

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 3**

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**2021**

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# Expanding Horizon of Article 21 Vis-a-Vis Judicial Activism

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KAVITA SINHA<sup>1</sup>

## ABSTRACT

*Right to life and personal liberty is one of the most fundamental and sacrosanct human right under the provisions of the Constitution of many countries like United States of America, Switzerland, India and others. 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. The development of the human race not just socially, but also growth in the fields of education and economics. Globalization has lead to even wider interpretation of the terms Life and Liberty today that covers a whole lot of rights within its ambit and the horizon is still expanding and ever evolving. The revolution in the basic concept makes it crucial that the concept of right to life and personal liberty must be examined in reference to the new development, meaning and depth along with the role of judiciary and justification for such liberal interpretation. Judicial Activism with the help of concept of legal realism has played a significant role over the period of time in expanding the ambit of Article 21. This paper hence, focuses on the expanding horizon of Article 21 and the need as well as the role of Judiciary through Judicial Activism.*

**Keywords:** *Life, Liberty, Fundamental Rights, Judicial Activism, Article 21.*

## I. INTRODUCTION

Right to life and personal liberty is the modern term for what we have always known as the natural rights or the god-made rights that are considered the most important for the development of every living individual irrespective of their citizenship, caste, gender or age. These rights are not only restricted to mere survival of a person but it extends to include all those rights which every person ought to have at each and every point of his life and in every doing. The paper consists of IV chapters consisting of various sub-chapters wherein Chapter I is a small introduction to meaning and significance of Right to Life and Personal Liberty. It also lays down the Aims and objective of the reach and the research questions which the

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<sup>1</sup> Author is a LLM student at Chanakya National Law University, Patna, Bihar, India.

researcher sought to answer by way of this paper. Chapter II explains and describes the various aspects and the evolution of Article 21 of the Indian Constitution. Chapter III deals with a comparative study of the provisions with respect to right to life and liberty under the American Constitution. The new developments in the ambit of Article 21 of the Indian Constitution has been discussed in the Chapter IV and finally Chapter V the researcher has concluded the research by analyzing the importance of judicial activism and the role of judiciary in giving meaningful interpretation and in expanding the horizon of Article 21.

## **II. HISTORY AND SIGNIFICANCE**

It is often said that a part of country's development can be measured by the prevailing freedom and the respect of the State towards individual's liberty. Hence, these rights play a pivotal role in the development not just at the individual level but also at institutional and State level. It guarantees safety and strength to the individual and hence is against the facets of inequality and discriminations. The true test of a democracy is how its laws stand with regard to the life and liberty of its people. The development of the Fundamental Rights in India was inspired by and is a product of the England's Bill of rights (1689), the American Bill of Rights (1791) and the France's Declaration of Rights of Man (1789). Extensive powers were given to the British Government and the police under Rowlett Act, 1919 which resulted in warrant less arrest and detention of the individuals, searches and seizures and also restriction on public gatherings. Eventually this resulted in mass campaigns of non-violent civil disobedience throughout the country. The freedom movements were also inspired by the Constitution of Ireland and the Directive Principles of the State Policy and as a result of which people of India started to revolt against the government's action and put forth demand of independent government.

The Nehru Commission in 1928 composing of representatives of Indian political parties proposed constitutional reforms for India. A Constituent Assembly of India was set up which comprised of elected representatives from diverse political background and the chairpersons of committees and sub-committees responsible for different subjects, who were assigned the task of developing a Constitution for the nation. The Constituent Assembly first met on 1946, and the draft Constitution was put to discussion in various rounds. The minutes of the debates were kept as a record and on 6<sup>th</sup> and 13<sup>th</sup> December, 1948 the Assembly took up the discussion on the draft Article 15 of the Constitution. Meanwhile, a notable development took place having a significant impact on the Indian constitution took place, when on 10 December 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights.

This Universal Declaration of Human Rights however, was not a legally binding instrument

but being a signatory of the declaration, India adopted the main idea enshrined in the declaration. A detailed discussion of all these documents is covered in the following chapters.

In India, the Preamble also sets out the goal of the Constitution to achieve Liberty of thought, expression, belief, faith and worship. This principle has been adopted from the ideas which formed the basis of the French Revolution in the year 1789.

