ruled that a loss should be ***just fair and reasonable*** and article 21 can be involved against arbitrary executive as well as arbitrary legislative action if the action is not just fair and reasonable
- The court held that procedure contemplated under article 21 could not be unfair and unreasonable. it should be ***just fair and reasonable***. Similarly 'law' under article 21 should embody the ***principles of natural justice***.
- Article 21 is controlled by article 19. The law must satisfy the requirements of article 19 also.
- The court elaborated that the right to life is not merely confined to Physical existence but it includes the right ***to live with human dignity***.
- In **Francis Coralie versus Union Territory of Delhi 1981**, the Supreme Court held that the right to life is not limited to mere animal existence. It is something more than just physical survival right to life includes the right to choice and dignity.
- Article 21 requires the following conditions to be fulfilled:
 1. There must be a valid law.

2. The procedure provided in law must be just, fair and reasonable.
3. Law must satisfy the requirements of article 14 and 19.

Various aspects of right to life and personal liberty

- ***Right to privacy:*** In **Justice K S Puttaswamy and Anr Vs. Union Of India And ors. 2017** Supreme Court held that right to privacy is a fundamental right and it is protected under article 21. Court overruled **MP Sharma** case and **Khadak Singh's case** to the extent that they held the right to privacy is not a fundamental right.
- **Kharak Singh vs. State of Tamilnadu (1963)**, this issue was raised for the first time. Justice Subba Rao in his Minority judgment said that the right to privacy flows from the expression personal liberty. This minority judgment paved path for the development.
- In **PUCL vs. Union of India (1997)**, Telephonic conversation, the court said, it was a part of modern man's life and important faces of a man's private life. Therefore, the Court ruled that telephone tapping would attract article 21, unless it was permitted under the procedure established by law.
- In **Selvi vs. State of Karnataka**, it was held that in involuntary subjection of person to test such as narco analysis, polygraph examination also violates the right to privacy.
- ***Aadhar held to be constitutional:*** **Justice KS Puttaswamy vs. Union of India 2018** Supreme Court upheld the constitutional validity of Aadhaar after reading down and striking down certain provisions.

- Offence of adultery is unconstitutional: In **Joseph Shine vs Union of India 2018** the Supreme Court scrapped down section 497 of Indian penal code as unconstitutional. Court held that it is violative of women's right to dignity and hence it infringed article 21.
- Homosexuality as constitutional; **Navtej Singh Johar vs Union of India 2019** Supreme Court declared Section 377 of Indian penal code, unconstitutional insofar as it criminalize is sexual acts between consenting adults.
- Non payment of minimum wages: in **People's Union for democratic rights vs. Union of India 1982** Court held that nonpayment of minimum wages is violative of article 21
- Right to livelihood: In **Olga tellis vs. Bombay Municipal Corporation 1986**, Supreme Court held that right to life includes right to livelihood also.
- Right to shelter: in **Chameli Singh vs. State of UP 1996** Supreme Court held that right to shelter is a fundamental right under article 21
- Reproductive choices: in **Suchitra Srivastava vs. Chandigarh administration 2010** Supreme Court held that right to make reproductive choices(decision to produce child or not) is included in article 21.
- Right to health: In **Parmanand Katara vs. Union of India 1989** Supreme Court held that all doctors (private or government) or employees are obliged to extend medical assistance to person injured immediately without asking for legal formalities.
- Right to sleep: in **RamLila Maidan Versus Home Secretary Union Of India Supreme** Court held that right to sleep is a fundamental right as it is biological and essential element of basic necessities of life.
- Arrest of judgment debtor: In **Jolly George Varghese vs. State Bank of cochin**: Supreme Court held that arrest And detention of honest

judgment debtor, in absence of willful failure to pay despite sufficient means is violative of article 21.

- Bonded labor: In **Neerja Chowdhury vs State of Madhya Pradesh 1984** Supreme Court held that bonded labour should be identified and rehabilitated.
- **Bandhua Mukti Morcha v. Union of India and others** respect of bonded labour and weaker section of the society.
- Right to die:
 - **P. Rathinam vs. Union of India 1994**
 - Keeping article 21 as well as the principle of natural justice in mind, the Court ruled that right to life also included the right to die.
 - **Gian Kaur vs. state of Punjab 1996** Supreme Court held that right to life does not include right to die.
- Passive Euthanasia: in **Aruna Ramchandra shanbaug vs Union of India, 2014** Supreme Court held that in certain cases passive Euthanasia is allowed.
- **Common Cause (A Registered Society) vs. Union Of India 2015**
A constitutional bench decided that right to life with dignity under article 21 includes right to die with dignity and introduced the concept of living will
- Self determination of gender: **National legal service authority versus Union of India 2014** Supreme Court held that self determination of gender is a part of personal liberty guaranteed under article 21.
- Child rights: In **Bachpan Bachao Andolan vs Union of India 2011** Supreme Court held that sexual, physical and emotional abuse of children detained in circus is violation of article 21.

