
EXPANDING AND EVOLVING THE AMBIT OF ARTICLE 21 OF THE CONSTITUTION OF INDIA WITH THE DEVELOPING SCENARIO

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ABSTRACT

India is a developing country not only in terms of Economy but also in terms of enhancing the lives of People. This can be seen with the help of the Constitution of India which provide the fundamental right i.e., right to life to every individual whether a citizen or not. This is one of the most important right given to people which cannot be curtailed even in emergency situations. This right has been described as "Heart of Fundamental Rights" by the Supreme Court of India. It is a right which not only about the survival of person but also entails being able to Live a complete life of dignity, meaning and educations. The most beautiful essence of this Article is that it is not a straight jacket rule instead it jeeps on evolving with the change in time.

This research paper highlights the developing meaning and scope of this right enshrined in the Constitution of India under Article 21.

INTRODUCTION

Fundamental Rights have powerfully described as *the soul of our Constitution*. These rights have terrestrially acknowledged as essential to human presence and requisite for social development. It ensures civil freedoms such that all Indians can guide their lives in peace and harmony as citizens of India. They involve individual benefits, well-known to the most liberal democracies, such as *equality before the law, freedom of speech and expression, freedom to propagate any religion, protection of life and personal liberty and the Right to constitutional remedies*. These rights have defined under Part III of the Constitution and can practise irrespective of race, place of birth, religion, caste, creed or sex.

Among all the rights guaranteed under part III of the Constitution, Article 21 guarantees a right which is the most important for the survival of the humankind. Article 21 states that *"No person shall be deprived of his life or personal liberty except according to the procedure established by law."* The primary aim of this fundamental Right is *to serve as a protection to counter infringement on a person's liberty or dignity*. This assistance is accessible to every *"person"* whether or not they are nationals of India, as ascertained in the case of *The Chairman, Railway Board & Ors vs Mrs Chandrima Das & Ors*¹. It is one of the most crucial fundamental rights, encompassing many distinct subsidiary rights budding out. It is not latent, rather an evolving section of the legislation. It is compelling to observe ahead the literal interpretation of this Article to furnish the current synopsis. Additionally, in light of judicial activism, there is a need to interrelate this Article with other provisions, to experience it with a more productive and progressive outlook, which is comprehensive of modern society.

HISTORY

The parliamentary memoir of Article 21 is that initially, Constituent Assembly had passed it as Article 15 which provided that *"No person shall be deprived of his life or liberty without the due process of law."*² After that, the Drafting Committee recommended two improvements to Article 15. First, the inclusion of the word *"personal"* before the word *"liberty."* Second, replacement of the expression *"without due process of law"* with *"except according to the procedure established by law."* The Drafting Committee passed the second amendment because it believed that the word *"due process "* was exploited in the American legal system.

¹ (2000) 2 SCC 465.

² H.M., Seervai, Constitutional Law of India, 4th edn. Vol. 2, (New Delhi: Universal Law Publishing Co. Pvt. Ltd. 2010), p. 970.

Besides, it was the outcome of a discussion which the Constitutional Assembly Advisor, Sir B.N. Rau had with Frankfurter J. of the United States of America Supreme Court, who communicated that due process clause is undemocratic and oppressive to the judiciary because it authorized judges to nullify the legislation passed by democratic majorities.

IMPORTANCE

Article 21 of the Constitution of India prevents the deprivation of rights except through procedures established by law. It is *the heart or bedrock of our Constitution*. It is the purest and reformist provision in our Constitution and is valid for every citizen of India as well as foreign citizens. Either it is by the British Magna Carta (1215) which states that "No free man 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"³. Or from the Universal Declaration, 1948, Article 3 saying "Everyone has the right to life, liberty and security of person"⁴ Or conferring to the Article 9 which provides that "No one shall be subjected to arbitrary arrest, detention or exile."⁵ Or by Article 2 of the statement of the European Convention on Human Rights, 1950 which states that "Everyone's Right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."⁶ Or only by The Covenant on Civil and Political Rights under Article 9 (1) of the U.N. Covenant on Civil and Political Rights, 1966 saying "Everyone has the Right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law"⁷, All of these have acknowledged a human being as a corporal entity and strived to safeguard him from the exploitation by rulers or State by itself. However, It is only in India under Article 21 of the Constitution that has visualized the human being in entirety and endeavoured for his complete well-being, prosperity, all-round development, and freedom from suffering and, tried to protect his life and limb from any outside aggression by State or its bureaus such as the Government Departments, administration,

³ Magna Carta, 1215.

⁴ Article 3, the Universal Declaration, 1948.

⁵ Article 9, the Universal Declaration, 1948.

⁶ Article 2, the statement of the European Convention on Human Rights, 1950.

⁷ Article 9 (1), the UN Covenant on Civil and Political Rights, 1966.

Legislature and local authorities using statutory powers. Article 21 is based upon and inspired by the Indian values and has most commonly expressed in one of our mantras:

“Sarve bhavantu sukhinah, Sarve santu niraamayaah,

Sarve bhadraani pashyantu Maakaschit dukkha bhaag bhavet”,

Which means May all be happy, be free from disabilities! May all look to the welfare of others, and none flag from sorrow.

