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## CONSTITUTION OF INDIA AND ARTICLE 21

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### ABSTRACT

Constitution of India is the largest constitution in the world with various features. Article 21 of Constitution of India is one of them features. The article is prescribed in two lines but the extent of this article is based on judgements of Supreme Court and state High Courts. The expression ‘the right to life and personal liberty’ is not a small term but the extension of the law and rules. Article 21 has direct impact on the society. Supreme Court has given the immense to Article 21 through various judgment.

**Keywords-** Constitution, Largest, Features, Extent, Supreme Court, High Court, Right to life, Personal liberty, Extension.

Part III of Indian Constitution is related to Fundamental Rights under Article 12 to Article 35. Part III is divided in six kind of fundamental rights like- (A) Right to Equality Article 14 to Article 18 (B) Right to Freedom Article 19 to Article 22 (C) Right against Exploitation Article 23 and Article 24 (D) Right of Religion Article 25 to Article 28 (E) Cultural and Educational Rights Article 29 and Article 30 (F) Right to Constitutional Remedies Article 32. These are six Fundamental Rights. Article 31 was about Right to Property but it was repealed and added as constitutional right under Article 300 A through 44<sup>th</sup> Constitutional (Amendment) Act, 1977. Article 21 is the part of Right to Freedom.

***Article 21 says- “No person shall be deprived of his life or personal liberty except according to a procedure established by law.”***

In **Francis Coralie Mullin v/s The Administrator 1981 SCR (2) 516**, Justice P. Bhagwati had said that Article 21 'embodies a constitutional value of supreme importance in a democratic society'. Further, Justice Iyer characterised Article 21 as 'the procedural Magna Carta protective of life and liberty'.

Article 21 is at the heart of the Constitution. It is the most organic and progressive provision in our living Constitution. Article 21 can only be claimed when a person is deprived of his 'life or 'personal liberty' by the 'State' as defined in Article 12. Thus, violation of the right by private individuals is not within the preview of Article 21. Article 21 secures two kinds of rights like- (a) Right to Life (b) Right to Personal Liberty.

'Everyone has the right to life, liberty and the security of person.' The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to life as interpreted and applied by the Supreme Court of India.

In **Kharak Singh v/s State of Uttar Pradesh 1964 SCR (1) 332**, the Supreme Court quoted that- *By the term 'life' as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is*

*enjoyed. The provision equally prohibits the mutilation of the body by amputation of an armored 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/s Delhi Administration(1978) 4 SCC 409**, the Supreme Court approved the above observations. It held that the ‘right to life’ included the right to lead a healthy life to enjoy all faculties of the human body in their prime conditions. It would even include the right to protect a person’s tradition, culture, heritage and all that gives meaning to a man’s life. In addition, it consists of the Right to live and sleep in peace and the Right to repose and health.

### **Right To Live with Human Dignity**

In **Maneka Gandhi v. Union of India AIR 1978 SC 597**, the Supreme Court gave a new dimension to Art. 21. The Court held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in **Francis Coralie v. Union Territory of Delhi** observed: “The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and 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 the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.”

Another broad formulation of life to dignity is found in **Bandhua Mukti Morcha v. Union of India (1997) 10 SCC 549** Characterising Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed that- “It is the fundamental right of everyone in this country to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

“These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

Following the above-stated cases, the Supreme Court in **Peoples Union for Democratic Rights v. Union of India 1983 SCR (1) 456**, held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violative of Article 21 of the Constitution.

Bhagwati J. held that rights and benefits conferred on workmen employed by a contractor under various labour laws are intended to ensure basic human dignity to workers. He held that the non-implementation by the private contractors engaged for constructing a building for holding Asian Games in Delhi, and non-enforcement of these laws by the State Authorities of the provisions of these laws was held to be violative of the fundamental right of workers to live with human dignity contained in Art. 21.

In **Chandra Raja Kumar v/s Police Commissioner Hyderabad 1998 (1) ALD 810** , it has been held that the right to life includes the right to live with human dignity and decency. Therefore, keeping of beauty contest is repugnant to the dignity or decency of women and offends Article 21 of the Constitution only if the same is grossly indecent, scurrilous, obscene or intended for blackmailing. Therefore, the government is empowered to prohibit the contest as objectionable performance under Section 3 of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956.