### III. MEANING AND SCOPE OF ARTICLE 21

India became free from the British rule in the year 1947 and after many discussions and debates the Constitution of India along with the Magna Carta was adopted by the people of India through the Constituent Assembly in the year 1949 which came into force later in 1950. Indian Constitution is a product of mixture from the best provisions of Constitutions of various countries. Since, most of the parts were adopted from other constitutions, the fundamental Rights under Part III of the Constitution has also been adopted with necessary modifications from the Constitution of United States of America which we will discuss in the later chapter. The provision the Article 21 is similar to that of the 14<sup>th</sup> Amendments rights available to the citizens of United States of America. Article 21 of the Indian Constitution reads as follows:

*21. Protection of life and personal liberty.- No person shall be deprived of his life and personal liberty except according to the procedure established by law.*

The Article is an obligation or a duty upon the state to protect the life and liberty of all the persons within the territory in all circumstances except where it is allowed under the established procedures and the law is being followed. These are the basic human rights which even the State can't violate. The rights protected under this article are the 'Right to life and personal liberty'. As per the Indian constitution the protection under this article is not only restricted to the citizens but is available to all the persons living within the territory of India. The Supreme Court in the case of *Chairman, Railway Board v. Chandrima Das*<sup>2</sup> has emphasized that "even those who come to India as tourists also have right to live, so long as they are here, with human dignity, just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizen".<sup>3</sup>

The article consists of three crucial terms or phrase which needs elaboration and discussion, these words are:

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<sup>2</sup> AIR 2000 SC 988

<sup>3</sup> *Ibid.*

### **(A) Right to Life**

As been discussed in the previous chapter also, the right to life under this Article is not merely the right to live. Right to life is more than a mere animal existence, which was also observed in the case of *Kharak Singh v State of Uttar Pradesh*<sup>4</sup>. In this case the court held that the inhibition against a person's life extends to all those limbs and faculties by which the life is enjoyed. It means a life of dignity which includes right to have a safe and secure livelihood which is an integral facet of life. In the case of *Sunil Batra v. Delhi Administration*<sup>5</sup> the court held that right to life includes right to live a healthy life so as to enjoy all the faculties of the human body in their prime conditions and would extend to include the protection of one's culture, tradition, heritage and all that with gives meaning to a man's life. Hence, it will include the right to live in peace, sleep in peace and right to good health.

In a recent writ petition filed before the Supreme Court in the case of *Ashwani Kumar v. Union of India and ors.*<sup>6</sup> The honorable Court while interpreting the meaning of life held that right to life includes the right to live with dignity. Elaborating upon the decision the Court also laid down that this Article is the key to achieve social justice as postulated in the Preamble.

The Court held that there is a need for continuous monitoring of the progress in the implementation of the constitutional mandate to make it available to the elderly all the health care and medical facilities. To quote the discussion "We accept that the right to life provided for in Article 21 of the Constitution must be given an expansive meaning. The right to life, we acknowledge, encompasses several rights but for the time being we are concerned with three important constitutional rights, each one of them being basic and fundamental. These rights articulated by the Petitioner are the right to live with dignity, the right to shelter and the right to health. The State is obligated to ensure that these fundamental rights are not only protected but are enforced and made available to all citizens."<sup>7</sup>

Hence, a continuous mandamus is required which must be practised to ensure that the rights of the people are respected, recognized and enforced by the state.

### **(B) Personal Liberty**

According to the definition given by A.V. Dicey, the right to personal liberty as understood means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification. This definition,

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<sup>4</sup> 1963 AIR 1295

<sup>5</sup> (1978) 4 SCC 409

<sup>6</sup> Writ Petition (C) No. 193 of 2018 decided on 18.12.2018 [MANU/SC/1475/2018]

<sup>7</sup> *Ibid.* at para 44

however, was suitable in the era where the state had a monopoly over the available resources and the people had very limited access. With continuous development and advancement in the society the meaning of liberty required expansion. The term liberty as it stands today, consists of all the other rights which a person is awarded with in order to live and enjoy a decent life, including all the luxury he could avail. The right to liberty is qualified by the term personal in order to limit and define the boundary of the right. Personal liberty hence includes all the freedoms which are mentioned in the other provision of Constitution such as freedom to move freely throughout the territory of India, freedom to practise any profession etcetera. Article 21A was added through the 86<sup>th</sup> amendment Act which ensured that it shall be the duty of the State to provide free and compulsory education to children between the ages 6 to 14 years. This was one of the major developments in the ambit of Article 21. To enumerate a few, Article 21 under the ambit of right to liberty would include:

- a) The right to equal opportunity
- b) The right to freedom under Article 19
- c) Right against exploitation
- d) The right to freedom of religion
- e) Cultural and educational rights
- f) Remedies constitutional right
- g) Right to education
- h) Right against arbitrary arrest and detention
- i) Prohibition of child labour and trafficking

The goal behind providing protection of personal liberty is to achieve social justice and to give every person equality and freedom of thought, expression, belief, faith and worship. It is the tool to provide every person the freedom of choice. It is hence, clear to state that there cannot be an exhaustive definition of this term personal liberty.

In the case of *Maneka Gandhi v Union of India*<sup>8</sup> the Supreme Court held that Article 14, 19 and 21 are not mutually exclusive and infact Article 21 within its broad ambit contains all these rights mentioned specifically under Article 14 and 19. These three articles are collective known as the golden triangle and the *Magna Carta* of human rights. “The fundamental rights conferred in Part III of the Constitution are neither distinctive nor mutually exclusive.” Any law depriving a person of his personal liberty has to stand a test of one or more of the fundamental rights conferred under Article 19. When referring to Article 14, the concept of reasonableness must

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<sup>8</sup> AIR 1978 SC 597

be tested and projected in the procedure.<sup>9</sup>

Not only that the court also opined that the Article 21 is governed by the principle of natural justice which includes the principle of:

- a. *Audi altrem partem*: It is the hearing rule which means that both the party to the suit must be given an equal opportunity of being heard and represented.
- b. Reasoned Decision: it means that the decision of the court shall be supplemented with appropriate reasoning which must be declared in an open court
- c. Rule against bias: no person shall be a judge of his own cause and the decision of the jury or the panel must be free and fair.

The court in this case by giving a liberal interpretation, had set a benchmark for the people to seek their rights which are natural and fundamental to the basic human necessity whether or not they are mentioned under the provisions of the Constitution. In the later chapters the different aspects and new challenges to this Article have been discussed in detail.

#### **IV. PROCEDURE ESTABLISHED BY THE LAW**

Procedure established by law means law which has been duly enacted, which complies with the procedural requirements and which does not violate any of the provisions of the constitution. This is an important factor of Article 21, because it implies that the rights protected under Article 21 is not a superficial right and can be curtailed by way of restriction imposed by the Legislature under the established 'procedure'. An overview of the Constituent Assembly Debates<sup>10</sup> shows that there was a huge discussion on draft article 15 (present Article 21) as to whether to incorporate the 'procedural due process clause' as under the 14<sup>th</sup> amendment of the American Constitution or to use the term 'procedure established by law'. With the fear and anxiety that the due process clause would give rise to judicial supremacy over the Parliament the term 'due process' was replaced with the term 'procedure established by the law'. It was even argued by Kazi Syed Karimuddin, that if the original article that is, "No person shall be deprived of his life or liberty without due process of law" is replaced by the present one it will give immense power in the hands of the Parliament as the Judiciary will not be able to declare any law, which is enacted under procedure of law, as void even if it violates the right protected under the Article. This proposal was not entertained in the

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<sup>9</sup>[https://blog.ipleaders.in/maneka-gandhi-v-union-of-india/#:~:text=Maneka%20Gandhi%20v.-,Union%20of%20India%2C%201978%20AIR,%2C%201978%20SCR%20\(2\)%20621](https://blog.ipleaders.in/maneka-gandhi-v-union-of-india/#:~:text=Maneka%20Gandhi%20v.-,Union%20of%20India%2C%201978%20AIR,%2C%201978%20SCR%20(2)%20621) last accessed on 02.04.2021

<sup>10</sup>Constitutional Assembly Debates, Volume 7, dated 6<sup>th</sup> December, 1948 [https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/7/1948-12-06](https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-06) last accessed on 02.04.2021

Constituent Assembly.