As said by *Justice Field* in the glorified case "*Munn v. Illinois*" the word "life" is more than mere animal existence and it embraces within itself not only the physical presence but also the quality of life. The expression "*personal liberty*" not only means freedom from arrest, detention and false or wrongful confinement but also covers those rights and privileges that are essential to achieve happiness with liberty⁸.

According to *Bhagwati, J.*, "Article 21 comprises a constitutional value of paramount significance in a democratic society." And *Iyer, J.*, has characterized Article 21 as "the procedural *Magna Carta*, protective of life and liberty."

Article 21 epistolizes to the *Magna Carta* (1215), the Fifth Amendment to the American Constitution, Article XXXI of the Constitution of Japan, 1946 and Article 40(4) of the Constitution of Eire, 1937. It applies to natural persons that mean it is accessible to every person, citizen or alien. Thus, even an immigrant can claim this Right.

THE AMBIT OF ARTICLE 21

Article 21 states that "*No person shall be deprived of his life or personal liberty except according to the procedure established by law.*" Therefore, Article 21 provides two primary rights: (1) Right to Life. (2) Right to Personal Liberty. Even though it is one of the greatest significant fundamental rights, as per other rights, this Right is not absolute and, apart from safeguarding the fundamental human rights, Article 21 provides for the reasonable restrictions on the same by way of *procedure established by law*, as to avoid the situations of ambiguity in the society.

⁸ *Munn v. Illinois* (1877).

- **RIGHT TO LIFE**

Right to life is vital to our very survival without which we cannot exist as a human being and encompasses all those perspectives of life, which go to conceive a man's life essential, comprehensive, and worth living. It is the only Article in the Constitution that has undergone the broadest permissible interpretations. It also includes the Right to shelter, growth, and nourishment. It is so because, it is the bare necessity, least and primary requirements that are indispensable and unavoidable for a person for the Right to life and other rights.

In *Munn Vs. Illinois*, Field J. observed that the term "life" as here used something more is meant than mere animal existence.⁹

- **RIGHT TO PERSONAL LIBERTY**

Liberty of a person is one of the most traditional notions to be preserved by national courts. The English Magna Carta, 1215, gave that "*no free man shall be taken or imprisoned, but... By the law of the land.*"¹⁰

The SC of India has rebuffed the view that liberty expresses freedom from physical circumscribe solely. It remarked that liberation comprises those right and opportunities that have long perceived as being indispensable to the systematic pursuance of peace by free man.

Dicey says Personal liberty means an individual right not to be constrained to custody, arrest or other bodily oppression in any manner without the acceptance of legal justification.

The case of *A.K. Gopalan v. the State of Madras*, AIR 1950 SC 27 (*Preventive Detention Act, 1950*) has developed Article 21 a long way through a range of various authoritative declarations by the Apex Court. In this case, the Court *narrowed down the meaning and scope of "personal liberty"* and held that the term "*personal liberty*" meant only freedom of the physical body and that Articles 19 (1) (d) and Article 21 have to treated separately.¹¹

- **THE PROCEDURE ESTABLISHED BY LAW**

The Court construed the term procedure established by law, as "There need be law, and the procedure should be followed". It indicates that article 21 is a guarantee against administrative

⁹ Ibid.

¹⁰ Supra note 3.

¹¹ A.K. Gopalan v. the State of Madras, AIR 1950 SC 27.

action only and not against parliamentary bodies.

Article 21 comprises of the term “*procedure established by law*” and not “*Due Process of Law*” because “*Due process of law*” is primarily a substantive due process. And Procedural due process includes law and procedure both and means that both should be reasonable, i.e. should be based upon the principles of natural justice. Due to ambiguity and indefiniteness of concept, the phrase “*Due process of law*” has eliminated in India.

The most critical and productive aspect of *Maneka Gandhi case*¹² is the reinterpretation of the term “*procedure established by law*”. According to it, the procedure must be reasonable, rational and non-arbitrary. Justice Krishna Iyer said, “Procedure in article 21 means fair and not formal procedure and the law is a reasonable law and not any enacted piece.”¹³

- **THE EXPANDING AMBIT OF ARTICLE 21**

The ambit of Article 21 has extended over the years through judicial precedents. The expansion of this Article is like a journey started with the case of A.K. Gopalan and is twisting its way, back from the Maneka Gandhi case till today.

The Apex Court held *A.K.Gopalan case (1950)*¹⁴ that the contents and subject material of Article 21 and 19 (1) (d) are not alike, and they progress on total principles. In this case, the word deprivation was interpreted in a narrow sense, and it was held that the denial does not restrict upon the Right to move freely which came under Article 19 (1) (d). The SC held that the expression ‘procedure established by law’ in the Constitution had embodied the British concept rather than the American ‘due process’.

