
EXPANDING HORIZONS OF ARTICLE 21 OF THE CONSTITUTION OF INDIA

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ABSTRACT

Constitution is the supreme law of country. No law can go beyond Constitution. The Supreme court is the guardian of the constitution. Time to time constitution has been widely interpreted by Supreme Court. Part –III of the Constitution deals with fundamental right ,which is the most important chapter of constitution. Among all fundamental rights article 21 provides protection of life and personal liberty. The Right to life interpreted by the court and this right includes so many rights in its wide dimension. The right to personal liberty has also been meaningfully interpreted by court. Constitutional law provides a new range of vision to Article 21. Right to life and liberty can be violated if there is procedure establish by law that procedure must be just fair and reasonable. It is the duty of the state to provide protection of right to life and personal liberty provided under Article 21 of the constitution.

INTRODUCTION

The Constitution of India is the supreme law of the land. Every law of India must be in accordance with the Constitution of India. The Supreme Court of India is the guardian of the Constitution. If any law made by the Parliament or State Legislative Assembly is inconsistent with the Constitution of India, then it shall be declared void by the Supreme Court. Under international law, State is an independent political entity occupying a defined territory, however, a sovereign state must have a constitution. India got independence through the Indian Independence Act, 1947. On 26th November, 1949 our Constitution was adopted but it came into force on 26th January, 1950. Initially, our Constitution contained 22 Parts, 8 Schedules and 395 Articles, however, with the passage of time, it has increased considerably, and at present, there are 25 Parts, 12 Schedules and 448 Articles.

DEFINITION OF CONSTITUTION

According to the Black's Law Dictionary, Constitution means the organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. It is a charter of government deriving its whole authority from the governed.¹ The famous author, Dr. J.N. Pandey while defining 'Constitution', quoted the definition given by Wade and Philip in their book "Constitutional Law", by saying that the Constitution implies a document having a special legal sanctity which sets out the framework and principal functions of the organs of the Government of the state and declares the principles governing the operation of those organs².

CONCEPT OF CONSTITUTIONAL LAW

It is a fact that the term "Constitutional Law" is broader than the term 'Constitution'. Constitutional Law comprises of the Constitution itself, relevant statutory laws, judicial decisions and conventions. Constitutional law is a body of law which defines the role, powers, and structure of different entities within a state, namely, the legislature, executive and judiciary; as well as the basic rights of citizens. According to the Black's Law Dictionary, Constitutional

¹Black's Law Dictionary; West Publishing Co.; Revised Fourth Edition; 1968; p. 384

²Dr. J.N. Pandey; Constitutional Law of India; Central Agency; First Edition; p. 10.

Law means the branch of the public law of a state which treats the organization and frame of government, the organs and powers of sovereignty, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and subject, and which prescribes generally the plan and method according to which the public affairs of the state are to be administered.³In simple words, Constitutional Law means that department of the science of law which treats constitutions, their establishment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law.

CONCEPTION OF FUNDAMENTAL RIGHT

Basic human rights include the right to life, right to equality and right to freedom. There are two kinds of documents- (i) Ancient Human Rights Documents, and (ii) Modern Human Rights Documents. The Ancient human rights document includes the treaty of *Magna Carta* of 1215, the US Constitution of 1787, the French Revolution of 1798 and the American Bill of Rights of 1791. The Modern human rights document includes the Charter of the United Nations in 1945, the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights in 1966, the International Covenant on Economic, Social and Cultural Rights in 1966, the Convention on the Elimination of All Forms of Discrimination Against Women in 1979, Convention on the Rights of the Child in 1989 and many others.

The basic human rights which have been given constitutional status are known as fundamental rights. Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, fundamental rights are enforceable by the courts, subject to certain conditions. There are six different categories of fundamental rights recognized by the Indian Constitution and they are the Right to Equality (Articles 14-18), the Right to Freedom (Articles 19-22), the Right against Exploitation (Articles 23-24), the Right to Freedom of Religion (Article 25-28), the Cultural and Educational Rights (Article 29-30) and the Right to Constitutional Remedies (Article 32).

