

# Article 21 of the Constitution of India provides:

- “No person shall be deprived of his life or personal liberty except according to procedure established by law.”
- Right to life and personal liberty is an essential part of human life.
- Right to life has been considered as the most fundamental of all human rights.
- “Right to life” under Article 21 of the Indian Constitution is supreme amongst all fundamental rights, enshrined in Part III of the Constitution of India

- The Indian judiciary widely interpreted and gave progressive meanings to the words of “life”, “personal liberty”, and “procedure established by law” for protecting individuals fundamental rights.
- Liberal interpretation of right to life and personal liberty led to the creation of new sub rights .
- Right to life is not an absolute right. State can impose reasonable restrictions by adopting some procedure.

- The expression “procedure established by law” in Article 21 does not mean any arbitrary law rather it **should be reasonable, fair and just.**

# Interpretation to the term “Life”

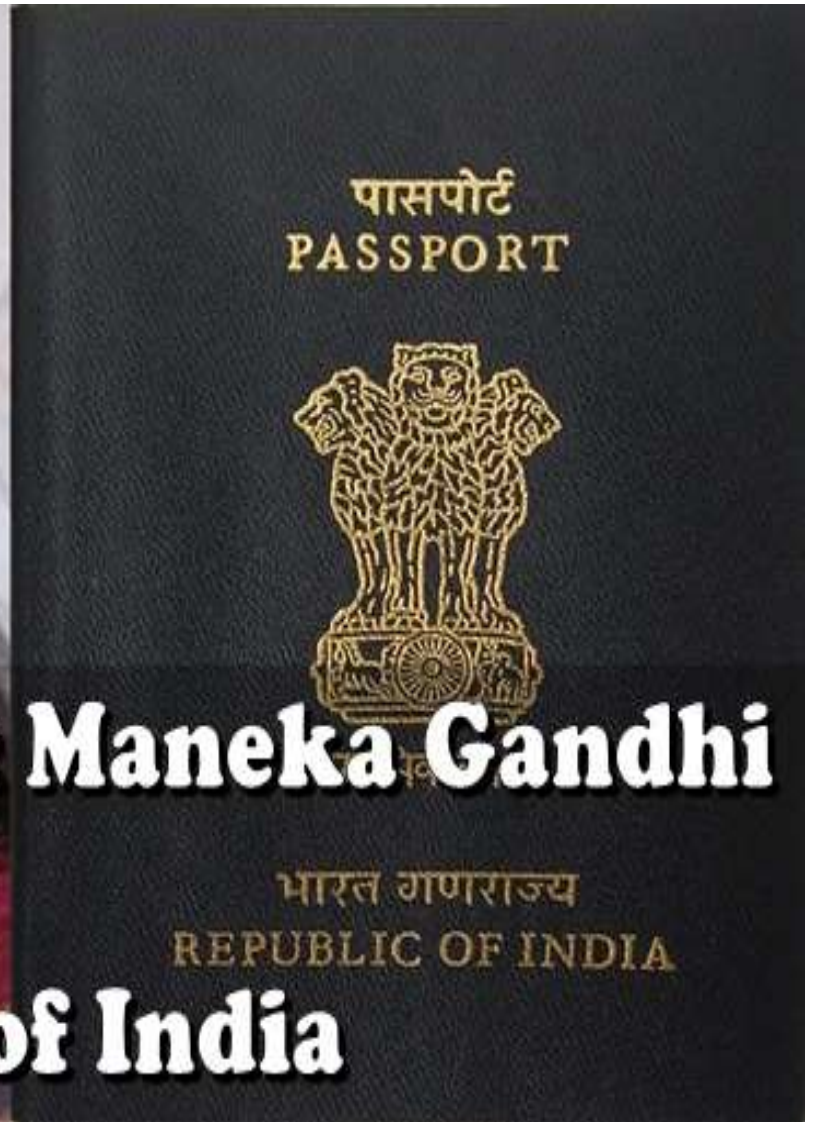
- *In Kharak Singh v State of UP and Sunil Batra v Delhi Administration*, SC upheld the view of US decision.
- The Supreme Court of India in ***Francis Coralie Mullin v Union Territory of Delhi* (AIR 1981 SC 746)** observed Right to life includes the right to live with human dignity.