But the Maneka Gandhi case reversed the Gopalan decision. Here, S.C. stated that Articles 19 and 21 are not watertight chambers. The notion of personal liberty under Article 21 has a broad scope including many rights, some of which are embodied under Article 19, thus giving them ‘additional protection’. The Court also held that a law that comes under Article 21 must satisfy the requirements under Article 19 as well. That means any procedure under the law for the deprivation of life or liberty of a person must not be unfair, unreasonable or arbitrary.¹⁵

¹² *Maneka Gandhi v. Union of India, AIR 1978 SC 597.*

¹³ *Ibid.*

¹⁴ *Supra note 11.*

¹⁵ *Supra note 12.*

With the advent of time, Article 21 has been interpreted in such a liberal sense that now, it includes certain more rights, which helps a person to live such as the Right to live with dignity, right to sleep, right to die, and many more.

Some of those rights are:

- **RIGHT TO LIVE WITH DIGNITY**

It is not sufficient to guarantee that a person has a Right to Live. An indispensable component of life is one's honour and respect. Therefore, each person has ensured the right to live with dignity – which implies having access to the requirements of human life as well as possessing sovereignty over one's individual decisions.

In *Occupational Health and Safety Association v. Union of India* (2014), the assurance of health and strength of workers and their access to just and benign circumstances of work were taken as ideal conditions to live with human dignity.¹⁶

Moreover, as can be witnessed, human dignity is not a straightjacket approach. Instead, it includes those rights and freedoms which permit a person to live life without infringement upon his or her self-respect, dignity and safety. As per Article 21, every person, whether a male, female or member of the LGBTQ category, has a right to live with dignity. Therefore, The Court, in the case of *Navtej Singh Johar v. Union of India*, 2018 implementing the belief of personal satisfaction, declared that Section 377 of the IPC was contradictory to Articles 14, 15, 19, and 21 of the Constitution of India to the degree that it forbids consensual physical acts of adults in private. Hence, sexual acts among LGBT adults administered with the free assent of the parties included were certified legal.¹⁷

- **RIGHT TO LIVELIHOOD**

To sustain, a person needs access to monetary and material resources to satisfy his diverse needs. The law acknowledges that every human, whether man or woman, has an equitable right to livelihood so that he or she may obtain the necessary resources like food, shelter, water, things and more. No person justifies living in hunger and misery because of being stripped of the chance to gain for himself.

¹⁶ *Occupational Health and Safety Association v. Union of India*, WP (civil) 79/2005 (Supreme Court of India).

¹⁷ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

A crucial case in this matter is the case of *Olga Tellis and Ors. v. Bombay Municipal Corporation* (1986). In this case, the Court decided that though the slum and pavement residents were deprived of their Right to Livelihood, the Government was acquitted in expelling them as they were getting used of the public resources for personal goals. The Court also held that they should not be regarded as trespassers as they conquered the nasty places out of absolute helplessness. It was decreed that any ejections would take place only after the impending monsoon season and the people who were censused before 1976 would be empowered to resettlement.¹⁸ While the case deserted to bring flourishing resettlement to the inhabitants, it did perform its role in securing the Right to Livelihood as a portion of the Fundamental Right to Life.

- **RIGHT TO PRIVACY**

Right to Privacy appears like a necessary and reasonable right to own, but for a hard time, it was not accepted as a well-defined right by the Government because of not being considered explicitly by the drafters in the Constitution of India. Across time, there has been a developing perception of a person's sovereignty over his or her body, intelligence and knowledge which yielded due importance by the courts in several judgements. The Right to Privacy was first sawed in the case of *R. Rajagopal v. State of Tamil Nadu* (1994), where a person convicted of murder transcribed his autobiography, in which he also revealed his relationship with the prison officials, some of whom were his companions in crime. His wife gave it for publishing to the Tamil publication 'Nakkheeran', but the jail officials intervened in the magazine. The compilers filed a petition to limit the Government or the prison officials from preventing the publication of the autobiography. The Court avered that it was the freedom of the criminal Auto Shankar to do anything he wanted with his individual information. Thus, the magazine could not be hindered from publishing something it announced the "Autobiography" of the criminal.¹⁹

This case established the platform for future judgements concerning the Right to Privacy and covered the way for it to be authorized as a part of the Fundamental Rights granted under Part III of the Constitution of India.

Moreover, in the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017, where a retired Karnataka High Court Justice brought a case before a nine-judge Constitutional bench,

¹⁸ *Olga Tellis and Ors. v. Bombay Municipal Corporation*, 1985 SCR Supl. (2) 51.

¹⁹ *R. Rajagopal v. State of Tamil Nadu*, 1994 SCC (6) 632.

questioning the Government's scheme of addressing the Aadhaar card (a consistent system of biometrics-based identification card) for all residents. He alleged that it was a contravention of the Right to Privacy. The evidence that there were no stringent data assurance laws in India indicated that people's private information could be mistreated. The bench commonly held that Right to Privacy was a part of one's Right to Life conferred by Article 21 and covered the Right to keep private information secret. While it supported the constitutional legality of the Aadhaar Card, it scratched down some terms of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.²⁰

- **RIGHT TO HEALTH AND MEDICAL ASSISTANCE**

The Right to Life, of course, cannot be confirmed if every human is not given way to proper health and medical support. It is the most fundamental need to live a complete life.