AN ANALYSIS OF ARTICLE 21

The right to life and personal liberty is one of the most fundamental and sacrosanct human

³Ibid. 1 at p. 385.

rights under the provisions of the Constitution of many countries like the United States of America, Switzerland, India and others.⁴ It is not an exhaustive right but includes within its ambit various other fundamental rights. Earlier, these rights only existed within the confined walls and were given a very strict interpretation. However, with the passage of time, judicial activism amalgamated with realist jurisprudence has played a significant role over the period of time in expanding the ambit of Article 21. Before 1978, Article 21 provided the right to life and personal liberty to the citizens only against arbitrary actions of the executive. However, in the famous case of *Maneka Gandhi v. Union of India*,⁵ the scope was increased, and now Article 21 provides the right to life and personal liberty not only against the executive but also against the legislature.

Article 21 provides that a person can be deprived of his life and personal liberty, only if the following conditions are fulfilled:

- (a) There must be a law;
- (b) There must be procedure established by law; and
- (c) The procedure must be just, fair and reasonable.⁶

For a detailed analysis, Article 21 has been divided into three phases:

- (I) Right to Life, and
- (II) Right to Personal Liberty.
- (III) Procedure Established by Law

(I) Right to Life: The right to life does not include only the mere animal existence of a person, it includes the total opportunity of development and to live with human dignity. Indian Judiciary has played an important role in finding out the real significance of the “right to life”. The various rights recognized by the Hon’ble Judiciary, under the purview of the right to life, are as follows:

(a) Right to Reputation: The right to life includes the right to reputation. In *Lal Krishna Advani v. State of Bihar*,⁷ it was held that a person has a right to preserve and protect his or her

⁴Kavita Sinha; Expanding Horizon of Article 21 Vis-a-Vis Judicial Activism; International Journal of Law Management and Humanities; Vol. 4 (3); 2021; p. 106.

⁵AIR 1978 SC 597.

⁶Ibid. 2 at p. 213.

⁷AIR 2003 SC 3357.

reputation. If someone's reputation is harmed that means his or her "right to life" has also been violated.

(b) Right to Livelihood: In *Olga Tellis v. Bombay Municipal Corporation*,⁸ it was held that the "right to life" includes the right to livelihood. The Hon'ble Supreme Court ruled that the eviction of pavement dwellers using unreasonable force, without giving them a chance to explain is unconstitutional. It is a violation of their right to livelihood. The court had emphatically objected to authorities treating pavement dwellers as mere trespassers.

(c) Right to Live With Human Dignity: The right to life under Article 21 is not merely the right to live. The right to life is more than a mere animal existence, which was observed in the case of *Bandhua Mukti Morcha v. Union of India*.⁹ In this case, it was held that every human being has a right to live a life with human dignity. Every human being includes every human, both the rich and poor.

(d) Right Against Sexual Harassment of Women at Workplace: In the landmark case of *Vishakhav. State of Rajasthan*,¹⁰ the Supreme Court decided that the consideration of International Conventions and norms is significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. This was a case where various women's groups led by Naina Kapur and her organisation, Sakshi filed Public Interest Litigation against the State of Rajasthan and the Central Government of India to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. The petition was filed after Bhanwari Devi, a social worker in Rajasthan, was brutally gang-raped for stopping a child marriage. The Court further held that the right to life includes every woman should be treated with decency and dignity in the workplace.¹¹

(e) Right to Live in Unpolluted Environment: The right to life includes the right to live in a pollution-free and infection-free environment. In *B.L. Wadehra v. Union of India*,¹² it was held that the right to life includes the enjoyment of pollution-free air, water and environment. In *M.C. Mehta v. Union of India*,¹³ it was observed that the right to life includes a pollution-free

⁸AIR 1986 SC180.

⁹AIR 1984SC802.

¹⁰AIR 1997 SC3011.

¹¹Narendra Kumar; Constitutional Law; Allahabad Law Agency; 2006; p. 296.

¹²AIR 19 Raj 82.

¹³AIR 1987 SC965.

environment because a polluted environment adversely affects life, and it amounts to slow poisoning and reducing the life of the citizens.

(f) Right to Shelter: The right to shelter is a fundamental right under Article 21 of the Constitution of India. In *Chameli Singh v. State of U.P.*,¹⁴ the Supreme Court held that the right to shelter is very much essential to live with human dignity and to “live with human dignity” comes under the right to life which is protected under Article 21 of the Constitution of India.

