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Critical Analysis on Interpretation of Article 21 of the Indian Constitution

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ABSTRACT

The scope of Article 21 of the Indian Constitution which secures two rights namely, Right to Life and Right to Personal Liberty had widened its scope and has been interpreting the right to life from mere physical existence to include finer values of life and right to proper healthy livelihood and the right to personal liberty has been interpreted to include right to privacy, right to travel abroad and various others. The framers of the Indian Constitution kept in mind the basic Human Rights and by the influence of the Universal Declaration of Human Rights (1948) provided for the protection of life and personal liberty of every citizen. Article 21 is available to both the citizens of the country and also to the non citizens, the reason behind this is that, Article 21 is safeguarding the basic human rights and such right shall apply without discrimination of any sort including citizens or non citizens. Traditionally the Article had a narrow interpretation, but with time and more wide interpretation of the Article and by applying the purposive construction approach of interpretation whereby the purpose of the creation of the statute is kept in mind and taken in consideration, Article 21 is being interpreted in a very wide scope. The court moved from a traditional pedantic approach to purposive approach in constructing the right to life and right to personal liberty under the constitution. Article 21 is omnipotent and cannot be suspended even during the period of emergency in the country. Article 21 does not merely exist in the paper but is kept alive and vibrant so the country can provide for absolute dignity and basic Human Rights to the people as it was intended by the framers of the constitution.

Keywords: Article 21, Human Rights, Right to Life, Personal Liberty, Constitution.

I. INTRODUCTION- THE BASIC AND THE INTERPRETATIONAL APPROACH:

The Constitution of India provides Fundamental Rights under chapter III which are guaranteed by the constitution to every person, one of this right lies in Article 21² which

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²“Article 21- No person shall be deprived of his life or personal liberty except according to procedure established by law.”

provides for the protection of life and personal liberty. In the earlier view³ of interpretation of the Article, provided that Article 21, can be applied only when there is a total loss of the right to life or personal liberty, later it was modified⁴ that Article 21 can be applied not only where there is total loss of the right but also where restriction has been on the right to life or personal liberty without following the 'procedure established by law'. Due to purposive interpretation it is possible to expand Article 21 to include right to the means which provides a proper livelihood like right to food, clean water, healthy environment etc. Also later in a case⁵ the Supreme Court has made it clear that the right to privacy is a part of the right to life guaranteed by Article 21 and also includes telephone conversation in the privacy of home or office. The Doctrine of Purposive interpretation and the Doctrine of Constitutional silence holds a lot of importance in the interpretation of Article 21. The Doctrine of silence considers the unwritten portion of the constitution that evokes the power of understanding the statute in a certain specific way. Alongside, the golden rule of interpretation is also applied. Which tries to avoid anomalous and unreasonable consequences and aims to give effect to the spirit of the law for delivering justice and to foreseen the consequences of the decision and is also applied while providing judgments under Article 21 of the Indian Constitution. Article 21 is a living statute that cannot be interpreted in a single context in which it was first written. It demands to be interpreted as per the changing needs and context of the people and the current situation of the society remaining firm on the principles of Equality, Liberty, Fraternity and Justice. Justice Chelameswar in one of the recent landmark case⁶ mentioned the need for purposive interpretation, and described the scope and amplitude of implications are to be ascertained from the overall scheme of the statute and for providing the justice, by keeping the basic structure of doctrine intact. Article 21 is to prevent violation of personal liberty and deprivation of life except according to the procedure established by law which means the procedure ratified by the state. Before, the word 'law' was used for the protection only against the executive action but not against the legislative action as in the case of Gopalan vs. State of Madras, but later⁷ the Apex court overruled the A.K. Gopalan's case and used the term 'law' in the sense of 'Lex' i.e., just law or the principles of natural justice, and mentioned that procedure established by law should be devoid of arbitrariness. The right under Article 21 is provided against state only, and if an act of private individual amounts to the violation of personal liberty or deprivation of life it shall not fall under the parameters of

