

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 4

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Right to Life and Personal Liberty: Scope of Article 21

SANDHYA PRABHAKARAN¹

ABSTRACT

*Right to life is provided to every person through Article 21 of the Constitution of India. Right to life not only refers to mere existence while breathing, but way more than that with multiple rights and interpretations included. Living a dignified life with the basic food, clothing, and shelter, having the right to get educated, including the right to live in a pollution free environment, right to have medical health care facilities, right to have privacy and many more rights are held to be under the scope of Article 21 of the Constitution of India through various judgments. Article 21 is one of the most important fundamental right provided in the Constitution of India. It is a proviso that covers almost entire facets of how to run a peaceful life. Article 21 provides two major rights which include right to life and right to personal liberty. Article 21 ensures that a person is never robbed off their right to life and the right to personal liberty unless as per the procedures established by the law. The scope of Article 21 is so wide that judicial intervention keeps expanding its meaning and provides various rights to be included in it which are necessary to complete the meaning of right to life and personal liberty. Be it right to travel as interpreted through *Maneka Gandhi v. Union of India* or protection from sexual harassment at workplace as interpreted through *VISHAKA v. State of Rajasthan*, judiciary's intervention in the process of interpreting the rights included in Article 21 has made the scope wider. Article 21 even includes right to die with dignity (passive euthanasia, but only on case-by-case basis, Supreme Court held in *Aruna Shanbaugh v. Union of India*).*

Keywords: *Article 21, Right to life and personal liberty, right to basic livelihood, right to education, right to live in pollution free environment, right to privacy, right to medical care, right against sexual harassment in workplace, right to travel, right to die with dignity.*

I. INTRODUCTION

“No person shall be deprived of his life or personal liberty except according to procedure established by law.” – Article 21 of the Constitution of India

The Article includes two major rights: (i) right to life, and (ii) right to personal liberty. Justice Field observed, *“Life is something more than mere animal existence. Thus, it embraces within*

¹ Author is a student at Amity Law School, Noida, India.

*itself not only the physical existence but also the quality of life.”*² Right to life expands widely and includes many facets of life. It involves everything that is required for the smooth and sustainable running of a decent livelihood and living. Be it minimum wages for a laborer or a proper education of the young children, right to life includes everything from one’s birth to death.

Right to personal liberty involves freedom from arbitrary and unjust arrest, detention, and false/wrongful confinement. It also involves to ensure one’s safety and security. The International Convention on Civil and Political Rights (ICCPR) declared that everyone has the right to liberty and security. Article 9 of the ICCPR which talks about right to liberty, security, protection from arbitrary arrest and detention, rights of arrested persons are all provided for in the Constitution of India.

Article 22 of the Constitution of India provides for protection against arrest and detention in certain cases. It’s clause (1) states that a person cannot be arrested without being informed of the reasons for which they are arrested, and such person must be allowed to consult a lawyer of their choice. Clause (2) states that such arrested person cannot be detained for more than 24 hours and must be taken to the nearest magistrate. Every person is provided with fundamental rights and for a person who is being arrested there are certain rights which must be kept in mind and cannot be snatched.

In the case of *D.K. Basu v State of West Bengal*³ the Supreme Court issued guidelines to be followed during arrest in order to control the custodial deaths. The guidelines are as follows:

- While investigating and interrogation of the accused, police personnel must refrain from using third-degree tactics.
- Checking the working environment, training, and orientation of police officers with basic human values must be prioritized.
- When it comes to extracting information from dangerous criminals, the police should adopt a balanced approach.
- At the time of the arrest, the police officer in charge must have a written memo, and at least one member of the accused’s family must be present.
- Police officers must adhere to the provisions of the Constitution of India as given under Articles 21 and 22.

² *Munn v. Illinois*, 94 U.S. 113 (1876)

³ AIR 1997 SC 610

- The arrested person must be made aware of his basic rights at the time of his arrest, and the court has prescribed specific preventive steps that must be taken by the police officer in charge at the time of an accused's arrest.