Earlier, the courts interpreted the right under Article 21 faithfully as per the intent of the framers of the constitution. However, development and globalization in the field of law gave rise to judicial activism, whereby the courts started incorporating due process clause recent case laws and judgements shows that the doctrine of ‘procedural due process’ as well as ‘substantive due process’ is applied by the constitutional courts in which enables the court to question not merely procedural laws, but also the substantive value choices of the legislative branch of government in order to uphold the rights of the people as against the State.

Supreme Court in the case of *A. K. Gopalan v. State of Madras*<sup>11</sup>, while deciding upon the validity of the Preventive Detention Act, 1950 laid down that though the Article provided that the deprivation of protection of rights under Article 21 is allowed only as per the ‘procedure established by the law’ and declined to read it in consonance with the doctrine of ‘due process of law’. However, this stance was overruled in the Maneka Gandhi case<sup>12</sup> Justice Kania referring to A.K Gopalan had said that the term “due process” mentioned in the article had limited the powers of the judiciary, to interpret it further and seek its reasonableness but a new precedent was set through the judgement in Maneka Gandhi which has resulted in broadening the vision of these two phrases. It is worth noting that the court also held that such procedure established by law must be just, fair and a reasonable and not an arbitrary one.

## V. CONSTITUTIONAL REMEDIES UNDER ARTICLE 32

The rights under Article 21 along with the other Fundamental rights under Part III of the Constitution can be enforced by invoking the writ jurisdiction of the High Courts and the Supreme Court. The remedies for enforcement of these rights have been provided under Article 32 of the Constitution which reads as:

- (1) *The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*
- (2) *The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*
- (3) *Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the*

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<sup>11</sup> AIR 1996 SC 1234

<sup>12</sup> Supra 8



*local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).*

*(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.<sup>13</sup>*

The High Courts under Article 226 and the Supreme Court have the jurisdiction to take cognizance if the writ is filed for enforcement of these rights against the State (defined under the Article 12 of the Constitution which includes Government and the Legislatures of the Union, Government and the Legislatures of each state and all the local or other authorities within the territory of India or under the control of the Government of India). As per Article 359, these rights cannot be taken away even when the proclamation of emergency is in operation.

## **VI. RIGHT TO LIFE AND LIBERTY - A COMPARATIVE STUDY**

In the international forum rights are divided under four generations of human Rights. The right to life and personal liberty were recognized as the most crucial right during the development of first generation of human rights which was called as the the generation of civil and political rights. Once time passed and ideas and concepts about state, political power, and right and freedom developed a fight against monarchical absolutism appeared. These rights were evolved in various countries under various titles such as<sup>14</sup>:

1. Magna Charta in 1215
2. Petition of Rights in 1628
3. The England Bill of Rights (Declaration of Rights) in 1689
4. The American Declaration of Independence in 1776
5. The French Declaration of Human and Citizen Rights in 1789.

## **VII. UNITED STATES OF AMERICA**

The American constitution is the oldest written Constitution in the world containing only 7 articles and has been amended 27 times. After the introduction of the Bill of rights in the Constitution that is the first ten amendments which declares the basic and fundamental rights of the citizens of United States of America, the XIV<sup>th</sup> amendment was a step taken further by the congress in direction of upholding and protecting the basic civil rights and individual liberties. This amendment along with the Section 1 of the XIV<sup>th</sup> amendment resulted in one of

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<sup>13</sup>Article 32 of The Constitution of India

<sup>14</sup>[https://www.law.muni.cz/sborniky/dny\\_prava\\_2009/files/prispevky/tvorba\\_prava/Cornescu\\_Adrian\\_Vasile.pdf](https://www.law.muni.cz/sborniky/dny_prava_2009/files/prispevky/tvorba_prava/Cornescu_Adrian_Vasile.pdf)

the most crucial as well as consequential part of the American Constitution, it reads as follows:

*“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>15</sup>*

The rights introduced under the 14<sup>th</sup> amendments are the precious rights conferred upon the citizens of America to cut short the arbitrary actions of the State. Unlike the Article 21 of Indian Constitution which adopted the idea of protection of life and liberty from the American Constitution, the 14<sup>th</sup> amendment rights extends to the protection of life, liberty as well as the property. There are three major changes which were brought in by the framers while adopting the XIV<sup>th</sup> amendments right in India, these are:

1. In America, the rights protected under the Constitution are right to life, liberty and property whereas in India these rights are only restricted to life and personal liberty. Property is not a subject matter to protection under Article 21 and the term liberty was qualified by the term personal in order to exclude those freedoms which are not personal in nature.
2. The protection under the 14<sup>th</sup> amendment rights is only available to the citizens of the United States whereas in India these rights are available to all the persons living within the territory of India, irrespective of their nationality.
3. The doctrine of ‘due process’ is an important aspect of the American Constitution whereas in India the only exception to the duty upon the state under Article 21 is when the act that is done by any State authority is as per the procedure established by the law.

While deciding upon the meaning and ambit of the term ‘Life’ the U.S. Supreme Court in the case of *Munn v. Illinois*<sup>16</sup>, “By the term “life” as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with outer world.”<sup>17</sup>

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<sup>15</sup>[https://www.senate.gov/civics/resources/pdf/US\\_Constitution-Senate\\_Publication\\_103-21.pdf](https://www.senate.gov/civics/resources/pdf/US_Constitution-Senate_Publication_103-21.pdf) last accessed on 03.04.2021

<sup>16</sup> 94 U.S. 113 (1876)

<sup>17</sup> <https://lawlex.org/lex-bulletin/article-21-right-to-life-livelihood/3631> last accessed on 03.04.2021

### VIII. ARTICLE 21 AND ITS EXPANDING HORIZON

It is well settled that the earlier view of the Courts in India was directional and confined within the words of the Legislature and it could be seen through the interpretation by the Courts in the post independence cases. However, with the judgement in the Maneka Gandhi's<sup>18</sup> case, a huge drift was noticed in the way Article 21 was interpreted liberally and given voice to the provision. This case marked the beginning of a new era of constitutional revolution with respect to judicial activism and also control of corruption and the basic human rights of the people with a view to ensure that it can extend the reach of the law. There are a few landmark cases through which judiciary has by applying Judicial Activism reviewed and set aside arbitrary government acts passed by the legislature of being ultra vires the Constitution and has given a liberal interpretation of Article 21, which has been discussed below. The Directive Principles of the State Policy mentioned under the Part IV of the Constitution which extends from Article 36 to Article 51, serves as the key to determine what all categories of rights may fall under the ambit of Article 21.

Right to life initially was confined to the basic needs of food, shelter and clothing however, with the development of society the societal needs of people has changed and the ambit of what life means now also includes right to nutrition, good health and right to live with dignity. In the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors*<sup>19</sup>, it was noted that the right to life could not be restricted to a mere animal existence, and provided for much more than only physical survival such as adequate nutrition and proper health and medicine, herein Bhagwati J. also observed as under:

*“We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings...it must in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.”<sup>20</sup>*

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<sup>18</sup> 1978 AIR 597

<sup>19</sup> 1981 AIR 746

<sup>20</sup> Ibid. at Para 8

In the case of *P. Rathinam v. Union of India*<sup>21</sup> the question which arose before the honorable court was whether right to die is included within the meaning of right to life, and the court with majority opined that the right to life also includes the right to die and held section 309 of the Indian Penal Code as unconstitutional and void. However, this was overruled in the case of *Gian kaur v State of Punjab*<sup>22</sup> in which the Court held that the right to life does not include the right to die and such an act to take one's life is punishable under the Indian Penal Code, however, the court opined that Article 21 includes the right to die with dignity. Also, in one of the most renowned case of *Common Cause (A Regd. Society) v. Union of India*<sup>23</sup> it was held by the Supreme Court that active euthanasia is included within the meaning of right to life under Article 21.

#### **(A) Freedom from exploitation**

Each and every person is given the freedom to exercise his liberty under the provisions of this Constitution, and whenever these rights and liberties is taken away or abridged the person has the right to move to the court under Article 32. However, the questions arise as to the situation where the aggrieved person cannot or under any circumstances is not allowed to move to the Court. Under these circumstances what is the remedy which is available to such person. The Supreme Court taking into regards such circumstances has in the case of *Bandhua Mukti Morcha v. Union of India*<sup>24</sup> while dealing with the provisions under the Bonded Labour System (Abolition) Act, held that,