³Gopalan vs. State of Madras, AIR 1950 SC 27

⁴Kharak Singh vs. State of UP., AIR 1963 SC 1295

⁵People's Union for Civil Liberties vs. Union of India, AIR 1997 SC 568

⁶K.S. Puttaswamy v. Union of India, 26 September, 2018

⁷Maneka Gandhi vs. UOI, 25 January, 1978

Article 21 and shall fall under Article 226 of the Constitution or under general law, but in case of, an act of a private individual in accordance of the state infringing the right of another person it will certainly come under Article 21. First time in law the safeguarding of a person's human dignity included the right to adequate nutrition, clothing, and shelter with facilities of reading, writing and to express oneself was included under Article 21⁸. Article 21 has been broadly interpreted to include right to clean and healthy environment⁹, as a clean environment is a means to provide livelihood to people and if the means of livelihood are taken away or gets polluted it is in turn taking away the right to life violating the protection of right under Article 21. When Article 21 is read alongside with the constitutional duties provided by the constitution¹⁰ it indicates that it is on the state to attend to while enacting laws and giving judgments that the essence of the constitution is upheld and kept alive.

II. INTERPRETING ARTICLE 21:

Right to Livelihood and to Live with human dignity-

It is the Fundamental right of everyone to live with human dignity free from any kind of exploitation and discrimination, this right to live with human dignity enshrined under Article 21 derives its basic from the directive principles of state policy. As the court interpreted the right to life should include all those aspects of life which makes a man's life meaningful, worth living and complete¹¹. The ambit of the 'right to life; has been further extended by the Supreme court in the case of *Bandhua Mukti Morcha vs. UOI*¹², the Supreme court has held that right to life should be taken to mean right to live with dignity free from exploitation. Following the above stated cases in *People's Union for Democratic Rights vs. UOI*¹³, The Supreme court held that the non-enforcement by the state authorities of Labor laws and the nonpayment of minimum wages to the workers employed is violation of a workers right to live with human dignity as enshrined in Article 21. In the case of *Neeraja Chaudhary vs. State of M.P.*¹⁴, the court has held that bonded laborers should not only be identified and released but also rehabilitated after the release. The release without rehabilitation will throw them to poverty and helplessness.

Initially right to livelihood was not included under Article 21 but then the view underwent a

⁸*Maneka Gandhi v. Union of India: (AIR 1978 SC 597), Francis Coralie v. Union Territory of Delhi: (AIR 1981 SC 746) and Bandhua Mukti Morcha v. Union of India © AIR 1984 SC 802*

⁹*Vellore Citizens' Welfare Forum v. Union of India: 1996 (5) SCC 647*

¹⁰PART IV, DIRECTIVE PRINCIPLES OF STATE POLICY, Article 36-51

¹¹*Maneka Gandhi vs. UOI, AIR 1978 SC597*

¹²AIR 1984 SC 802

¹³AIR 1982 SC 1473

¹⁴AIR 1982 SC 1099

change with the definition of the word 'life' in Article 21 and in a case the¹⁵Supreme court has said that the right to life guaranteed under Article 21 includes the right to livelihood. In another case¹⁶ the SC. Held that the right to life guaranteed by Article 21 includes right to means of livelihood and therefore, rule of procedure for deprivation of the right must be fair, just and reasonable. Later in *Olga Tellis vs. Bombay Municipal Corporation*¹⁷, the Supreme Court has made it clear that Article 21 includes right to livelihood also, however, it may be curtailed or curbed only by following the just and fair procedure established by law.

Right against rape and sexual harassment at workplace-

Rape is not just violation of a person's right to life but is also a serious degradation of a women's human dignity and is a crime against the entire society as well. All kinds of rape against women are a threat for the society and violates the right given under Article 21. In the case of *Bodhisattwa Gautam vs. Subhra Chakroborty*¹⁸ the court stated that rape destroys the entire psychology of a women and puts her into a deep emotional crisis, it is the most hated crime and is a crime against basic human rights and is a violation of the right to live with human dignity under Article 21 of the constitution.

