

Polity Class 20

6th September, 2023 at 9:00 AM

ARTICLE 21 (09:10 AM)

- It states that No person shall be deprived of life or personal liberty except according to the procedure established by law.
- There are three requirements to be satisfied by a law:
- There must be a law made by a competent authority.
- The law must provide a procedure to deprive a person of life or personal liberty.
- The procedure provided must be followed by the state to deprive the person.
- **Maneka Gandhi vs. Union of India Case**
- She argued that:-
- The term 'public interest' on the basis of which the govt has made the order is vague and subjective.
- The order to confiscate her passport is violative of Article 21 as well since the procedure to deprive a person of life and personal liberty must be just, fair and reasonable.
- The denial of the right to be heard is violative of Article 14.
- The order is violative of Art 19 (1) as well since the grounds are not prescribed in this article.
- **A K Gopalan vs. State of Madras case**
- In this case, Gopalan argued that the order of preventive detention made against me was violative of Art 21.
- He argued that the procedure under Article 21 must be just, fair and reasonable. The law must also be just, fair and reasonable.
- He also argued that his rights under Article 14 and Art 19(1) (d) have also been violated.
- American constitution contains Due process of law- No person shall be deprived of life, liberty and property except according to the due process of law.
- According to Article 21 of the Indian Constitution, A person shall not be deprived of life and personal liberty except according to procedure established by law.
- In such a situation, the court must ensure that a valid law made by a competent legislature has provided a procedure to deprive a person of life and personal liberty and that the procedure has been followed.
- The Court is supposed to keep a check on executive actions alone and not look into whether the law itself is just, fair and reasonable or not.

- In other words, according to this concept, the court can not examine the validity of legislative actions.
- In the A K Gopalan case, the court stated that Articles 14, 19 and 21 are mutually exclusive and there is no need to ensure that a law depriving a person of life and personal liberty according to Art 21 should satisfy the conditions under Articles 14 and 19 as well.
- In the Maneka Gandhi case, the court held that are not mutually exclusive and it is the duty of the court that a law depriving the rights of a person under Art 21 does not violate Art 14 or Art 19. In other words, Art 14, 19 and 21 are not mutually exclusive.
- The court also stated that the procedure established by the law to deprive a person of life and personal liberty must be just, fair and reasonable.
- In other words, the court has the power to examine the legislative actions as well.
- Therefore, the renewed provision of Article 21 should be interpreted as "No person shall be deprived of life and personal liberty except according to just, fair and reasonable procedure provided by a valid law"

EXPANDED MEANING OF ARTICLE 21 (10:37 AM)

- In the aftermath of the Maneka Gandhi case, the court acquired an activist position and constantly expanded the ambit of fundamental rights.
- The most important aspect of the judgment was that it expanded the meaning of the Right to life to include a wide range of unenumerated rights.
- The court through its judgements has stated that the Right to life under Art 21 does not mean mere animal existence rather it includes all those things that make life worth living.
- If any person is denied the right to live with dignity, it would also be considered a denial under Article 21.
- The ambit of the Article 21 has been expanded over the years:
- Right to speedy justice- Hussainara Khatoon vs. State Of Bihar
- Cases related to the environment-
- Right to a healthy and clean environment- M C Mehta vs. Union of India
- Right to sustainable development- N D Jayal vs. Union of India
- Right to pollution-free air and water- Subhash Kumar vs. State of Bihar
- Pollution from pollution hazards due to the use of pesticides- Ashok vs. Union of India case
- Cases related to personal liberty
- Right to choose one's sexual orientation- Navtej Singh Johar vs. Union of India case
- Right to choose one's life partner- Shakti Vahini vs. Union of India case

- Right against phone tapping- R M Malkani vs. State of Maharashtra
- Right to reputation- Kiran Bedi vs. Committee of Enquiry
- Cases related to social issues
- Right against sexual harassment at the workplace- Vishakha vs. the State of Rajasthan
- Right to livelihood- Olga Tellis v. Bombay Municipal Corporation
- Right to education- Mohini Jain vs. the State of Karnataka
- Right to Health- Vincent vs. Union of India case
- Right to die with dignity- Aruna Shaunbagh vs. Union of India

ARTICLE 23 AND ARTICLE 24 (11:21 AM)

- Article 23 prohibits activities such as trafficking in human beings, begar and other such activities.
- Trafficking in human beings refers to the sale and purchase of human beings as if they are inanimate objects. For ex- Slavery, prostitution etc.
- Begar is a form of forced labour where an individual is forced to work without wages or below a minimum wage.
- Forced labour includes those situations where a person is forced to work against his wishes.
- Article 23 (2) is an exception to the principle embodied in Article 23(1).
- It allows the state to impose compulsory service for public purposes.
- The idea is to keep the doors open for conscription in the armed forces if the situation demands.
- It also lays down the grounds on which discrimination is prohibited while imposing compulsory services.
- A notable omission from these grounds is that of sex.
- Article 24
- As per the constitutional makers, child labour is an inhumane practice as it snatches away opportunities for a normal childhood from a person. Thereby hampering the growth of an individual.
- The Parliament enacted the Child Labour Prohibition and Regulation Act 1986 making it a punishable offence to employ children in hazardous occupations.
- The list of occupations has been mentioned in this act itself.
- In 2006, an amendment was made to this act that banned the employment of children as domestic help and working in establishments such as hotels and Restaurants.

- In 2016, another amendment was made that identified a new category in the form of adolescents between the ages of 14 to 18 years who are prohibited from working in hazardous occupations.
- In the *M C Mehta vs. Union of India* case, the petitioner invoked Art 32 and sought the intervention of the court to prohibit the engagement of children in the manufacturing of matches and fireworks at Sivakasi in Tamilnadu.
- The court qualified this industry as hazardous and ordered the suspension of any activity of children with an immediate effect.
- The court referred to the provisions of Art 39 (e) and Art 39 (f) stating that it is the responsibility of the state to ensure that children develop in a healthy manner and are not forced to work at places that are unsuitable to their age and strength.

FUNDAMENTAL RIGHT TO RELIGION (12:00 PM)

- **Article 25- Fundamental Right to Religion for individuals.** It is applicable to citizens and aliens.
- It is not an absolute right and can be restricted on certain grounds such as public order, public health, morality and other fundamental rights
- **Article 26- Fundamental Right to Religion to religious groups**
- **Article 27 - No compulsion to pay a tax to promote a religion**
- **Article 28- Prohibitions on religious education and worship in certain educational institutions.**
- **Freedom of conscience-**
- It is the absolute inner freedom of a person to mould his relations with his god in whatever manner he likes.
- **Right to profess one's religion**
- It means the Right to exhibit one's religion in overt acts such as teaching, practising and observing religious ideals in which there is no explicit intention of convincing others about one's religion.
- Taking out religious processions and wearing specific garments are also included in its ambit.

TOPIC OF THE NEXT CLASS- DISCUSSION ON FUNDAMENTAL RIGHTS (TO CONTINUE)