# Interpretation to the term “Personal Liberty”

- *A.K. Gopalan v State of Madras*(AIR 1950 SC 27) , the Court refused to accept the liberal interpretation of Constitutional provisions.
- The **Court gave a narrow construction** to words such as “**personal liberty**” and “**procedure established by law**” used in Article 21 of the Constitution.
- Issues:
  1. Whether Preventive Detention Act 1950 is in violation of Article 19 and 21 of the Constitution?
  2. Whether ‘procedure established by law’ under Article 21 of the Indian Constitution is same as ‘due process of law’ under US Constitution?
  3. Whether is there any relation between Article 19 and 21 of the Constitution or they are independent in nature?

- Held that the '**personal liberty**' which is enumerated under Article 21 of the Constitution means nothing more than the liberty of the physical body, that is freedom from arrest and detention without the authority of law.

- In *Kharak Singh v State of UP*, the Supreme Court of India refused to accept the narrowest interpretation of the term “personal liberty”.
- The court held that the term “personal liberty” under Article 21 of the Indian Constitution included not only mere freedom from physical restraint but all other aspects of liberty.



**Landmark Case: Maneka Gandhi  
Vs  
Union of India**



# ***Maneka Gandhi v Union of India***

- A major breakthrough came in *Maneka Gandhi v Union of India*(AIR 1978 SC 597)
- In this case, the action of impounding Maneka Gandhi's passport was challenged on the ground that it violated her personal liberty. The authorities did not provide her any hearing before impounding her passport.

## Issues before the Court:

- Are the provisions under **Articles 21, 14 and 19** are anyway connected or they are mutually exclusive??
- Whether **Section 10(3)(c)** of Passport Act 1967 is a **violation of Article 14** and Article 19 of Constitution??
- Whether the power of passport authority to impound or revoke any individual's passport is arbitrary??
- Is "**Right to travel abroad**" included in Article 21 of the constitution??
- What is the **scope of "procedure established by law"** given in Article 21 of the constitution??
- Whether the word "law" in **Article 21** of the constitution can also be read as **rules of natural justice**??

# Judgment

- **The Supreme Court** not only broadened the meaning of the words “**personal liberty**” , but also adopted the concept of procedural due process within the words “**procedure established by law**”.
- **Art 21, 14 and 19** has a nexus established between these articles.
- Interest of sovereignty and integrity of the state” is not at all vague and wrong under Passport Act so thus rejected issue 2.

- The Court held that personal liberty includes a variety of rights among which one such right is the **right to go abroad**.
- The court said that the “law” in Article 21 does not only mean enacted law but also refers to rules and principles of natural justice.
- Any law prescribed under “procedure established by law” should be **just, fair and reasonable**. According to Justice Bhagwati “The procedure **cannot be arbitrary, unfair or unreasonable**”.

# Impact

- **Justice Krishna Iyer** said, " The spirit of a man is the root of Article 21. Personal liberty makes for the worth of the human person".
- The "**Golden Triangle Test**" was introduced by the court that any law which is depriving a person's liberty must not only answer Article 21 but meet also the requirements of Article 14 and Article 19 of the Indian constitution.

# Sub - Rights

- The decision of *Maneka Gandhi v Union of India* inspired the later decisions and made the courts realized to adopt new vistas of personal freedoms like
  - (i) Right to privacy
  - (ii) Right to education
  - (iii) Right to Die
  - (iv) Right to speedy trial
  - (v) Right to bail, Right to appeal
  - (vi) Right to humane treatment inside prison
  - (vii) Right against torture
  - (viii) Right to live with basic human dignity
  - (ix) Right to compensation to the victims
  - (x) Right to clean and healthy environment etc

# Article 21A

- **The Constitution (Eighty-sixth Amendment) Act, 2002** inserted **Article 21-A** in the Constitution of India to **provide free and compulsory education of all children in the age group of six to fourteen years** as a Fundamental Right.
- **The Right of Children to Free and Compulsory Education (RTE) Act, 2009** was introduced and enforced on 1 April 2010.