Sexual Harassment of women is held by the Supreme Court to be violation of human dignity and the right to life under Article 21. In the case of *Vishaka vs. State of Rajasthan*¹⁹ Supreme Court declared that sexual harassment of a women at her workplace amounts to the violation of right to life and liberty and also brings gender discrimination is clearly violating Article 14, 15, 21 of the Indian Constitution and came up with guidelines also known as Vishakha guidelines to curb such practice. But in the case of *Medha Kotwal Lele vs. UOI*²⁰ the Supreme court highlighted the non compliance to the Vishakha guidelines of 1997 and the Sexual Harassment of Women at work place (prevention, prohibition and redressal) Act, 2013 came into force to safeguard the rights of a working women and to prevent the violation of Article 21 of a women.

Right to health and medical care –

Article 21 and Directive Principles of State Policy²¹ makes it the responsibility of the state to preserve the life of a person, it is the Human right of every person, it is universal and equal in nature. In a very important case²² the apex court has very specifically mentioned that

¹⁵Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath nandkarni on 17 November, 1982

¹⁶D.K. Yadav vs. J.M.A. Industries, (1993) 3 SCC259

¹⁷AIR 1986 SC 180

¹⁸1996 AIR 922, 1996 SCC (1) 490

¹⁹DATE OF JUDGMENT: 13/08/1997

²⁰19 October, 2012

²¹Article 46 and 47 of Indian Constitution

²²*Parmananda Katara v. Union of India* Ors on 28 August, 1989

preservation of life is of high importance. And it is a professional obligation of all doctors' government or private to preserve life even before legal formalities is done by the police. Under Article 21 it is the birth right of every human being to health and medical care and no state or law can intervene to delay the discharge of such action which will save the life of a person or has no authority to take away the right of a person to proper medical care. In another case of Paschim Banga khet Mazdoor samity vs. State of West Bengal²³, from a train accident a person was suffering from serious head injuries but he was refused treatments from various hospitals on the basis that the hospitals lacked the necessary equipment for the treatment. The Supreme Court in this case observed and stated that not providing proper medical care at the right time can end the life of a person and it is a violation of Article 21 to not provide for proper medical care. The court also stated that it was necessary by the state to have such resources to provide the medical care which is the entitlement of the people to receive emergency medical care. But also in another case²⁴ the court kept in mind that the provisions of health facilities cannot be unlimited in any state there will be financial barriers and held that the provisions has to be within the extent that finance permits.

Interpretation of Article 21 in Environmental cases –

Under Article the state is responsible to provide a clean and healthy environment to the citizens and the people for a healthy sustainability of life. Under this the state is obliged to look after the clean environment, supply of clean water and air and to control noise pollution. This interpretation of the Article is also internationally encouraged by the different treaties of the United Nations like the Stockholm declaration, Kyoto protocol, Brunt land commission etc. all of this aiming for the safeguarding of the environment for the sustainable development of the human life. In the famous case of Vellore Citizen vs. UOI²⁵ the court looked in looked into the case of tanneries which was causing environmental pollution that were polluting the water resources, rivers, canals etc and issued several directions to deal with the matter. In another case²⁶ the Supreme Court held that the right to life means clean environment which will be responsible for healthy body and mind. In M.C. Mehta vs. Kamalnath²⁷ the Supreme Court held that the environment pollution is a wrong against the community but also mentioned that when productive changes are taken for the betterment of the environment it directly does not violates any right under Article 21²⁸. In another case of M.C. Mehta vs. Kamalnath²⁹ the Apex court held

²³ 6 May, 1996

²⁴ *State of Punjab v. Ram Lubhaya Bagga* AIR 1997 SC 734 : (1997) 2 SCC 353

²⁵ AIR 1996 SC 2721 : (1996) 5 SCC 647

²⁶ *Milk Men Colony Vikas Samiti v. State Of Rajasthan* (2007) 2 SCC 413

²⁷ AIR 2000 SC 1997

²⁸ *Narmada Bachao Andalan vs. UOI*, AIR 2000 SC 375

that a person who is responsible for causing pollution has to pay compensation for the restoration of the environment and ecology. In the case of *Paramanand Ktara vs. UO Tamil Nadu*³⁰ the court held that right to water flows from Article 21 and people have a right to access clean water of the nature but this principle applies only to natural water storage resources like rivers, lakes etc. and cannot be applied in relation to artificial tanks.