The above case set the standard for police officers for making any arrest in consonance with the provisions of right to personal liberty as given under Article 21 and also adhering to Article 22. This case protects the aspects of human rights.

Through the case of *A.K. Gopalan v. State of Madras*⁴ the Supreme Court ruled that personal liberty amounts to freedom of body and nothing else. In *Maneka Gandhi v. Union of India*⁵ the Supreme Court overturned the A.K. Gopalan case's ruling and held that any procedure that is depriving someone of their life or personal liberty must be reasonable and just and arbitrariness cannot be tolerated. Personal liberty includes being free from unfair and unjust detention.

(A) Research Questions –

By researching and writing this paper, the author aims to comprehend the following:

- What is the Scope of Article 21?
- Interpreting the different landmark judgments.
- What are the new changes and recent developments?

(B) Research Objective –

This paper is written to understand Article 21 of the Constitution of India in a comprehensive and elaborate manner and learn about the various rights falling under Article 21.

(C) Scope of Article 21 –

Article 21 guarantees multiple rights. Its scope is wider and there are many landmark cases that provide new interpretations and rights which get added under the ambit of the very Article 21.

II. RIGHT TO LIVE WITH HUMAN DIGNITY

The word dignity is originated from the Latin term *dignitas*, meaning worth, esteem, high status, reputation. The Universal Declaration of Human Rights (UDHR) established the idea and concept of human dignity after the end of second world war. The Universal Declaration of Human Rights in its preamble mentions that human dignity, and human rights are the important members of the human family and is the basic foundation of freedom, justice, and peace in the

⁴ AIR 1950 SC 27

⁵ AIR 1978 SC 597; (1978) 1 SCC 248

world.⁶

Dignity helps define one's self-worth, self-esteem, and confidence to enjoy the quality of life. Humans value dignity and it falls under the right to life as dignity acquired with hard work helps one run life peacefully. Any act that derogates or makes one lose their dignity must be considered as violation of the fundamental right to life.

In the case of *Maneka Gandhi v. Union of India*⁷ the Supreme Court interpreted Article 21 and the judgment was pronounced unanimously by a 7-judge bench. In the case, the petitioner's passport which was issued on June 1st, 1976, as per the Passport Act, 1967 was ordered to be surrendered on July 2nd, 1977. The act of the Passport Office was considered as arbitrary and unjust because no grounds and reasons of such order was informed to the petitioner. The petitioner approached the Supreme Court and claimed that Right to Personal Liberty was violated under Article 21 of the Part III of the Constitution of India. The judgment of the case widened the scope of Article 21 and held that any procedure established by law must not be arbitrary and unjust and every law must be in consonance with the golden triangle of Articles 14, 19 and 21.

In the above-mentioned case it was also stated that Right to Travel Abroad is very well within the meaning of Right to Personal Liberty of Article 21 as stated in the case of *Satwant Singh Sawhney v. D. Ramarathnam*.⁸

Again the Court held that any procedure that deprives a person of their life or personal liberty must be fair, and just. It cannot be arbitrary and irrational.⁹ The right to life and personal liberty falls under Article 21, a Fundamental Right, and the Court's goal should always be to broaden the reach and scope of the Fundamental Rights rather than to narrow their meaning and content. The fundamental right to life is the most precious human right and, as such, should be interpreted broadly in order to increase its significance by enhancing the dignity and worth of an individual and their life.

In a case, a letter to one of the Judges was made into a *habeas corpus* writ petition. The letter was about the torture done to one of the prisoner (Prem Chand) by a jail warden. The Court issued notices and even appointed *amicus curiae* in order to visit the prison, verify the documents and examine the witnesses. The report of the *amicus curiae* clearly stated that there

⁶ United Nations, Peace, dignity and equality on a healthy planet, Universal Declaration of Human Rights | United Nations, (last visited June 20th, 2022).