(g) Right to Education: The case of *Mohini Jain v. State of Karnataka*,¹⁵ occurred when the Government of Karnataka issued a notification that permitted the private medical colleges in the State of Karnataka to charge exorbitant tuition fees from the students admitted other than the “Government seat quota”. The Supreme Court held that although the right to education as such has not been guaranteed as a fundamental right under the Constitution, it becomes clear from the Preamble of the Constitution and its Directive Principles that the framers of the Constitution intended the State to provide education for its citizens. The more notable part of the judgment was its insistence that the right to education should be read as an integral part of the “right to life” guaranteed under Article 21 of the Constitution of India.

In *J.P. Unni Krishnan v. State of A.P.*,¹⁶ the Court held though the right to education is not expressly mentioned as a fundamental right, it is implicit and flows from the right to life guaranteed under Article 21. Though the right to education flows from the right to life and personal liberty under Article 21 but these rights are not absolute. Its content and parameters have to be determined in light of Articles 45 and 41. In other words, every child/citizen of this country has the right to free education before he or she reaches the age of 14 years.

(h) Right to Sustainable Development: Sustainable development means the development that manages the need of the present generation but without compromising the ability of future generations to meet their own needs. It is a principle for meeting human development goals along with sustaining a good environment. In *N.D. Jayal v. Union of India*,¹⁷ the petitioner argued for the rehabilitation of the people for Tehri Dam Project. The Supreme Court held that development should be done by maintaining the environment, and the right to life includes the

¹⁴AIR 1996 SC1051.

¹⁵(1992) 2 SCC1858

¹⁶AIR 1993 SC2178.

¹⁷AIR 2004 SC867.

right to sustainable development. In *M.C. Mehta v. Union of India*,¹⁸ it was held that without sustainable development, the life of upcoming generations will be in jeopardy.

(i) Right to Social Security: The right to life includes the right to social security and protection of family. The right to social security is a human right. Everyone has the right to a good standard of living, adequate for the health and development of lifestyle. The right to social security in the events of unemployment, sickness, disability, and old age has been recognized by the Indian Judiciary. Article 25(2) of the Universal Declaration of Human Rights, 1948 and Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 deal with the right to social security. Article 21 of the Constitution of India includes the right to social security. In *C.E.S.C. Limited v. Subhas Chandra Bose*,¹⁹ it was held that the right to social and economic justice is a fundamental right, specifically the right to life. Further, the Court stated that the right to life and dignity is meaning 'less' without socio-economic rights, and the right to social security and protection of the family is an essential part of the right to life.

(j) Right to Information: The Supreme Court through its various judgments observed that the right to information comes from Articles 19(1) and 21. In *S.K. Kantikar v. B.N. Municipal Council*,²⁰ it was held that "people at large have a right to know in order to be able to take part in participatory development in the industrial life and democracy. The right to know is a basic right to which citizens of a free country aspire. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform".

(k) Right Against Honour Killing: "Honour Killing" can be said as the murder of a member of a family or social group by other members, due to the belief of the perpetrators (and potentially the wider community) that the victim has brought dishonour upon the family or community. Hence, a murder committed in order to save what is considered in a specific culture the 'honour' of one's family against the shame caused by another member of the family could be termed as "Honour killing". In the recent landmark judgement of *Shakti Vahini v. Union of India*,²¹ it was ruled by Hon'ble Justice Deepak Mishra that Article 21 encompasses safeguarding human life along with freedom and basic human rights such as equality of status.

¹⁸AIR 1987 SC965.

¹⁹AIR 1992 SC573.

²⁰(2000)3BomLR 573.

²¹2018 (7) SCC 192.

The acts of honour killing by Panchayat or individuals are in contravention to the Article, and hence, are punishable likewise.

(l) Right to Electricity: In *S. Vinod v. Kerala State Electricity Board*,²² it was held that the right to electricity is an integral part of the right to life under Article 21 of the Indian Constitution. In *C.E.S.C. Ltd. v. Subhash Chandra Bose and Ors.*,²³ the Calcutta High Court held that the right to life includes the right to electricity, and further held that the Corporation, as a licensee, is duty-bound to generate, transmit and supply electrical energy to the consumers of the area by erecting electric supply lines and also overhead lines, service lines, under-ground cables through which energy is supplied.

(m) Right to Health and Medical Aid: The right to life not only includes the right to health but also timely medical aid. In *Paschim Banga Khet Mazdoor Samity v. State of W.B.*,²⁴ it was held that Article 21 imposes a duty on the State to safeguard the life of every person. The Government hospitals and medical officers employed therein are bound to provide medical assistance for preserving life. If any Government hospital fails to provide timely medical aid, then it is a clear violation of Article 21 i.e., the right to life. In *Consumer Education and Research Centre v. Union of India*,²⁵ it was held that social justice includes the right to live with human dignity, with a minimum standard of health. In *Pt. Parmanand Katara v. Union of India*,²⁶ it was held that it is the duty of the doctor to render their professional service to preserve the life of patients.