*“...liberty is no doubt a fundamental right guaranteed to every person under the Constitution. There cannot be any manner of doubt that any person who is wrongfully and illegally detained and is deprived of his liberty can approach this Court under Art. 32 of the Constitution for his freedom from wrongful and illegal detention, and for being set at liberty. In my opinion, whenever any person is wrongfully and illegally deprived of his liberty, it is open to anybody who is interested in the person to move this Court under Article 32 of the Constitution for his release. It may not very often be possible for the person who is deprived of his liberty to approach this Court, as by virtue of such illegal and wrongful detention, he may not be free and in a position to move this Court.”*

#### **(B) Right to education**

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<sup>21</sup> 1994 AIR 1844

<sup>22</sup> 1996 AIR 946

<sup>23</sup> Writ Petition (Civil) No. 215 of 2005

<sup>24</sup> 1984 AIR 802

In the case of *Unni Krishna v State of Andhra Pradesh*<sup>25</sup> which involved a challenge by the private professionals educational facilities to the constitutionality of state laws regulating capitation fees charged by such institutions. It was held by the Supreme Court that the right to education is one of the facets of liberty under Article 21 when read with the directive policy under Article 41. Although this does not imply a right to education that flows from higher professional degree, the court interpreted the right to education upto the age of 14 years as the fundamental right of every citizen. In order to enforce this law declared by the Supreme Court, Article 21A was added to the Constitution under Part III by 93<sup>rd</sup> amendment in the year. In addition, the Court said that, in order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution and that “the provisions of Part III and Part IV are supplementary and complementary to each other.”<sup>26</sup>

### **(C) Right to privacy**

The right to privacy has now been recognized to be an intrinsic part of the right to life and personal liberty. In the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*<sup>27</sup> decisions and preserves the sanctity of the private sphere of an individual.<sup>43</sup> The right to privacy is not simply the “right to be let alone”, and has travelled far beyond that initial concept. It now incorporates the ideas of spatial privacy, and decisional privacy or privacy of choice.<sup>44</sup> It extends to the right to make fundamental personal choices, including those relating to intimate sexual conduct, without unwarranted State interference

### **(D) Right to speedy trial and right against illegal detention**

*In Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>28</sup> it was brought to the notice of the Supreme Court that an alarming number of men, women, and children were kept in prisons for years awaiting trial in courts of law. The Court took a serious note of the situation and observed that it was carrying a shame on the judicial system that permitted incarceration of men and women for such long periods of time without trials.

The Court in this case ordered the release from jail of all those under-trial prisoners, who had been in jail for a longer period than what they could have been sentenced had they been convicted upholding that detention of under-trial prisoners, in jail for a period longer than what

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<sup>25</sup> 1993 AIR 2178

<sup>26</sup> <https://www.escri-net.org/caselaw/2006/unni-krishnan-jp-ors-v-state-andhra-pradesh-ors-cited-1993-air-217-1993-scr-1-594->

1993#:~:text=Summary%3A,fees%20charged%20by%20such%20institutions.&text=The%20Court%20ruled%20that%20there,that%20flows%20from%20Article%2021. last accessed on 03.04.2021

<sup>27</sup> Writ Petition (Civil) No. 494 Of 2012

<sup>28</sup> AIR 1979 SC 1360

they would have been sentenced if convicted, was illegal as being in violation of Article of 21. The Article 21 recognizes the rights of the arrested persons by providing a fair and reasonable mechanism to be followed when an accused person is detained so that no person is illegally detained. In cases of *Sunil Batra v. Delhi Administration*<sup>29</sup> court held that even a person convicted of any offence, though deprived of freedom, but he is well entitled to rights guaranteed under Article 21 of the Constitution. Even solitary confinement of a person in jail was held to be violative of Article 21. In *D.K. Basu v. State of West Bengal*<sup>30</sup> Supreme Court laid down the guidelines to be followed by the concerned authorities in cases of arrest and detention.

### **(E) Freedom of sexual preference and to chose a life partner**

In the case of *Navtej Singh Johar v. Union of India through the Secretary ministry of law and justice*<sup>31</sup> while declaring the part of Section 377 of the Indian Penal Code as unconstitutional the Supreme Court held that “Section 377 violates the right to life and liberty guaranteed by Article 21 which encompasses all aspects of the right to live with dignity, the right to privacy, and the right to autonomy and self-determination with respect to the most intimate decisions of a human being.”