⁷ 1978 AIR 597, 1978 SCR (2) 621

⁸ 1967 AIR 1836, 1967 SCR (2) 525

⁹ Francis Coralie Mullin v. Union Territory of Delhi, 1981 AIR 746, 1981 SCR (2) 516

had been inhuman torture done and serious injuries were caused to the prisoner who was later moved to the Irvin Hospital. The Court held that in the eyes of law, prisoners are persons and not animals. Further, it was stated that fundamental rights must not be taken away from a person even inside prisons although few rights due to detentions are removed; that does not allow them to be robbed off of their right to life and personal liberty. The integrity of physical and mental health is important for a prisoner for their reformation.¹⁰

In the case of *Aruna Shanbaugh v. Union of India*, a question arose whether right to life includes right to die. In this case, the concept of euthanasia application in the hospitals was clarified. The Supreme Court of India held that passive euthanasia can be practiced but only on case-by-case basis and active euthanasia still remains illegal. Even the process of passive euthanasia must take place in the presence of a team of medical experts of neurologist, physician, psychiatrist with the permission of not less than 2 judges.

Euthanasia is also known as mercy killing. Euthanasia is performed on the patient who is suffering from a disease that is not curable in nature or a person who is in a position of irreversible coma state. Few countries such as the Netherlands, Switzerland, Belgium, Luxembourg, etc., have made passive euthanasia as legal.

Another question regarding right to life was with respect to suicide. Attempting suicide is a punishable offence under Section 309 of the Indian Penal Code, 1860. But many people raised queries that people who attempt suicide need proper counselling rather than imprisonment, thus, the Parliament passed the Mental Health Act, 2017. The objective of this act is to provide mental healthcare facilities for people who suffer from mental issues and also to promote and safeguard the rights of such persons.

III. RIGHT TO LIVE IN A POLLUTION FREE ENVIRONMENT

Environment includes everything present in the surrounding. The Constitution of India in its various provisions have mentioned about environmental protection. The early adaptation dates back to the Stockholm Declaration of 1972, because of which, through the 42nd Constitutional Amendment, Article 48A was added to Part IV (Directive Principles of State Policy) and Article 51A (g) was added to Part IVA (Fundamental Duties) of the Constitution of India.

Article 48A talks about the protection and improvement of environment and safeguarding of forests and wild life.¹¹ Article 51A (g) talks about the protection and improvement of natural environment including forests, lakes, rivers, and wild life, and to have compassion for living

¹⁰ Sunil Batra v. Delhi Administration, AIR 1978 SC 1675

¹¹ Constitution of India, Constitution of India (last visited June 20th, 2022).

creatures.¹²

Under Article 21, every citizen is entitled with the right to stay in a clean and safe environment. In the case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*¹³ the Supreme Court directed the formation of a Committee of Experts to identify the damages caused by the mining of limestone in the valley leading to the ecological imbalance. In this case, limestone was extracted by ways of blasting the hills with the usage of dynamite which is an illegal activity. The blasts caused landslides making it difficult for villagers to thrive. To solve this issue, the court applied the doctrine of Sustainable Development for creating a balance between advancement through development and protection of environment.

*“Sustainable Development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”*¹⁴

There have been many case laws related to environmental protection, in which most of the cases were filed by the public-spirited lawyer Shri. M. C. Mehta. In the case of *M. C. Mehta v. Union of India (Shriram Factories Oleum Gas Leak Case)*¹⁵, the doctrine of Absolute Liability replaced the rule of Strict Liability. For applying Strict Liability, three major essentials must be looked into, firstly, some dangerous substance must have been brought by a person onto their land, secondly, that dangerous substance must escape the premises of the person who brought it, and thirdly, the usage of the land must be for a non-natural purpose. In absolute liability, any organization that is engaged in the business of production of hazardous substances could be escaped from the eyes of the law for any accidents caused.

In the case of *Vellore Citizens Welfare Forum v. Union of India*¹⁶ the Supreme Court held that the principle of Sustainable Development must be adopted in order to prevent such pollution and contamination caused to the drinking and bathing water source (River Palar in Tamil Nadu). The pollution was caused due to the release of chemicals by the tanneries and other industries into the River Palar.