Yet, sometimes doctors and medical organizations wait to assist the feeble persons due to anxiety of lengthy formalities and complexities, particularly in medico-legal cases in the case of *Pt. Parmanand Katara v. Union of India* (1989), it was admitted that Article 21 provides paramount significance to the protection of human life. Thus, it is the responsibility of all medical professionals to give urgent health aid to all patients, without being placed under any statutory impediment. It was also determined that no medicinal professional should be attacked for any examination, and he or she would not be required to prove in Court unless required and unconditionally necessary.²¹

Thus, this case discharged the medical professionals of any judicial restrictions and thereby made it a responsibility and duty for them to provide urgent assistance to patients to support the Right to Life.²²

- **RIGHT TO SLEEP**

All of us love sleeping, but many are not conscious that the Right to Sleep is a different part of one's Fundamental Rights, which guards against the actions of the State reaching to the wrongful divestment of a person's sleep. *Re-Ramlila Maidan Incident v. Home Secretary and Ors.* (2012) was the case which managed to the substantiation of this Right. In this case, a Yoga

²⁰ Justice K.S. Puttaswamy (Retd.) v. Union of India, Writ Petition (Civil) No. 494 of 2012, (2017) 10 SCC 1.

²¹ *Pt. Parmanand Katara v. Union of India*, 1989 SCR (3) 997.

²² *Ibid.*

practice camp was to be accommodated in Ramlila Maidan during June 2011, but on 4th June it transformed into a hunger strike fronting black money and corruption started by Baba Ramdev. The demonstrations took place all day and at 12:30 at night, when all the protestors were sleeping, a large fraction of CRPF, Delhi Police force and Rapid Action Force personnel approached the venue to take the sadhu out. A fight ensued between the group and the sadhu's followers which desisted in throwing teargas bullets on the people.

The Court upheld that sleep is an indispensable part of a healthful life and a requirement for the maintenance of individual peace. Thus, it avered that every person is authorized to sleep as conveniently and freely as he breathes. If any person's sleep is interrupted without any rational justification, it amounts to cruelty and is a violation of his human rights. Therefore, making the sleeping persons leave and causing violence at the location was held as illegal, since there was no unlawful activity taking place there.²³

- **RIGHT TO DIE**

The Right to Life bestows upon the person the right to live a full life and dictates that the State cannot intervene in this Right besides through procedure established by law. But what if a person wishes to end his own life? Can he intervene in his Right to Life?

Section 309 of the IPC forbids attempt to suicide, with the condemned person meeting up to one year of imprisonment, or a fine, or both.²⁴

Section 306, criminalizes abetment to suicide, i.e., the assistance given by a person in the process of the commitment of suicide by another.²⁵

But in the case of *P. Rathinam v. Union of India* (1994), Managing Article 21 as well as the principles of natural justice in remembrance, the two-judge bench ordered that Right to Life also covered the Right not to live a restricted life. Accordingly, Section 309 of the Indian Penal Code was held void.²⁶

But, the Court then reversed its position in the succeeding case of *Smt. Gian Kaur v. the State of Punjab* (1996), where, it was regarded that Section 309 of the IPC was constitutional and

²³ Re-Ramlila Maidan Incident v. Home Secretary and Ors, (2012)5SCC1.

²⁴ Section 309, Indian Penal Code, 1860.

²⁵ Section 306, Indian Penal Code, 1860.

²⁶ P. Rathinam v. Union of India, 1994 SCC (3) 394.

that Section 306, criminalizing abetment to suicide, was Constitutional as well. The Court decided that suicide being an abnormal termination of life, it was against the concept of Right to Life.²⁷

Euthanasia

The term euthanasia originates from two Greek words – *eu* indicating 'good' and *thantos* predicting 'death'. Thus, it means 'good death'. It is the method of ending the life of a person experiencing a severe disease but still breathing, therefore experiencing great suffering and sorrow. It supports him, or her go by a mild, painless death preferably, by an action or omission upon his or her body. It is, therefore, also known as "mercy killing" or "supported self-destruction".

There may be two sorts of euthanasia- active and passive.

1. Active Euthanasia means doing something to a sufferer to end his or her life, with their consent, for, e.g. giving an injection.
2. Passive Euthanasia means eliminating medical services to end the patient's life. In other words, it indicates not performing something to a patient, which if completed, would have preserved his or her life.

In the case of *Smt. Gian Kaur v. the State of Punjab*, the Court mentioned that euthanasia could be addressed lawful only by legislation. The logic behind this was to prevent illegal actions by ill-intentioned people.²⁸

The landmark case in this matter, though, was *Common Cause (A Regd. Society) v. Union of India* (2018), which created passive euthanasia legal. In this case, A five-judge Constitution bench decreed that Right to Life also holds a person's Right to Die with dignity, and therefore allowed passive euthanasia, i.e. the will of sufferers to withdraw medical assistance in case of sliding into an immutable state of coma.²⁹

Hence, currently, active euthanasia is prohibited in India, just as in most distinct countries. On the opposite hand, passive euthanasia is permitted in our country, subjected to several strict guidelines.