It has been held very recently by Supreme Court that the right to choose his or her life partner as fundamental right under Article 21 and in the case of *Shakti Vahini v. Union of India*<sup>32</sup> directions given to authorities to take all possible preventive steps to combat honour killings and related crimes.

### **(F) Right to clean environment**

With the rapid developments in the field of science and the evolution in the field of technology the environment and ecology has been compromised in many ways. The evidence is the growing damage which could be clearly noticed in deteriorating quality of air and water bodies.

In *Murli S. Deora v. Union of India*<sup>33</sup>, the persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of the act of smokers. Right to Life under Article 21 is affected as a non-smoker may become a victim of someone smoking in a public place. Also in the case of *Subhas Kumar v. State of Bihar* the court held that a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water

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<sup>29</sup> 1980 SCC (3) 488

<sup>30</sup> 1997 1 SCC 416

<sup>31</sup> Writ Petition (Criminal) No. 76 Of 2016

<sup>32</sup> 2018 (7) SCC 192

<sup>33</sup> AIR 2002 SC 40

or air which may be detrimental to the quality of life.”

It is also worth noticing that the court has taken a step towards including noise pollution within the ambit of life and liberty and held in the case of *In Re: Noise Pollution*<sup>34</sup> “While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise rose to unpleasant or obnoxious levels then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21”.

## IX. CONCLUSION CRITICISM AND SUGGESTIONS

'Right to life' and 'personal liberty' is the modern name for what traditionally has been known as the 'natural rights.' Not just in Article 21, right to liberty is one of the basic human rights which are aimed to be achieved and enshrined in the Preamble to the Indian Constitution. As been discussed in the chapters liberty is guaranteed in almost all the countries through the Constitution or the fundamental charter of every country. It is a primitive right and hence, it is necessary to develop and enhance the ambit of these rights for the development of the human personality. One of the biggest challenges that are being faced today with respect to the protection of life and personal liberty is that most of the people are not even aware of these rights. These rights though form part of the ambit of term 'Liberty' but these rights are not expressly enumerated anywhere.

This however, is main challenge, to find the scope and meaning and effectively enforce its mandate to educate the public about their rights which forms part of the 'personal liberty.' Deprivation of livelihood would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet such deprivation of life would not be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life.

Another challenge which is being faced is with respect to Judicial Activism. Although, the introduction and adaptation of Public Interest Litigation has lead to major evolution with respect to a new regime of rights of citizens and obligations of the State and devised new methods for its accountability. PIL was introduced to enforce the rights of the disadvantaged

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<sup>34</sup> Writ Petition (civil) 72 of 1998

people. But it got diluted in the process and used to interfere with the power of the government to take decisions on a range of policy matters. It has led to an increased interference of Judiciary in the legislative law-making. The framework of Article 21 is structured in such a way that leaves a lot of room for interpretation of the provision by the judiciary. It is a body of flesh without the soul meaning thereby, the meaning of life and liberty is dependent on the other provisions of the Constitution and Article 21 itself does not hold any form. This has led to the enhancement of the role of Judiciary which has led to law making through judicial activism. Here arises much controversy in relation to the stability of the law because laws made in the court are subject to change and can be overruled through subsequent judgement by another bench. Another criticism to judicial activism is that, the judiciary often mixes personal bias and opinions with the law.

The doctrine of judicial activism which justifies easy and constant readiness to set aside decisions of other branches of Government is becoming wholly incompatible with a faith in democracy and in so far it encourages a belief that judges should be left to correct the result of public indifference. Hence, a great duty has been conferred upon the judicial wing to analyze and interpret the meaning of liberty and life which is the basic human right and as it is best said that with great power, comes great responsibility, hence, judiciary must adhere by its duty.

When the judiciary surpasses its power to stop and misuse or abuse of power by the government in a way, it limits the functioning of the government. The function and duty of the legislature to make laws and the role of the judiciary is to fill the gap of laws and to implement them in a proper manner. Hence, it is suggested that a balance must be maintained between the duties of these two bodies a fine equilibrium between these government bodies can sustain the constitutional values so that the only work remaining for the judiciary is interpretations. Judiciary through judicial activism must perform the role and set out a system of balances and controls to the other branches of the government.

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