Simply breathing does not amount to right to live but the very right includes many other rights as well. Right to live in a surrounding free from air pollution to breathe fresh air, free from water pollution to access clean water for drinking and other purposes, free from land pollution to protect the soil fertility and agricultural purpose of land, free from noise pollution to live in

¹² Aaptaxlaw.com, 51A Constitution| Fundamental duties| Article 51A of Constitution of India 1949 (aaptaxlaw.com) (last visited June 20th, 2022).

¹³ 1985 AIR 652, 1985 SCR (3) 169

¹⁴ Academic Impact, Sustainability | United Nations (last visited June 21st, 2022)

¹⁵ 1987 AIR 1086, 1987 SCR (1) 819

¹⁶ AIR 1996 SC 2715: (1996) 5 SCC 647

peace and any other form of pollution. In the case of *Subhash Kumar v. State of Bihar*¹⁷ the Supreme Court held that under Article 21, right to enjoyment of pollution free environment for full enjoyment of life is included. If any element is threatening the quality of life, violating the existing laws, then the citizens have right to constitutional remedy for infringement of their fundamental rights under Article 32 of the Constitution in order to remove the elements causing harm to life.

Just as so it is the right of every citizen to live in a pollution free environment, it is also their fundamental duty to take all the necessary steps to prevent pollution. Polluter Pays Principle was applied in the case of *Enviro-Legal Action v. Union of India*.¹⁸ The Polluter Pays Principle states that it is the duty of the polluter, i.e., the person causing pollution must be the one paying the price for it as a punishment. Hazardous industries must take all the steps to prevent polluting the environment as pollution can cause harm to the living and the means for such living.

IV. RIGHT TO LIVELIHOOD

Earlier, right to livelihood was not included within the ambit of Article 21, but later in the case of *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni*¹⁹ the Court held that right to livelihood will very much fall within the scope of right to life under Article 21.

In the *Pavement Dwellers Case*²⁰ the Court held that right to livelihood is borne out of right to life. The scope of Article 21, right to life is broad and far-reaching. It does not simply mean that life cannot be extinguished or taken away, as, for example, by the imposition and execution of a death sentence, unless done so in accordance with legal procedure. This is only one facet of the right to life. The right to livelihood is an equally important aspect of the right to life because no one can live without a means of subsistence.

Livelihood is a very basic need for any human. In the Constitution of India, Article 39 clause (a) provides that the state must provide its citizens with the right to have an adequate means of livelihood²¹ under the Directive Principles of State Policy (Part IV of the Constitution).

Livelihood includes the means for a living, such as food, clothing, shelter, health, hygienic living and working conditions and more. Even clause (e) of Article 39 provides for right to livelihood by stating that health and strength of men, women, and children cannot be abused

¹⁷ (1991) 1 SCC 598

¹⁸ AIR 1996 SC 2715

¹⁹ 1983 AIR 109, 1983 SCR (1) 828

²⁰ *Olga Tellis v. Bombay Municipal Corporation*, 1986 AIR 180, 1985 SCR Supl. (2) 51

²¹ INDIA CONST. art 39 cl. (a).

and it is the duty of the state to ensure that they do not do the work because of economic pressures that is not suitable for their age and strength.

Right to shelter falls under livelihood. In the case *U.P. Avas Vikas Parishad v. Friends Coop. Housing Society Limited*²² the Court identified right to shelter as a fundamental right falling under the scope of Article 21. It was identified so as to provide basic civic amenities and facilities to the poor and provide them with opportunities to build a house.

In another similar case²³, the Supreme Court held that shelter protects the human from exterior dangers. Inside a safe shelter a human develops opportunities to grow in several ways such as mentally, physically, and intellectually. The right to shelter must include a safe space with a decent structure which has clean and hygienic surroundings that includes hygienic environment with water and electricity facilities, sanitation, and good roads. Food is one of the basic necessity of life and falls within the meaning of livelihood. Right to healthy food is included under right to livelihood. Article 47 under Part IV states that it is the duty of the state to increase the nutrition level and the standard of living in order to improvise the public health. Right to food is an integral part of the basic structure of the constitution.

The fundamental right to be free from hunger is provided in Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESR). It states that countries which are a part of the covenant must ensure that right to free from hunger, production, conservation, and the methods of distribution of food are improved. Further, the import and export of food must ensure equitable distribution.

V. RIGHT TO EDUCATION

Education is said to be one of the essentials that fulfils the right to life and dignity. In the case of *Mohini Jain v. State of Karnataka*²⁴ where the constitutional validity of capitation fee charged by educational institutions was challenged. In this case, the students with government seats were charged Rs. 2,000, the students who did not secure government seats from the state (Karnataka) were charged Rs. 25,000 and students of different state than Karnataka who did not secure government seats were charged Rs. 60,000. The question was that whether this is violative of Article 14 and right to education guaranteed under directive principles or not. The Supreme Court held that right to education contained in Part IV of the Constitution that involves Directive Principles of State Policy is intended to provide education to the citizens.

²² 1996 AIR 114, 1995 SCC Supl. (3) 456

²³ Chameli Singh v. State of Uttar Pradesh. 1995

²⁴ 1992 AIR SCC 1858

Right to education is a part of right to life.

In a similar case, *Unni Krishnan v. State of Andhra Pradesh*²⁵ the Supreme Court held that right to education is very well within the scope of Article 21 and is always in conformity with Article 41 of Part IV. Accordingly, to make education a fundamental right, Article 21A was inserted into Part III of Fundamental Rights of the Constitution in the year 2010.

“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” – Article 21A of the Constitution of India

From this it can be inferred that it becomes the duty of the state to ensure that every child gets access to education up to the age of fourteen years. Article 45 of the Part IV stated earlier that the state must provide free and compulsory education to all children up to age of fourteen but it was amended and made up to the age of six when Article 21A was inserted.

Even Article 15 includes education whereby clause (3) and (4) talk about reservation in educational institutions (protective discrimination). Article 30 clause (1) states that minorities have the right to establish educational institutions of their choice.

Article 24, and clause (e) and (f) of Article 39 protect children from child labour, ensures that children are not forced by the economic conditions to do the work that is not suitable for their tender age, and provides opportunities for children to develop in a healthy manner with dignity, liberty, protection from exploitation, abuse, and abandonment.

Education not only amounts to bookish knowledge, but it becomes the most important facet of life. Literacy helps one make their livelihood more dignified.

VI. RIGHT AGAINST SEXUAL HARASSMENT AT WORKPLACE

Sexual harassment is a punishable offence under Section 354A of the Indian Penal Code, 1860. The section states that any man who tries to have physical contact against the will of a woman, or demands for sexual favours, or shows her pornography forcefully, or makes any sexual remarks on her, will be deemed to be guilty of sexual harassment and will be punished with rigorous punishment for three years or fine or both.²⁶

In the case of *VISHAKA v. State of Rajasthan*²⁷ the issue regarding sexual harassment at

²⁵ 1993 AIR 217, 1993 SCR (1) 594, 1993 SCC (1) 645, JT 1993 (1) 474

²⁶ Law Rato, IPC Section 354A - Sexual harassment and punishment for sexual harassment [1] - Punishment and bail (lawrato.com) (last visited July 1st, 2022).

²⁷ (1997) 6 SCC 241

workplace was raised stating it to be violative of Article 14, 15, 19 (1)(g), and 21 of the Constitution of India.

In the case, the victim Bhanwari Devi was a women working under a Women's Development Project (WDP) in the year 1985. For the purpose of her job, she took up a case of attempted rape where she successfully brought justice to the victim.

In the year 1992, she took up another case where an infant girl was about to be married off by her family members. Child marriage is illegal, thus Bhanwari made a complaint and the Sub-Divisional Officer and the Deputy Superintendent of Police went to stop the marriage, nevertheless the marriage was held the next day. The family members were furious that police had come because of Bhanwari therefore, 5 men (4 of the infant girl's family members and one family friend) raped her brutally and even attacked her husband. Bhanwari's rape case came to the court and due to political connections, the accused were acquitted.