In **State of Maharashtra v/s Chandrabhan 1983 AIR 803**, the Court struck down a provision of Bombay Civil Service Rules, 1959. Thi provision provided for payment of only a nominal subsistence allowance of Re. 1 per month to a suspended government servant upon his conviction during the pendency of his appeal as unconstitutional on the ground that it was violative of Article 21 of the Constitution.

### **Right Against Sexual Harassment at Workplace**

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. “The meaning and content of the fundamental rights guaranteed in the Constitution of India are of

sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse.” The above statement by Justice Verma in the famous Vishakha judgment liberalised the understanding of Article 21. Therefore, making it even more emancipatory. In **Vishakha v. State of Rajasthan (1997) 6 SCC 241**, the Supreme Court declared sexual harassment at the workplace to violate the right to equality, life and liberty. Therefore, a violation of Articles 14, 15 and 21 of the Constitution. In this case, in the absence of a relevant law against sexual harassment, the Supreme Court laid down the following guidelines to ensure gender parity in the workplace- This meant that all employers or persons in charge of the workplace, whether in the public or private sector, should take appropriate steps to prevent sexual harassment.

1. Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
2. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
3. As regards private employers steps should be taken to include the prohibitions above in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
4. Appropriate work conditions should be provided for work, leisure, health, and hygiene to ensure that there is no hostile environment towards women at workplaces. No employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
5. Where such conduct amounts to specific offences under IPC or under any other law, the employer shall initiate appropriate action by making a complaint with the appropriate authority.
6. The victims of Sexual harassment should have the option to seek the transfer of the perpetrator or their own transfer.

In **Apparel Export Promotion Council v. A.K. Chopra 1997 (42) DRJ 526**, the Supreme Court reiterated the Vishakha ruling and observed that- “There is no gainsaying that each incident of sexual harassment, at the place of work, results in the violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India....”

“In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated....”

### **Understanding Article 21 Through Sexual Assault and Rape**

Rape has been held to be a violation of a person’s fundamental life guaranteed under Article 21. Therefore, the right to life would include all those aspects of life that go on to make life meaningful, complete and worth living.

In **Bodhisattwa Gautam v. Subhra Chakraborty 1996 AIR 922**, the Supreme Court observed- “Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society, which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, namely, the right to life with human dignity contained in Art 21 ”.

### **Right to Reputation and Article 21**

Reputation is an essential part of one’s life. It is one of the finer graces of human civilisation that makes life worth living. The Supreme Court referred to **Bodhisattwa Gautam v. Subhra Chakraborty 1966 SCC (1) 490** in **Smt. Kiran Bedi v. Committee of Inquiry 1989 AIR 714**. It said:

“good reputation was an element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life, liberty, and property. The Court affirmed that the right to enjoyment of life, liberty, and property. The Court affirmed that the right to enjoyment of private reputation was of ancient origin and was necessary to human society.”

The same American decision has also been referred to in **State of Maharashtra v. Public Concern of Governance Trust S.L.P. (Civil) No. 18965 of 2006** . The Court held that good reputation was an element of personal security and was protected by the Constitution, equally with the right to enjoy life, liberty and property.

It has been held that the right equally covers a person’s reputation during and after his death. Thus, any wrong action of the state or agencies that sullies the reputation of a virtuous person would undoubtedly come under the scope of Article 21.

**State of UP v/s Mohammad Naim** 1964 AIR 703 succinctly laid down the following tests while dealing the question of expunction of disgracing remarks against a person or authority whose conduct comes in consideration before a court of law. These are-

- whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself.
- whether there is evidence on record bearing on that conduct justifying the remarks.
- Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct, it has also been recognised that judicial pronouncements must be judicial. It should not normally depart from sobriety, moderation, and reserve.

In **State of Bihar v/s Lal Krishna Advani** 1792 of 1997, a two-member commission got appointed to inquire into the communal disturbances in the Bhagalpur district on October 24, 1989. The commission made certain remarks in the report, which impinged upon the respondent’s reputation as a public man without allowing him to be heard. The Apex Court ruled that it was amply clear that one was entitled to have and preserve one’s reputation, and one also had the right to protect it.

The Court further said that if any authority, in the discharge of its duties fastened upon it under the law, transverse into the realm of personal reputation adversely affecting him, it must provide a chance to have his say in the matter. Finally, the Court observed that the principle of

natural justice made it incumbent upon the authority to allow the person before any comment was made or opinion was expressed, likely to affect that person prejudicially.

### **Right To Livelihood**

To begin with, the Supreme Court took the view that the right to life in Art. 21 would not include the right to livelihood. In **Re Sant Ram**, a case arose before the Maneka Gandhi case, where the Supreme Court ruled that the right to livelihood would not fall within the expression 'life' in Article 21. The Court said curtly:

“The Right to livelihood would be included in the freedoms enumerated in Art.19, or even in Art.16, in a limited sense. But the language of Art.21 cannot be pressed into aid of the argument that the word 'life' in Art. 21 includes 'livelihood' also.”

But then the view changed. The definition of the word 'life' in Article 21 was read broadly. The Court, in **Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni**, came to hold that 'the right to life' guaranteed by Article 21 includes 'the right to livelihood'.

The **Olga Tellis v/s Bombay Municipal Corporation 1986 AIR 180**, popularly known as the 'Pavement Dwellers Case', is important. Herein, a five-judge bench of the Court implied that the right to livelihood is borne out of the right to life. It said so as no person can live without the means of living, that is, the means of livelihood.

In **DTC v/s DTC Mazdoor Congress 1991 AIR 101**, the Court was hearing a matter where an employee was laid off by issuing a notice without any reason. The Court held that the same was utterly arbitrary and violative of Article 21.

In **M. Paul Anthony v/s Bihar Gold Mines Ltd AIR 1999 SC 1416**, it was held that when a government servant or one in a public undertaking is suspended pending a departmental disciplinary inquiry against him, subsistence allowance must be paid to him. The Court has emphasised that a government servant does not have his right to life and other fundamental rights.

However, if a person is deprived of such a right according to procedure established by law which must be fair, just and reasonable and in the larger interest of people, the plea of



deprivation of the right to livelihood under Article 21 is unsustainable.

In **Chameli Singh v/s State of Uttar Pradesh 1995 Supp (6) SCR 827**, the SC held that the state acquired a landowner's land following the procedure laid down in the relevant law of acquisition. So even though the right to livelihood of the landowner is adversely affected, it is not violated. The Court opined that the state acquires land in exercising its power of eminent domain for a public purpose. The landowner is paid compensation in place of land. Therefore, the plea of deprivation of the right to livelihood under Art. 21 is unsustainable.

In **M. J. Sivani v. State of Karnataka & Ors 1995 (3) SCR 329**, the Supreme Court held that the right to life under Article 21 does protect livelihood. However, the Court added a rider that its deprivation could not be extended too far or projected or stretched to the recreation, business or trade detrimental to the public interest or has an insidious effect on public moral or public order. The Court further held that regulating video games of pure chance or mixed chance and skill are not violative of Article 21, nor is the procedure unreasonable, unfair or unjust.

An important case that needs to be mentioned when speaking about the right to livelihood is **MX of Bombay Indian Inhabitants v/s M/s. ZY AIR 1997 Bom 406**. In this case, the Court had held that a person could not be denied employment if they tested positive for HIV. And they cannot be rendered 'medically unfit' owing to the same. In interpreting the right to livelihood, the Court emphasised that the same couldn't hang on to the fancies of the individuals in authority.

## **References**

- (1) Jai Narayan Pandey : Constitution of India
- (2) <https://indiankanoon.org/doc/1264404/>
- (3) <https://www.advocatekhaj.com/library/judgments/announcement.php?WID=9656>
- (4) <https://indiankanoon.org/doc/888207/>
- (5) Introduction to the Constitution of India : Durga Das Basu
- (6) The Constitution of India : B.A. Bakshi
- (7) The Indian Constitution : Granville Austin