²⁷ *Smt. Gian Kaur v. the State of Punjab*, 1996 SCC (2) 648.

²⁸ *Ibid.*

²⁹ *Common Cause (A Regd. Society) v. Union of India*, Writ Petition (Civil) No. 215 of 2005.

- **RIGHT TO A HEALTHY ENVIRONMENT**

The rapid extension of technology originating with the Industrial Revolution and increasing over the centuries has not helped the environment at all. The substantiation of more and more industries and growth in the demand for goods manufactured by them has increased the garbage churned out by them. It finishes up in the land, water, and air.

Numerous court judgements have directed to demonstrate the Right to a healthy environment and the steps to curb the pollution of the Earth.

Right to get pollution-free water and air

Without fresh drinking water, we can't remain half a week, and without air, we can't even stay for half an hour. It is essential to have access to pollution-free water and air for a healthy brain and body.

The case of *Subhash Kumar v. the State of Bihar*, 1991 highlighted this Right as a part of Article 21. In this case, the Court approved that the Fundamental Right to Life encompasses the Right to have pollution-free water and air, and if anything threatens the quality of water and air then, a person can file a petition in Court.³⁰

Yet, this particular PIL was rejected because it had been filed in individual interest for the petitioner's profits and that it lacked any evidence as the State Pollution Control Board had taken proper measures to control pollution.³¹

Protection of Ecology and Environmental Pollution

Nature requires to be preserved not only for our eating, drinking and breathing but also to protect the complete ecosystem which maintains the ecological stability on Earth.

In the case of *Rural Litigation and Entitlement Kendra v. the State of U.P.* (1985) or the *Dehradun Valley Litigation*, the Court only granted a few mines to continue, while all the others, which were generating harm, were closed down. The Valley was announced as an

³⁰ *Subhash Kumar v. the State of Bihar*, 1991 SCR (1) 5.

³¹ *Ibid.*

ecologically delicate area, and steps were taken for its recovery. Most importantly, this case headed to the enactment of the Environment Protection Act, 1986.³²

Furthermore, in the case of *M.C. Mehta and Anr. v. Union of India (1987)* (the *Shriram Food and Fertilizer Case*), the Court avered the industry accountable for its negligence and directed it to pay Rs 20 lakh as damages to the victims. It also decreed the demonstration of an Expert Committee to inspect the performance of the industry. It was ordered for workers to be accurately tutored, and loudspeakers to be fixed in the premises to alert people in situation of leakage.³³

Thus, this showed to be a landmark case in environmental legislation, as it settled the principle of absolute liability, which includes holding the industry trading in hazardous materials absolutely liable for all injuries generated by its wrong operations.

Freedom from noise pollution

In this fast-paced, turbulent urban world, the noise has grown a significant obstacle to a peaceful and wholesome lifestyle. The massive public speakers, noisy fireworks, and even the constant noises of vehicles on the road have grown a source of considerable annoyance and also of severe health risks.

In the *Re: Noise Pollution case, 2005*, the Court discussed the issue of noise pollution and moved a step towards controlling it. The Court recognized the grave unfavourable effects of loud noise and gave specific directions to prevent the same-

1. Prohibition of cracking noisy firecrackers at night.
2. Obsession of cap on the noise levels of loudspeakers.
3. Refusal of honking vehicles in household areas at night.
4. Spreading information about the hazardous effects of noise pollution.
5. Commanding the State to seize loudspeakers operating, exceeding permitted noise limits.³⁴

PRISONER'S RIGHTS AND ARTICLE 21

Fundamental Rights constitute the foundation of human existence and are not refused to anyone

³² *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1985 SCR (3) 169.

³³ *M.C. Mehta and Anr. v. Union of India*, 1987 SCR (1) 819.

³⁴ *Re: Noise Pollution case*, (2005) 5 SCC 733.

except under specific conditions. A person sentenced to a crime too, consequently, is not stripped of his Fundamental Rights. Restraints are usually put on a criminal's action, the practice of the profession, and more. But, the Right under Article 21 is one claim that is not seized from him, except by procedure established by law (for, e.g. a death sentence).

- **RIGHT TO FREE LEGAL AID**

Article 39A of the Constitution gives that the State must acquire a proper legal system based on the fair opportunity by proposing free legal assistance to people, to assure that no one is denied justice because of his financial weakness. It is per Article 14, which grants equal protection before the law and Article 22(1) which asserts that every arrested person must get the opportunity to be served by a legal practitioner of his choice.

Hence, this Right serves to ensure one of the most fundamental components of justice – that it is made available to all.