(n) No Right to Die: In *P. Rathinam v. Union of India*,²⁷ the Supreme Court held that right to life is a natural right embodied in this Article 21 but suicide is an unnatural termination of life, so the right to die is incompatible with the right to life, and consequently, right to life does not include right to die. In *Aruna Ramchandra Shanbaug v. Union of India and Ors.*,²⁸ it was held that active euthanasia is not allowed in India but passive euthanasia may be done with the prior permission of the court. The court observed that it is a settled principle all around the world that active euthanasia is illegal unless there is legislation permitting it and passive euthanasia is legal even without legislation. Considering the chances of misuse, the court alone as “*Parens*

²²W.P. (C).No.11213 of 2015(B); Judgment Delivered on 13.11.2020.

²³1991 SCR Supl.(2) 267.

²⁴AIR 1996 SC2426.

²⁵AIR 1995 SC922.

²⁶AIR 1989 SC2039.

²⁷AIR 1994 SC1844.

²⁸(2011)2 SCR 869.

Patriae” will decide whether life support should be withdrawn or not, for the people who are incapable to provide consent for themselves. However, the Supreme Court opined that passive euthanasia can be allowed in exceptional and rarest of rare cases with due approval from the patient’s family members and doctors.

(o) Sentence of Death:Capital punishment or death sentence is not violative of Article 21. In *Jagmohan Singh v. State of U.P.*,²⁹ it was held that by the nature of the crime committed, the court could make a choice of awarding a death sentence or life imprisonment. Awarding a death sentence comes under the purview of “procedure established by law” which is mentioned in Article 21. In *Bachan Singh v. State of Punjab*,³⁰ it was held that Article 21 recognised that the State can deprive the life of a person with just, fair and reasonable procedure established by law and thus, the death sentence is not violative of Article 21.

(II) Right to Personal Liberty: The freedom of the individual to do as he pleases, is limited only by the authority of politically organized society, to regulate his action to secure the public health, safety, or morals or of other recognized social interests. In *A.K Gopalan v. State of Madras*,³¹ it was held that personal liberty means nothing but the liberty of the physical body, and held that it includes various rights, which are as follows:

(a) Right to Privacy:The term ‘privacy’ includes a state of non-interference and free from disturbance. The right to privacy is not absolute but subject to reasonable restrictions. The right to privacy includes various perspectives and they are as follows:

(i) Right to Privacy and Telephone Tapping:Telephonic conversation is an important part of one’s private life. The right to privacy would certainly include telephone conversations in the privacy of one’s home or office. Therefore, telephone tapping would be violative of Article 21 of the Constitution of India, unless it is permitted by the “procedure established by law”. In *Peoples Union for Civil Liberties v. Union of India*,³² it was held that telephonic conversation is a part of modern life and telephone tapping is violative of Article 21 unless it is permitted under the “procedure established by law”.³³

²⁹AIR 1973 SC947.

³⁰AIR1980 SC898.

³¹AIR 1950 SC1295.

³²AIR1997SC568

³³Ibid. 11 at p. 312.

(ii) *Right to Privacy and Disclosure of Dreadful Diseases*: In **Mr. X v. Hospital Z**,³⁴ a question arose before the Supreme Court that whether disclosure of HIV positive results to the prospective in-laws, by the doctor about his patient, who was about to get married, would be violative of Article 21. The Court held that the right to privacy is not absolute and has some legal restrictions. If the protection of personal liberty causes something against the right to life, then it can be curtailed. In this case, the right to life of the woman with whom the HIV positive patient was to marry, should be informed prior to marriage.