- *Right to free Legal Aid- MH Hoskot vs. State Of Maharashtra, 1978*
Supreme Court held that right to free Legal Aid is a part and parcel of right to life and liberty.
- *Right to speedy trial: Hussainara Khatoon Vs State Of Bihar 1979*
Supreme Court held that right to speedy trial is a fundamental right and it is implicit in article 21.
- *Fair investigation: In Nirmal Singh Kahlon Vs State Of Punjab 2009*
Supreme Court held that fair trials include fair investigation.
- *Keeping under trials with Convicts: In Sunil Batra vs. Delhi administration 1980*
Supreme Court held that keeping under trials with Convicts in jail offends article 21.
- *Right against handcuffing: In Prem Shankar vs Delhi administration 1980*
Supreme Court held that handcuffing is prima facie inhuman, arbitrary and unreasonable. Handcuffing should be resorted to when there is clear and present danger of escape.
- *Use of third degree methods: In Kishore Singh versus state of Rajasthan 1981*
Supreme Court held that use of third degree method by police is violative of article 21.
- *Ban on smoking in public places: In Murali S Deora Vs. Union Of India 2002*
Supreme Court directed the government to issue orders banning smoking in public places considering the adverse effect of smoking on non smokers. The persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of the act of smokers. Right to Life under Article 21 is affected as a non-smoker may become a victim of someone smoking in a public place.

- Public hanging: In **Attorney General Of India Vs Lakshmi Devi 1986** Supreme Court held that execution of death sentence by public hanging is violative of article 21.
- Hanging by rope: In **Deena Vs Union Of India 1983** Supreme Court held that hanging by a rope does not violate article 21
- Delay in execution of death sentence: In **TV Vatheeswaran V. State Of Tamil Nadu 1981** Supreme Court held that delay in execution of death sentence is violative of article 21.
- Custodial torture / death: In **Nilabati Behera Vs State Of Orissa 1993** Supreme Court awarded compensation to the family of deceased who died in police custody due to beating.
- In **Dk Basu Vs State Of West Bengal 1997** Supreme Court laid down guidelines to be followed by investigating agencies in cases of arrest and detention.
- In **Joginder Kumar Vs State Of UP 1994** Supreme Court laid down guidelines providing arrest of person during investigation.
- Compensation for violation of article 21: **Rudal Shah Vs State Of Bihar 1983**, Supreme Court held that courts have power to award compensation in appropriate cases of violation of article 21.
- Prevention of sexual harassment in workplaces: In **Vishaka Vs State Of Rajasthan 1997** Supreme Court laid down guidelines to prevent sexual harassment of working women in workplaces.
- Right to clean environment: In following cases Supreme Court held that right to clean environment is fundamental right protected under article 21. Consequently supreme court also give various directions regarding upkeep of environment it and control of pollution

- In **M.C. Mehta v. Union of India (1988)**, the Supreme Court ordered the closure of tanneries that were polluting water.
- In **M.C. Mehta v. Union of India (1997)**, the Supreme Court issued several guidelines and directions for the protection of the Taj Mahal, an ancient monument, from environmental degradation.
- In **Vellore Citizens Welfare Forum v. Union of India**, the Court took cognizance of the environmental problems being caused by tanneries that were polluting the water resources, rivers, canals, underground water, and agricultural land. The Court issued several directions to deal with the problem..
- In **M.C. Mehta v. Union of India (2006)**, the Court held that the blatant and large-scale misuse of residential premises for commercial use in Delhi violated the right to clean and decent environment. Taking note of the problem the Court issued directives to the Government on the same.
- **In Re: Noise Pollution**, the court held noise pollution caused by obnoxious levels of bursting of crackers during Diwali sentence is violative of article 21.

Right to Education [Article 21A]

- Article 21A provides that the state shall provide free and compulsory education to all the citizens of the **age of 6 to 14 years in** such manner as the state may by law determine.
- This article was inserted by the **86th Constitutional Amendment Act 2002**
- **Mohini Jain vs. State of Karnataka 1992** the supreme court held that right to education at all levels is a fundamental right flowing from article 21
- In **Unni Krishnan versus state of Andhra Pradesh 1993** the supreme court held that the right to education is a fundamental right flowing from article 21 but right to free education is available to children until they complete the age of 14 years. After that the obligation of the state to provide education is subject to economic capacity and development.
- In **State Of Tamil Nadu Versus K Shyam Sundar 2011** Supreme Court held that the right to education should be extended to have quality education without discrimination on the grounds of economic social and cultural backgrounds.