This angered the women activists and a women's group named 'VISHAKA' filed a Public Interest Litigation and writ petition of *mandamus*. The issues raised were that does sexual harassment at the work place violate Article 14, 15, 19 (1) (g), and 21 of the Constitution of India.

The Court held that there is a dire need of a legislation which would govern sexual harassment at the work place. Section 354 and 354A of the Indian Penal Code, 1860 were referred to and the Court issued important guidelines governing the same. These guidelines were established by the Supreme Court of India in 1997 to protect the safety of women in their place of work. After Bhanwari's case, many women groups came forward and demanded for rights to protect their safety at their place of work because during that time there were no specific legislations governing protection of women from sexual harassment at workplace.

The VISHAKA guidelines include the following:

1. *Safe Working Environment*: Every employer is duty bound to ensure that the working environment is safe for every employee of the organisation. The steps to ensure so must include the protection of interest of women employees and disciplinary committees to take action against those who harass or mistreat any women employee.
2. *Filing of Complaint*: Every employer is obligated to file a complaint against the employee who commits any offence punishable under the Indian Penal Code, 1860.
3. *Complaint Redressal Committee*: Every organization must have a Complaint Redressal Committee to take complaints from the employees and aid them to solve their issues and grievances.

4. *Assistance to Sexually Harassed Employee:* Any women employee who is sexually harassed by another must be provided assistance from the employer in order to reach the required justice.
5. *Creating Awareness:* Employees must have the knowledge of legislations and rights related matters concerning sexual harassment and safety. Employers must spread awareness through various methods such as seminars to make sure that women employees know their rights.
6. *Government's Duty:* It is the duty of the State to expand the scope of these guidelines as ensure that proper legislations as passed so that even private sector organizations become duty bound to follow these guidelines.

In 2013, the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act was passed to implement the above-mentioned guidelines in a more stricter sense. This act successfully widened the scope of protection of women of sexual offences at the work place even though there are still cases of harassment but this Act works as a shield to protect women.

VII. CRITICAL ANALYSIS AND CONCLUSION

For a life to take birth, many hardships are faced. For that living being to thrive through is yet another long battle. During the span of life, one is taken care of by the surrounding in all possible ways. A good governance can be defined by looking at how well the representatives are able to protect the rights and fulfill the required duties. The simple yet very important rule that no one is above that law makes administration more easier.

Right to life and personal liberty guaranteed as a fundamental right under Article 21 of the Constitution of India (Part III) is one of the most important right for mankind as it ensures that every individual is provided with all the means of livelihood, a hygienic and pollution free environment, right to live with dignity and also right to die with dignity, right against protection from different kinds of harassments, right to education, right against inhuman treatment, and many other rights.

All the above-mentioned rights are recognised to fall under the ambit of Article 21 by the Supreme Court of India. Over the years many cases before the courts have made it possible to deeply interpret Article 21's scope and agenda. Be it the right to move freely across the country through the *Maneka Gandhi v. Union of India* case or be it dying with dignity as held in the case of *Aruna Shanbaugh v. Union of India* or be in educational rights as held in different cases such as *Mohini Jain v. State of Karnataka* and *Unni Krishnan v. State of Andhra Pradesh*, the

courts have always provided and recognized the interpretations of Article 21 carefully.

Rights such as right to choose a life partner, right to privacy, right to speedy trial, right against unlawful detention, right to legal aid, right to information, right to reputation, right to be heard, right to a fair trial, right to medical facilities, etc., all fall under the scope of Article 21.

It becomes the duty of the state to ensure that such rights are equally provided to everyone and not violated. Article 32 acts as a constitution remedy in case of violation of the Fundamental Rights. Any person whose fundamental rights are violated can directly approach the Supreme Court to seek remedy under Article 32. Supreme Court has the right to issue writs under Article 32 which include 5 types of writs *Habeas Corpus* (to bring the body) *Mandamus* (we command), *Quo Warranto* (by what authority), *Certiorari* (to be certified) and *Prohibition* (to forbid). The High Courts have to same power under Article 226.