(iii) *Right to Privacy and Hindu Marriage Act, 1955*: Section 9 of the Act deals with the restitution of conjugal rights. In **T. Sareetha v. T. Subbiah**,³⁵ it was held that Section 9 of the Hindu Marriage Act, 1955 violates the right to privacy. However, in **Saroj Rani v. Sudarshan Kumar Chadha**,³⁶ the Delhi High Court held that Section 9 of the Hindu Marriage Act, 1955 is not violative of the Constitution because Section 9 has a social purpose of preventing the breaking of marriages. Marriage is a social union, so the breakup of marriage must be prevented.³⁷

(iv) *Right to Travel Abroad*: In **Maneka Gandhi v. Union of India**,³⁸ the passport of the petitioner was seized under the Passports Act, 1967 which empowered the government to do so for the public interest. The Government explained that the presence of the petitioner before a commissioner of inquiry, in connection with various complaints against the petitioner, was very much essential, and the passport was impounded only to ensure such presence and to restrict the petitioner from leaving the country. However, it was observed that the right to travel abroad is a fundamental right because it is a part of the right to privacy, under the right to personal liberty, secured under Article 21 of the Constitution.

(b) Rights of the Prisoners: Prisoner means a person deprived of liberty and kept under involuntary restraint, confinement, or custody, especially one on trial or in prison. Article 21 provides some rights for prisoners also and they are as follows:

(i) *Right to Free Legal Aid*: In **M.H. Hoskot v. State of Maharashtra**,³⁹ the Supreme Court held that an accused who is unable to pay fees to a lawyer has a right to get free legal aid at the

³⁴AIR2003 SC 495.

³⁵AIR 1983 SC356.

³⁶AIR 1984 SC 1562.

³⁷B.M. Gandhi; Hindu Law; Eastern Book Company; 2nd Edition Reprint 2011; p. 280.

³⁸AIR1978 SC697.

³⁹AIR 1978SC1548.

cost of the State. In *Suk Das v. Union Territory of Arunachal Pradesh*,⁴⁰ the Supreme Court ruled that conviction of an accused without representation in trial by a lawyer is a clear violation of Article 21, and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.

(ii) *Right to Speedy Trial*: The right to a speedy trial has been interpreted as an essential part of personal liberty under Article 21. In *Hussainara Khatoon v. Home Secretary, State of Bihar*,⁴¹ it was noticed that a large number of prisoners, including men, women and children were waiting for trial year after year. These persons were denied even basic human rights. The court while passing the judgment observed that detention of persons under trial, for a longer period, than the period of conviction, if convicted, was illegal and violative of Article 21. Further, it was observed that speedy trial is one's right under Article 21 of the Constitution.

(iii) *Right Against Illegal Detention*: Illegal detention is violative of the fundamental right, specifically the right to personal liberty under Article 21. In *Joginder Kumar v. State of U.P.*,⁴² the petitioner was detained by the police for five days without informing his family. This was a case of illegal detention of a free citizen. The Supreme Court laid down the following guidelines, governing the arrest of persons during an investigation:

- (a) An arrested person being held in custody is entitled, if he so requests, to have one friend, relative or another person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.
- (b) The police officer shall inform the arrested person when he is brought to the police station of this right.
- (c) An entry shall be required to be made in the diary as to who was informed of the arrest and it must be enforced strictly.
- (d) It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.
- (e) Additionally, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest.

⁴⁰AIR 1980 SC991.

⁴¹AIR 1979 SC1360.

⁴²AIR 1994 SC 1349.

(f) These requirements shall be in addition to the rights of the arrested persons found in the various police manuals.

(iv) *Right Against Custodial Violence:* Custodial violence is a clear violation of fundamental rights secured under personal liberty in Article 21. In *D.K. Basu v. State of West Bengal*,⁴³ the Supreme court has laid down the following guidelines in case of arrest or detention:

- (a) Particulars of the police personnel who handles or interrogates the arrestee must be recorded in a register.
- (b) The Police Officer carrying out the arrest of a person shall prepare a “memo of arrest” at the time of the arrest.
- (c) The detained person shall be entitled to have one friend or relative or anyone whom he wants, to be informed about his arrest, as soon as possible.
- (d) The time and place of arrest, along with the venue of custody of an arrestee must be notified by the police, where his friend or relative lives outside the district.
- (e) The person arrested must be informed about his rights.
- (f) The person should be subjected to medical examination, and if at the time of arrest any major or minor injury is found in his body, then it too must be recorded.
- (g) The arrestee may be permitted to meet his lawyer during interrogation.⁴⁴
- (h) All the copies of documents including the memo of arrest should be sent to the Magistrate for his record.

In *Sheela Barse v. State of Maharashtra*,⁴⁵ the Supreme Court took action against the custodial violence committed against the women prisoners confined in police lockups. It was held that it is a violation of fundamental rights secured under Article 21.

(v) *Right to Compensation:* In *Nilabati Behera v. State of Orissa*,⁴⁶ the son of the petitioner died due to custodial violence. The Supreme Court held that the respondent i.e., the State of Orissa has to pay a sum of Rs.1,50,000/- to Mrs. Nilabati Behera and also a sum of Rs.10,000/- has to be paid to the Supreme Court Legal Aid Committee. It was contended that the evidence adduced during the inquiry does not support the defence of respondents and there is no reason to reject the finding of the learned District Judge that Suman Behera died in police custody as

⁴³AIR 1997 SC610.

⁴⁴Ibid. 2 at p. 254.

⁴⁵AIR 1983 SC378.

⁴⁶AIR 1993 SC 1960.

a result of the injuries inflicted upon him. The right to compensation is also a right under Article 21.

In *Chandrima Das v. Chairman, Railway Board*,⁴⁷ Mrs. Chandrima Das, a practising advocate of the Calcutta High Court, filed a petition under Article 226 of the Constitution against the Chairman of Railway Board, claiming compensation for the victim, Mrs. Hanuffa Khatoon, a Bangladeshi National who was gang-raped by many, including some employees of the Railways, in a room at Yatri Niwas at Howrah Station. The court awarded a sum of Rs. 10 Lakhs as compensation for Smt. Khatoon. The court was of the opinion that the rape was committed at the building belonging to the Railways and was perpetrated by the railway employees, and thus, the Railway Board is vicariously liable for the violation of Article 21.

(III) Procedure Established by Law: The “procedure established by law” is applicable to both substantive law and procedural law. It means that a law that is duly enacted by the legislature or the concerned body is valid if it has followed the correct procedure. In this system, the court would assess whether there is a law or not, whether the legislature is competent to frame the law and whether it had followed the procedure laid down to legislate but would not assess the intent of the said law. This doctrine has a major flaw. It does not assess whether the laws made by parliament are fair, just and not arbitrary. “Procedure established by law” means a law duly enacted is valid even if it is contrary to principles of justice and equity. Strictly following “procedure established by law” may raise the risk of compromise to the life and personal liberty of individuals due to unjust laws made by the law-making authorities. Thus, “procedure established by law” protects the individual against the arbitrary action of only the executive. After Maneka Gandhi’s case, it was established that the procedure must be just, fair and reasonable.⁴⁸

However, in American Constitution, there is a term “due process of law” instead of “procedure established by law”. The doctrine of “due process of law” not only checks if there is a law to deprive the life and personal liberty of a person, but also sees if the law made is fair, just and not arbitrary. If the court finds that any law is not fair, it will declare it as null and void. This doctrine provides for a more fair treatment of individual rights. Under the due process, it is the legal requirement that the State must respect all of the legal rights that are owed to a person, and the laws that States enact must conform to the laws of the land like fairness, fundamental

⁴⁷AIR 2000 SC98.

⁴⁸M.P Jain; Constitutional Law, Lexis Nexis, p. 1194.

rights, liberty, etc. This doctrine also gives the judiciary to assess the fundamental fairness, justice, and liberty of any legislation. Thus “due process” protects the individual against the arbitrary action of both executive and legislature.

POSITION OF ARTICLE 21 DURING EMERGENCY

It is a common belief that the right to life and personal liberty are human rights and is not a “gift of the Constitution”. Article 4 of the International Covenant on Civil and Political Rights, 1966 recognises the right to life and personal liberty to be a non-derogable right, even during times of emergency. After the 44th Amendment Act, it was agreed by the court that in any case, no person can be stripped of his right to life and personal liberty. Therefore, Article 21 cannot be suspended even in case of an emergency.

CONCLUSION

Article 21 deals with the right to life and personal liberty. Indian judiciary has played a great role in the interpretation of Article 21. The right to life and personal liberty can be infringed only by a procedure established by law, and that procedure must be just, fair and reasonable. Article 21 ensures the most significant fundamental right under Part III of the Constitution. Due to the significant nature of Article 21, it is not even suspended in the time of emergency. The right to life and personal liberty has a wide ambit which is growing over time. There has been increasing awareness about the various aspects of a person’s life that he or she is entitled to control and which would, thus, facilitate the enhancement in the quality of his or her life. This right has been described as the “heart and soul” of the Constitution of India by the Supreme Court and certainly proves to be so, representing the very basic necessities of human life.