- **RIGHT TO A SPEEDY TRIAL**

Right to speedy trial indicates that the accused should be placed under trial as soon as practicable to determine whether he is guilty or not. It safeguards the accused against being put into jail for a long time, with no foreseeable time shortly to front trial. It is accessible to the accused at all steps including investigation, inquiry, trial, appeal and more. This Right is based on the belief that "*justice delayed is justice denied.*"

The Court presented this Right in detail in the case of *Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar* (1979), where the Supreme Court upheld that though the Right to a speedy trial is not explicitly listed as a Fundamental Right in the Indian Constitution, it is inherent in the broad scope of Article 21.³⁵

Speedy trial is the core of criminal justice and hence, no procedure which does not guarantee a moderately speedy trial could be "reasonable, fair or just." Thus, the Bihar Government was directed to start the trials of the detainees as soon as practicable.

- **RIGHT TO A FAIR TRIAL**

A fair trial is a trial described by the total neutrality and impartiality of judges throughout the

³⁵ *Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar*, 1979 SCR (3) 532.

hearings. Every person experiencing a trial should be provided with a fair chance, to secure the application of fundamental components of human rights and proper execution of justice. It sets part of International Law as well, provided under Article 10 of the Universal Declaration of Human Rights.

- **CONSTITUTIONALITY OF A DEATH SENTENCE**

The death sentence is a type of sentence granted to criminals who have perpetrated the grossest or grave offences.

The constitutional legality of a death sentence has been much contested and debated, with many contending that it is inhumane, that it infringes the Fundamental and Human Rights, or that the 'eye for an eye' philosophy behind it performs no purpose in law and justice.

In the benchmark case of *Bachan Singh v. the State of Punjab* (1980), the Court confirmed the constitutional validity of the death penalty declaring that it did not infringe Articles 14, 19 and 21, but reemphasized that it could solely be awarded in the "rarest of rare" cases, and not as a replacement for life imprisonment.³⁶

Thus, while capital punishment is a very severe punishment, it is essential in the grossest and most severe cases like the murder of numerous persons, a brutal rape, and more, to accurately administer justice and act as a hindrance in society. The Supreme Court has confirmed its constitutional validity. Yet, a high burden must be put on the judge to appropriately consider and be satisfied with the granting of a death sentence.

- **PUBLIC HANGING**

Public hanging indicates the killing of a convict by hanging in a public place where the members of the general community are authorized to attend willingly. While today they are marked with a general objection, public executions used to be more common earlier as they served as a substantial obstacle for others, explicating the power of the State to apportion with destructive elements of the community.

In India, convicts hold a Right against Public Hanging as a component of their Fundamental Right to Life, because of the wild nature of such execution. It was established in the case

³⁶ *Bachan Singh v. the State of Punjab*, (1980) 2 SCC 684.

of *Attorney General of India v. Lachma Devi and Ors.* (1985), where the bench convicted public hanging as being illegal and gravely violative of Article 21 of the Constitution, therefore eliminating that command of the High Court.³⁷

Therefore, while a death sentence continues a method of punishment in the most severe crimes, it need not be exercised to the scope of a public hanging to humiliate the convict more and make turmoil in the community.

TRIAL OF RAPE CASES

Rape is one of the most horrific wrongs of all, and one of the few offences for which no cause was given can be deemed justified by any person. Unfortunately, it is also a crime that scares to never expire in our country, with India remaining the most unsafe country for women as per a report of Thomson Reuters Foundation in 2018. Government data states that over 90 rape cases are listed in the country every day – but the original number is presumably much higher.

Rape has survived a grossly under-reported offence, which can be connected to the psychological stress and terror of ostracization by society in the remembrances of victims and their relatives, and also to the long-drawn, uncomfortable and often distressing trial procedure. Over time, attempts have been performed by the courts to facilitate dispersion of more comfortable, faster and more comprehensive justice to victims of rape.

It was in the cold rape case of *Delhi Domestic Working Women's Forum v. Union of India* (1995) that the Court devised down parameters to aid the victims of rape in the trial process. The Court identified the errors in the system where accusations are not appropriately managed, and victims are often embarrassed by the police and suffer severe psychological stress. The parameters laid down include-

1. Provision of legal description to victims from the minute they arrive at the police station for the accusation, and the duty of the police to familiarise them of this Right.
2. Maintenance of anonymity of the victims as far as required.
3. Demonstration of Criminal Injuries Compensation Board to grant compensation to victims even before conviction of offender takes place.³⁸

PREVENTION OF SEXUAL HARASSMENT OF WORKING WOMEN

³⁷ *Attorney General of India v. Lachma Devi and Ors.*, Writ Petition (Criminal) No. 1601 Of 1985.

³⁸ *Delhi Domestic Working Women's Forum v. Union of India*, 1995 SCC (1) 14.

In this patriarchal society, women are frequently treated as sexual things meant for the enjoyment of men, and it leads to undesired sexual advances towards them.

Women's security outside their houses has been one of the causes why even in the urban areas in contemporary times, there is a scarcity of women in the workspace. For a woman, the Right to Life involves the Right not to suffer any sexual harassment while they go out to get a living and accomplish their professional goals – thereby empowering them to practice their freedom of practising any profession, occupation or trade.

Accordingly, various provisions have been directed by the Court and executed by the Government to counter sexual harassment of women, which can be essentially credited in the landmark case of *Vishaka and Ors. v. State of Rajasthan and Ors*, where the Court explained sexual harassment and laid down some rules for the deterrence of sexual harassment in the workplace, which involve (but are not confined to) the following-

1. Responsibility of employers and responsible people to counter sexual harassment.
2. Duty of employers to accommodate a safe and suitable working environment for women.
3. Demonstration of a complaint committee (headed by a woman) and a grievance mechanism to redress grievances.
4. Rules for disciplinary actions to be exercised against misconduct.
5. Spread of consciousness regarding the rights of working women.³⁹

- **EVE-TEASING**

Undesired remarks and approaches towards women don't just stand at private professional or domestic settings. Regrettably, they also happen in public places like railroads, metros, and even roads, and this is known as Eve-teasing. The case of *Dy. Inspector-General of Police and Anr. v. S. Samuthiram* (2012), led to the establishment of guidelines to deter and penalize eve-teasing. The guidelines laid down by the Court involve (but are not confined to) the following-

1. All governments to guarantee the appearance of plain-clothed female police officers in public areas.
2. Investment of CCTV cameras in imperative locations.

³⁹ *Vishaka and Ors. v. State of Rajasthan and Ors*, (1997) 6 SCC 241.

3. Orders to persons in-charge of public organizations and public service transportations to promptly report any acts of eve-teasing to the police, omission of which would direct to adverse consequences.
4. Endowment of Women Helpline in all states and union territories.⁴⁰

- **RIGHT TO EDUCATION: A FUNDAMENTAL RIGHT UNDER ARTICLE 21A**

Life outwardly education persists to be a mere animal survival, as it is education that expands the extents of a person's mind, making him competent of not only gaining a livelihood but also of attaining happiness and honour and making a record for himself in the world.

The Right to Education in India was enumerated under Article 21A of the Constitution of India by the Constitution (Eighty-Sixth) Amendment Act, 2002. This Article grants free and mandatory education to all children of the age group ranging between six to fourteen years (6–14) as a part of their Fundamental Right.

In the particular case of *Miss Mohini Jain v. State of Karnataka and Ors.* (1992), the High Court held that it was illegal to impose capitation fee from students under any conditions. Moreover, it confirmed that education was what guaranteed life of dignity and happiness to a person and not modifying the Right to education specified under Article 41 of Part IV of the Constitution into a Fundamental Right would beat its purpose and also keep all current Fundamental Rights beyond the reach of the uneducated. Thus, it claimed that the Right to Education is a part of the Fundamental Rights.⁴¹

Moreover, in the case of *Unni Krishnan, J.P. and Ors. Etc. v. State of A.P. and Ors.*, it was avered that every citizen of India has a Fundamental Right to Education. No human can be stripped of his education by the State. This Right encompasses free education until the person achieves the age of 14 years and following, it will depend on his or her financial capability as well as one of the State.⁴²

- **RIGHT TO INTERNET**

Access to the Internet has grown to be an essential requirement for the students as the information has graced more available to them. In the case of *Faheema Shirin R.K. vs State of*

⁴⁰ Dy. Inspector-General of Police and Anr. v. S. Samuthiram, (2013) 1 SCC 598.

⁴¹ Miss Mohini Jain v. State of Karnataka and Ors., 1992 SCR (3) 658.

⁴² Unni Krishnan, J.P. and Ors. Etc. v. State of A.P. and Ors, 1993 SCR (1) 594.

Kerala and others, the Hon'ble High Court affirmed that Right to access the internet is a component of Right to privacy as well as Right to education under Article 21 and Article 21A of the Constitution of India. Internet Access not only improves the possibilities of students to acquire knowledge but also enhances the quality of education.⁴³

Moreover, In *Anuradha Bhasin vs Union of India and Ors.*, the Apex Court recognized that freedom under Article 19 (1)(g) over the means of internet experiences Constitutional safeguard under Article 19(1)(a) and Article 19(1)(g). However, the restriction of such fundamental rights should be according to Article 19(2) and (6), including the proportionality test. Internet is an inescapable tool for business and commerce and represents an essential role in conducting e-commerce business as it provides a virtual stage to a businessman which is more affordable.⁴⁴

- **EMERGENCY AND ARTICLE 21**

Emergency refers to a condition where the officials in the State need urgent action to administer with severe conditions including internal resistance, external hostility or commercial bankruptcy. In India, an Emergency can be any of the three types-

1. National Emergency
2. Failure of Constitutional Machinery in a state (also known as President's rule)
3. Financial Emergency

In a condition of Emergency, the sovereignty of the people may be provisionally rejected, with the rationalizing that the State requires to prevent destruction and efficiently cope with the problematic situation. Article 359 of the Constitution of India authorizes the President to dissolve the Fundamental Rights of the people invested in Part III for a definite period. However, this is not without exclusions.

Article 21, imparting the Right to Life and Personal Liberty, is one of the barely two rights that can not be refused by the officials even in circumstance of an Emergency. It says that no person is denied of his life or personal liberty except by a procedure established by law, and the

⁴³ Faheema Shirin RK vs. State of Kerala and others, AIR2020Ker35.

⁴⁴ Anuradha Bhasin vs. Union of India and Ors., (2020)1MLJ574.

procedure mentioned above must not be arbitrary or unreasonable (as recognized in the Maneka Gandhi case).

The fact that Article 21 cannot be waived ensures that people are not exploited during periods of stress and risk and that they still hold their fundamental and cherished human rights.

The 44th Amendment instituted this provision of non-suspension of Article 21 to the Constitution in 1978, which improved Article 359 not to eliminate Articles 20 and 21 from its scope.

THE RELEVANCE OF ARTICLE 21 WITH OTHER FUNDAMENTAL RIGHTS

As we have discussed above, that Article 21 is the only Fundamental right which has interpreted so widely. With the developing time, as the Article is interpreting in the broader scope, courts are also establishing the interrelations between Article 21 and other fundamental rights. One such relation is between articles 14, 19 and 21. They're a triangle because they require to be read together; the triangle is golden because they're vital to the protection of freedoms and prevention of government capriciousness and arbitrariness.

The article 14 of the Constitution speaks about equality before the law; it's a negative concept which asserts that people in comparable situations should be treated alike, in both opportunities & responsibilities imposed whereas, the idea of 'equal protection of the laws' needs the State to give specialized treatment to persons in diverse situations to stabilize equality among all. It is positive.

Therefore, the necessary analogy to this would be that "equals would be treated equally, whilst unequal would have to be treated unequally."

Article 19 stretches from freedom of peaceful association to freedom of speech and expression, to practice of trade and profession to the residence, occupation, and more.

Article 21 sermons about the right to life and personal liberty, 'Life' in Article 21 does not mean mere animal existence. It has a much broader meaning which covers the right to live with human dignity, right to health, right to livelihood, and more. It is only reasonable and fair for the State to impose some rights and regulations if it comes to human life. It refers to everyone who challenges this Article and its scope. These rights are considered as the basic laws for the smooth working of life for citizens of our country. The golden triangle grants full protection to

people from any infringement upon their rights from society and others as well. This view has been interpreted in the case of *Maneka Gandhi v. Union of India*, where the Supreme Court upheld that Articles 19(1) and 21 are not commonly particular as the Right to Life and Personal Liberty comprises a broad category of rights, some of which have been given supplementary protection under Article 19(1). Article 19 and 21 go hand-in-hand, and the procedure established by law limiting these rights should withstand the examination of other provisions of the Constitution as well – including Article 14. Thus, a law infringing upon one's liberty must not only pass the test of Article 21 but the test prescribed under Article 14 and Article 19 of the Constitution as well. These three rights are, hence, interconnected and administer safeguards against unreasonable actions of the Government. They are meant to be viewed together and construed per each other. All three of them award fundamental human rights and liberties to the citizens, and their extensive collective influence has provided them with the name "*Golden Triangle*" in jurisprudence.

Another such relation has been made between Article 20, 21 and 22.⁴⁵

Article 20 talks about the protection of the citizens against conviction for offences. Part II of the Article 21 talks about the procedure established by law for limiting the rights granted by the Article, which must be reasonable, fair and unarbitrary. And Article 22 talks about the rights of an arrested person. Therefore, any law limiting the rights granted under article 21 needs to pass the test given not only under Article 21 but as per Article 20 and 22 as well and vice versa. It has been established in the case of *Francis Coralie Mullin vs Union Territory of Delhi (1981)*, where the Court held that Article 21 demands that no one shall be deprived of his life or personal liberty but by the procedure established by law and this procedure must be unbiased, fair and impartial and not arbitrary, capricious or fanciful. The law of preventive detention has consequently now to pass the test not only for Article 22 but also of Article 21 as well. If the constitutional legality of any such law is questioned, the Court would have to determine whether the procedure placed down by such law for stripping a person of his liberty is reasonable, fair and equitable.⁴⁶

CONCLUSION AND SUGGESTION

The Right to Life and Personal Liberty holds a broad ambit which is only developing over time.

⁴⁵ Supra note 12.

⁴⁶ Francis Coralie Mullin vs Union Territory of Delhi, 1981 SCR (2) 516.

There has been growing recognition about the various perspectives of a person's life, which he is authorized to control and would, thus, promote improvement in the quality of life. This Right has defined as the "heart and soul" of our Constitution by the Apex Court and unquestionably proves to be so – serving the fundamental requirements of human life. But these intended rights developing under the extent and ambit of Article 21 is often taken up to Court for adjudication as it is expressly not granted under the Constitution. Hence, in reality, there is no guarantee spelt out in our Constitution for citizens to secure their claim as a subject of the right to lead a life with Opportunity and Honour. Article 21 needs to be expanded further to guarantee all wisdom reemphasized from time to time in the basic structure of our Constitution settled in its's Preamble.