Right to Privacy –

Right to Privacy means the right to be let alone and the right to be free from unwanted public attention. For the first time the issue of privacy was raised in *Kharak Singh vs. State of Tamil Nadu*³¹. Here it was mentioned that right to privacy is inbuilt in the expression of personal liberty. Later in *R.Rajgopal vs. State of Tamil Nadu*³² the court observed the meaning of right to privacy and said that it is the right to be left alone and is guaranteed under Article 21 of the constitution. In the cases of *R.M. Malkani vs. State of Madhya Pradesh* and *People's Union of Civil Liberties vs. UOI*³³ the SC. Made it clear that right to privacy also includes telephone conversation in the privacy of home or office and telephone tapping is violative of such right and also Article 19(1)(a) and directed certain procedures against such practices. Under right to privacy a women's rights to make reproductive choices are also covered it includes the women's right to decide on her participation in her sexual activities, pregnancy or choice of her contraceptive methods. She cannot be forced to carry on a pregnancy or take part in any contraceptive operations such as undergoing sterilization operations against her will. Even in cases of abortion a women cannot be forced to abort her child if she doesn't wants to. This right lies with the women despite of the fact that she is married or not.

Right to free legal aid, right to appeal and right to speedy and fair trial –

Access to free legal aid under Article 21 is a one of the fundamental rights of a person. The state is responsible to secure the operation of the legal system and shall provide a basic equal opportunity to all its citizen to receive equal protection of law. In *M.H. Hoskot vs. State of Maharashtra*³⁴ the Supreme court laid down two important guidelines in right of appeal firstly to send a copy of the judgment in time to the prisoner to enable him o file an appeal and secondly free legal service to be secured for the prisoner who is not able to secure legal services otherwise for himself.

In the guarantee of life and personal liberty it in an implicit right of receiving speedy trial, it is

²⁹ AIR 2000 SC. 1997.

³⁰ AIR 2006 SC. 2893

³¹ AIR 1963 SC. 1295

³² (1994) 6 SCC 632

³³ AIR 1997 SC 568

³⁴ AIR 1978 SC 1548

said that late justice is no justice and hence any person who is denied of speedy trial has the right to approach the court for enforcing such right. In the case of Hussainara Khatoon vs. Home Secretary, state of Bihar³⁵ the Supreme Court held that speedy trial is a fundamental right and is constructive under Article 21 of the Constitution and such right is enforceable in court. Similarly in another case³⁶ in the Supreme court guidelines for speedy trial of offences was laid down which included the period of pre conviction detention should be kept as short as possible and undue delay will result in the ability of the accused to defend himself. In the case of Anil Rai vs. State of Bihar³⁷ the court directed the judges of the High Court to provide quick judgments without unnecessary delay.

Also every person is entitled to free and fair trial under Article 21 of the Indian Constitution without any kind of discrimination as to caste, culture, sex or religion.

Rights of Prisoners-

Prisoners are also considered as normal human being when it comes to their rights under Article 21 of the Constitution. A prisoner is entitled to all his fundamental rights unless they have been constitutionally curbed. A prisoner under no condition is to be treated inhumanly while inside the prison. In the landmark judgment of *Prabhakar Pandurang*³⁸ the Bombay district prison prevented the detainee from publishing his book that he has written while in prison, while he was in detention, but the Supreme Court's judgment held that the civil rights and his right to liberty is not curtailed and the book he wanted to publish was in no way posing any threat to the public safety and not letting him do so will be curbing his right under Article 21. In the case of *Sunil Batra vs. Delhi administration*³⁹ the prisoner was sent to solitary confinement but not because of prison discipline but because he was set for a capital punishment, it was held wrong and illegal because according to the rules a prisoner can be sent for solitary confinement if he breaks prison discipline or is a threat to other prisoners in the prison and not because of the punishment that he is awarded for his crime. Also on a letter sent by Sunil Batra to a judge of the Supreme Court which was treated as a PIL under Article 32 of the Constitution which was on an inhuman treatment and torture of his jail inmate by a jail warden. The Supreme court observed that a prisoner is entitled to safety of his life even if he is in prison and his right to life cannot be violated under Article 21 and found this act as illegal and inhuman.

³⁵AIR 1979 SC 1360

³⁶*A.R. Antulay v. R.S. Nayak* AIR 1992 SC 170

³⁷AIR 2006 SC 1367

³⁸STATE OF MAHARASHTRA v. PRABHAKAR PANDURANG 1966 AIR 424

³⁹1978 AIR 1675

Capital punishment- Not violating Article 21 –

Under Article 21 of the Constitution it has been held multiple times by the Supreme Court that Capital punishment and death by hanging is not considered as violation of the Article. In cases when the crimes are so heinous in nature and crimes of one person is taking away the fundamental human right of other person and becomes a terrible threat to the society, sentence of death will not be curtailing the rights under Article 21. In *Jagmohan Singh vs. state of UP*.⁴⁰ It was held by the Supreme court that a sentence of death shall be reasonable and just and carefully reviewed since it is taking the right to live of someone. And in an important case of *Bachan Singh vs. State of Punjab*⁴¹ the court held that death penalty can be considered as an alternative punishment to murder under sec 302 of IPC and it therefore makes it in public interest and is not unreasonable.

No right to die or suicide under Article 21-

In 1985, *Maruti Dubal vs. State of Maharashtra*, a police constable tried to commit suicide and criminal charges were pressed against him, he challenged section 309 of IPC IN Bombay High court saying that it violates Article 21 of the Constitution, the court accepted the challenge and agreed that there was nothing unnatural in the desire to die and sec 309 was struck off. A similar judgment was given by the Supreme Court in the case of *P. Rathinam vs. UOI*⁴² and also the Supreme Court mentioned that an attempt to commit suicide is more of a psychological problem rather than any criminal instinct and struck down sec 309 of IPC. Later in *Gian Kaur vs. State of Punjab*⁴³ the Supreme Court overturned the judgments in the above two cases and settled the controversy about section 309 of IPC and Article 21 of the Constitution stating that Article 21 only protects the life and liberty of a person and does not support the idea of right to die or abetment to commit suicide and also stated that right to live under Article 21 is a natural right and right to death is unnatural and will not be covered by Article 21 also in this case the court differentiated between Euthanasia and committing suicide. In the case of *Aruna Ramchandra Shanbaug* the concept of passive euthanasia was considered and given permission but not right to commit suicide.

⁴⁰ AIR 1973 SC 947

⁴¹ AIR 1980 SC 898

⁴² AIR 1994 SC 1844

⁴³ AIR 1996 SC 1844

III. THE LANDMARK CASE OF MANEKA GANDHI VS. UOI (1978), AND THE INTERPRETATION OF ARTICLE 21 POST THE CASE OF MANEKA GANDHI:

The Supreme Court's decision in *Maneka Gandhi vs. Union of India*⁴⁴ was a turning point in the court's movement towards a broader interpretation of the Fundamental rights guaranteed by the constitution. The *Maneka Gandhi* case occurred in a period immediately following the end of the National Emergency in India. *Maneka Gandhi*⁴⁵. She was issued a passport in 1976 under the Passport Act. In 1977, around the time she wished to leave India to fulfill a meeting and speaking engagement, *Maneka Gandhi* received a letter stating that the Government of India has decided to impound her passport in Public interest under Section 10(3)(c) of the Passport Act⁴⁶. The Government turned down her request seeking the reason why the order has been passed, and stated that it was not in public interest⁴⁷. *Maneka Gandhi* filed a Writ petition in the Supreme Court challenging the impounding order of the Government of India on the passport and its subsequent refusal to provide reasons for the same. In *Maneka Gandhi*, the Supreme Court held that the Fundamental rights form an integral scheme under the Constitution; Articles dealing with different Fundamental Rights Contained in Part III of the Constitution do not represent separate rights but they are all part of an integrated scheme in the Constitution. They must mix together and are demanded to be interpreted together as a whole for the enforcement of Fundamental Rights without arbitration. Isolating various aspects of human freedom in order to protect some other right for their purpose of protection is neither realistic nor beneficial. The court said that Part III of the Constitution is to be read holistically; the Supreme Court said that the mere fact that a law satisfied the requirements of one Fundamental Right it did not exempt the functioning of other Fundamental Rights. It also means that even if a law were ostensibly associated with a particular fundamental right and complied with its requirements, it would also have to satisfy the requirements of other Fundamental rights. The court stated that any procedure established by law under Article 21 would have to be 'fair, just and reasonable'. And with this standards of interpretation the order that was passed failed to satisfy the needs of Article 21 and the order was arbitrary and violating the right to equality under Article 14 and the Right to liberty in Article 21. The

⁴⁴ AIR 1978 SC 597

⁴⁵ daughter-in-law of former Prime Minister Indira Gandhi and founder editorial of a political magazine 'Surya'

⁴⁶ The section states: 'The passport authority may impound or cause to be impounded or revoke a passport or public document ... (c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in interests of the general public'

⁴⁷ It was later discovered that the primary reason the passport authority may impound *Maneka Gandhi*'s passport was it's fear that she would flee India to avoid giving testimony to a Commission of Enquiry set up to investigate crimes committed during the emergency period- Manoj Mate, *The Origins of Due Process in India*, Berkeley journal of International Law,)

question in front of Supreme Court was that, does a law that satisfies all procedural requirements in its enactment, however arbitrary or unreasonable, meets the test of Article 21. In the Maneka Gandhi case by vesting in itself the power of substantive review under Article 21, the court transformed itself from being merely a supervisor to being a watchdog of the constitution. The Court's judgement in Maneka Gandhi is based on the simple fact that a law which is arbitrary in nature is no law. The Supreme Court's judgment in Maneka Gandhi resembled with the 5th Amendment of the U.S Constitution⁴⁸ which stated that 'procedure established by law' would have the same effect as the expression 'due process of law' and would read as: 'no person shall be deprived of life or personal liberty except according to fair, just and reasonable procedure established by law'. Maneka Gandhi's case is a reflection of dynamic Constitutional interpretation. The importance of it was that it signified the Court's changing approach towards the constitution. In the following decades it was treated as an organic document whose interpretation must evolve with time and the society's condition.

IV. CONCLUSION- HUMAN RIGHTS AND ARTICLE 21:

The concept of Human Rights have come into existence since 539 BC and have evolved since them from countries to countries and states to states but the very basic meaning and intention remains intact i.e., every human being born on this Earth is entitled to a set of rights which no one can take from them these rights are present for being a human without any other kind of consideration. The International legal platform has done allot⁴⁹ to inbuilt Human Rights and spread the knowledge about it to Nations and have encouraged them to make provisions to safeguard Human Rights. India was one of the original signatories in the International Covenant on Civil and Political Rights. The Preamble of Indian Constitution mentions the dignity of every person and similarly the part III of the Constitution effectively looks after the rights of a human being and Article 21 safeguards the life and liberty of a person. Article 21 of the Constitution has been interpreting the Article in a way to cover all aspects of Human beings and to safeguard all means of livelihood not just by literally interpreting the Article but also using Purposive method of interpretation to keep intact the basic human rights that every people deserve without any discrimination and also not just the citizens of the country.

⁴⁸5th Constitution Amendment is USA- "No person shall be deprived of his life, liberty or property without due process of law"

⁴⁹ (1) The U. N. Charter, 1945.

(2) Universal Declaration of Human Rights, 1948.

(3) International Covenants of 1966 i.e. Civil and Political Rights and Economic, Social and Cultural Rights.

(4) European convention for protection of Human Rights, 1953.