- Education gives a person human dignity. The framers of the Constitution realising the importance of education have imposed a duty on the state under **Art 45 as one of the directive policy.**
- **Article 45** - “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”.



# Judicial Decisions

- The object was to abolish illiteracy from the country.
- **86<sup>th</sup> Amendment, 2002 also inserted Article 51 A(k) as a fundamental duty.**
- **Mohini Jain vs State of Karnataka (AIR 1992 SC 1858)**
- **Unnikrishnan vs State of AP (1993) 1 SC 645**

# Judicial Decisions

- **Mohini Jain vs State of Karnataka (AIR 1992 SC 1858)**
  - the matter was raised by the petitioners that whether the right of education is a fundamental right under Article 21 of the Constitution?
  - the petitioner was Miss Mohini Jain who was denied admission because of high capitation fee.
  - **Held, charging capitation fee is illegal and right to education flows from Article 21.**

- **Unnikrishnan vs State of AP (1993) 1 SC 645**

The court did not agree with the decision of Mohini Jain that children of all ages have the right to education but **held that the right to education is free and compulsory between the age group of 6 to 14 years.**

-This led to the creation of 86<sup>th</sup> Amendment Act, 2002.

- Protection against arrest & detention
- Article 22 of Indian Constitution

- Arrest brings humiliation
- Arrest curtails the freedom of individual
- Arrest involves restriction of personal liberty of a person arrested and as such violates the basic human rights of liberty
- Though the Constitution of India as well as international covenants recognize the **power of the state** to arrest any person as a part of its major role in maintaining the law and order problem, the Constitution of India mandates that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

# Article 22

- Article 22 safeguards the rights of individuals who have been arrested and detained for committing an offence.
- Article 22 has contain 7 sub clauses:
- First part – Rights of an arrested person
- Second part – Protection to persons arrested under preventive detention laws

- (1) No person *who is arrested* shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

- i) Right To Be Informed Grounds Of Arrest
- (ii) Right To Legal Assistance
- (iii) Right To Be Produced Before The Magistrate Within 24 Hours



- Art. 22 (3) & (4) enact two exceptions to the fundamental rights otherwise guaranteed to the arrested persons under Clause (1) & (2),
- *i.e., these protections are not available in case of an enemy alien*
- a person arrested or detained under any law providing for preventive detention.

Cases:

***D.K. Basu v State of West Bengal***

**Joginder Kumar v. State Of U.P and Others 1994 AIR 1349**

# Safeguards Against The Order Of Preventive Detention

- **Art. 22 Clauses (4) to (7)**

i) No law providing for preventive detention shall authorise the detention of a person **for a longer period than three months** unless

- (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

ii) to **communicate the grounds** of detention to the detenu at the earliest;

iii) to afford him the earliest opportunity of **making a representation** against the detention order which implies the duty to consider and decide the representation when made, as soon as possible.

- 44<sup>th</sup> Amendment – reduced the period of detention from three to two months without the opinion of advisory board. However, it is not implemented yet.

- **Preventive detention laws:**
- 1. Preventive Detention Act, 1950 – valid till 1969
  - A.K.Gopalan vs State of Madras (1950)
- 2. Maintenance of Internal Security Act (MISA), 1971 – valid till 1978
- 3. National Security Act, 1980
- 4. Foreign Exchange Conservation and Prevention of Smuggling Activities (COFEPOSA), 1974
- 5. Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985 – repealed
- 6. Prevention of Terrorist Activities Act (POTA), 2002
- 7. Unlawful Activities (Prevention) Act, 2008

# Art 23

Prohibition of traffic in human beings and forced labour

- [\(1\)](#) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
- [\(2\)](#) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them
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# Art 24

- Prohibition of employment of children in factories, etc
- (i) No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment