

Here, we have dealt with the most important amendments made in the 1996 Act and there have been other amendment in the Act which should be looked after. We can say from this recent amendment that now clear demarcation has been strived to be made between Domestic and International Arbitration. However, the amendment still doesn't create clarity on

whether the proposed amendment is prospective or retrospective in nature. It has though acted as catalyst in the giving a new dimension to the Indian Arbitration law. It has to some extent included the recommendations of Law Commission and we can hope by these initiatives that India is on progressive path to create an arbitration hub and a hassle free system for people.

JUDICIAL INTERPRETATION - ARTICLE 21 OF THE CONSTITUTION OF INDIA

By

—Dr. MUDDU VIJAI, Advocate
High Court of Hyderabad for the State of Telangana
and the State of Andhra Pradesh

Introduction

Article 21 enshrines the fundamental right of all Indian citizens to the protection of life and personal liberty. Article 21 weaves a string of an endless yarn of welfare legislation. Its scope and interpretation has been time and again defined and redefined, giving it the widest possible amplitude and judiciary has played an important role in lining up the actions of a welfare State.

Article 21 is protection of life and personal liberty, number of persons shall be deprived of his life or personal liberty except according to procedure established by law. The Article prohibits the deprivation of the above rights except according to a procedure established by law Article 21 corresponds to the Magna Carta of 1215, the Fifth Amendment to the American Constitution, Article 40(4) of the Constitution of Eire 1937, and Article XXXI of the Constitution of Japan, 1946. Article 21 applies to natural persons. The right is available to every person,

citizen or alien. Thus, even a foreigner can claim this right. It, however, does not entitle a foreigner the right to reside and settle in India, as mentioned in Article 19(1)(e).

This article aims to examine the full scope of this constitutionally guaranteed freedom in light of the various judgments of the Courts and its contemporary application today.

In order to fully comprehend the entire scope of the article and how it is applied by the Courts, a brief examination of the principles and core concepts of the article is necessary.

Core Principles and Concepts

Protection of Life:—"precious and inalienable right under Article 21."

Personal Liberty:-Physical as well as psychological restraints are construed to be impeding personal liberty.

Exception being, “according to procedure established by law.”

Interpretations and Application by Courts

The Supreme Court and the Courts of India have increasingly sought to widen the interpretation and application of Article 21 to address the modern challenges in society including the proliferation and influence of technology on public and personal life and privacy, rights of women and children to safety, dignity and decency, as well as environmental challenges in an increasingly industrialized world.

The Courts in making judgments have historically taken cognizance of similar principles, laws and jurisprudence of other nations that embrace similarly democratic values. In their interpretation of the scope and application of Article 21, Indian Courts have also sought to interpret the law in accordance with India's obligations under International Law and various applicable Treaties. Over the years Article 21 has been read to include a variety of inherent rights without which the fundamental guarantee of right to protection of life and liberty would be rendered meaningless. It is in the context of these ‘inherent’ rights that the jurisprudence and our understanding of Article 21 continue to evolve. In the case of *Munn v. Illinois*, 94 U.S. 113 (1876), the Court referred to the observation of Justice Field, wherein he stated that by the term ‘life’ as here used something more is meant than a mere animal existence. Thus, it embraces within itself not only the physical existence but also the quality of life.

One of the first cases to examine the scope and meaning of Article 21, was the *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27, which dealt with the meaning of the right to personal liberty, and whether the right was applicable during a state of Emergency being in effect within the Indian territory. The judgment at the time held that

although the right to personal liberty was a constitutionally guaranteed fundamental right, it was not an absolute right and the Courts in their interpretation and application of this right, would be required to be mindful of the phrase contained within the Article 21, “except according to procedure established by law”. A state of Emergency being in effect and in the interests of preserving the security of the territory of India during wartime, it was held in the *Gopalan's* case (supra), that the Preventive Detention Act, 1950 was not in contravention of the Constitution and therefore in accordance with the procedures established by law..

Furthermore the Right to Personal liberty has been held by Courts to include the right to travel, go abroad, right against illegal detention. The expression personal liberty does not only mean freedom from: Arrest, Detention False or Wrongful confinement. The Supreme Court of India held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men. The expression procedure established by law has also been a subject-matter of interpretation. It means the procedure laid down by statute or procedure prescribed by the law of the State. In the *Satwant Singh Sawhney v. D. Ramarathnam*, (1967) 3 SCR 525, the Court held that the expression ‘personal liberty’ in Article 21 includes the right of locomotion and travel abroad. The Supreme Court in the *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, held that a citizen's right to travel abroad was indeed, part and parcel of the meaning of right to personal liberty. In this case the judgments of *Satwant Singh's* case (supra) and *E.P. Royappa v. State of Tamil Nadu and another*, (1974) 2 SCR 348, were relied upon and the judgment set forth that the right of personal liberty could not be curtailed in any manner unfair, unreasonable or arbitrary.

In the case of *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610, the Supreme Court

laid down the guidelines to be followed by the Central and the State investigating authorities in all cases of arrest and detention. The Court not only issued the guidelines but, also went to the extent that any failure by the officials to comply to such guidelines would not only subject them to departmental actions but would also amount to Contempt of Court. In the case of *Francis Coralie v. Union Territory of Delhi*, (1981) 1 SCC 608, it was held that right to live includes the right to live with human dignity with bare necessities of life such as: Adequate nutrition, Clothing and Shelter over the head and facilities for: Reading Writing and Expressing oneself in diverse form.

In order to give effective expression of the right enshrined under Article 21, the Courts have further recognized that Right to Life is meaningful only when it is a life of basic human dignity, decency, free from exploitation. The Courts have recognized that inherent to human life is each human being's need for shelter and a livelihood. In fact, the Courts having previously held *Sant Ram*, AIR 1960 SC 932, that livelihood being not expressed in terms under Article 21, the right to life could not be read to include any right to livelihood.

However, in the *Olga Tellis or Pavement Dwellers* case (*Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180) this position was reversed and the Court held that under Article 21, "An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live."

In a further expansion of the meaning, scope and application of Article 21, the

Court, in the *Francis Coralie Mullen's* case (supra), explained and elaborated on how the right to life without an inherent inclusion of the right to a life of dignity would be quite empty. It was held by the Honourable Judges 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.*" *Olga Tellis's* case (supra).

That the Right to Life must include within its scope the right to basic human decency, to work and live in humane conditions and to be free of exploitation was clarified in the *Bandhua Mukti Morcha v. Union of India and others*, 1984 AIR 802, in which it was held that: "*It is the fundamental right of everyone in this Country, assured under the interpretation given to Article 21 by this Court in Francis Mullen's case, to live with human dignity, free from exploitation. This right to live with human dignity, enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State-neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.*" Ibid.

Protection of life lacks true meaning without individuals having access to emergency medical services and basic medical care. In the *Pt. Parmanand Katara v. Union of India and others*, 1989 AIR 2039, the Court stated: "*Article 21 of the Constitution casts the*

obligation on the State to preserve life. Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way."

It was also held in the above cited *Katara's* case (supra), that any perceived or real harassment arising from assisting any patients in 'medico-legal' cases, by way of such medical professionals being required to appear in Court, give witness, make statements to the investigating police *etc.*, such harassment and any incidental delays arising therefrom shall be sought by both Courts and police to keep to a minimum and only when necessary.

In the *C.E.S.C. Ltd. Etc. v. Subhash Chandra Bose and others*, 1992 AIR 573, the Court cited the socio-economic justice aspect of the conditions of life that must be available to each citizen in order to truly and completely realize the inherent guarantees and promise contained in the Right to Life under Article 21. In this case, the Court invoked not only Article 21 but also the provisions under Universal Declaration of human rights, to illustrate the universality of this basic and fundamental right to life.

The Court stated: "*The health and strength of a worker is an integral facet of right to life. Right to health is a fundamental human right to workmen. The maintenance of health is a most imperative constitutional goal...*" Ibid. This was further reiterated in the *Consumer Education & Research Centre and others v. Union of India and others*, 1995 AIR 922, in which the Supreme Court citing its own previous judgments as well as the various previous judgments made in the other Courts of India stated that, "...it must be held that the

right to health and medical care is a fundamental right under Article 21..."

This inherent right to health under Article 21 was further expanded when the Supreme Court held that "*Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.*" *Subhash Kumar v. State of Bihar and others*, 1991 AIR 420.

In the *M.C. Mehta v. Kamal Nath*, (2000) 6 SCC 213, the Supreme Court reaffirmed the significance of the "doctrine of public trust", which enjoins Governments to protect the environmental and natural resources for public rather than permit private ownership or commercial endeavor's. Relying on the Public Trust doctrine, the Court clarified the restrictions imposed on Governmental authority and powers by public trust, stating that this principle being derived from English Common Law principle which heavily influences our Indian legal system casts the State and Government as the primary trustee of all natural resources on behalf of the public.

Right to life carries within it the criteria of quality of life and health, and this quality is prejudiced unless there is a recognition that individuals, communities and society have a right to clean environment, access to clean water and air, protection from the ill-effects of pollution which includes noise pollution as well. Citing previous judgments of the High Courts of India as well as its own prior judgments, the Supreme Court reiterated the "*right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution and noise pollution beyond permissible limits as an in-road on that right.*" *Noise Pollution v. In Re*, (2005) 5 SCC 733.

Right to protection of life, and life with human dignity has also been read to include the rights of safety and protection of women and children. The right against rape, honour killings, sexual harassment at the workplace, have been recognized to be inherent and essential in the interpretation of Article 21. The Supreme Court indicating the lack of adequate legislation in this matter, relied on the provisions of the Indian Constitution as well India's commitments under various international conventions and asserted the need for effective protections and guidelines to prevent sexual harassment at the workplace, stating "Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution." *Vishaka and others v. State of Rajasthan and others* on 13th August, 1997.

Citing previous judgments which have established Article 21 to include within its sweep the right to life of dignity and "all those aspects of life which go to make a life meaningful, complete and worth-living.", *Shri Bodhisattva Gautam v. Miss. Subhra Chakraborty*, 1996 AIR 922, the Court, in view of the increasing violence against women held that "Rape..... is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21." Ibid.

The Supreme Court has reaffirmed this stance in subsequent cases *The Chairman, Railway Board and others v. Mrs. Chandrima Das and others*, 2000 AIR 988 and it is now well established that the right to life and Personal Liberty as guaranteed under Article 21 contains within it the right of every woman and girl to be protected against rape, sexual assault, sexual harassment so as to give meaning to a life of dignity and personal liberty.

Apart from the expansion of interpretation of the Article 21 to include

specific protections for women, the Courts have also included within its ambit the rights of children, specifically the right to education. In the *Unnikrishnan J.P. and others Etc. v. State of Andhra Pradesh and others*, AIR 1993 SC 2178, citing previous judgments *Bandhua Mukti Morcha v. Union of India and others*, 1984 AIR 802 (wherein it was held – "...Article 21 ...must include...opportunities and facilities for children to develop in healthy manner and in conditions of freedom and dignity, educational facilities,...), regarding education being intrinsic to the quality of life, the Court determined that alongside the provisions included under the Directive Principles of our Constitution, it was necessary to recognise that education of every child was inherent to and indeed, flowed from the Right to Life as envisioned by the framers of our Constitution.

The Court postulated that "...right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution." *Unni Krishnan J.P. and others Etc. v. State of Andhra Pradesh and others*, 1993 AIR SC 2178. It was clarified by the Court that regardless of the other Constitutional provisions relating to education of children, Article 21 not only was applicable but ought to be read together with the other provisions in order to confer and establish the right of every child to education as a fundamental right implied within the meaning and scope of Article 21.

It was therefore held that, "The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21." Ibid.

The question of privacy of individual and whether there exists any fundamental right

of privacy that emanates directly from Right to life of dignity and personal liberty has arisen time and again before the Courts. While a more restrictive approach *Kharak Singh v. State of U.P. and others*, 1963 AIR 1295, was favoured initially by the Courts, with changing times, the jurisprudence has evolved to adopt a more liberal approach.

In the *Rajagopal* case, the Supreme Court held: “*The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21.*” *R. Rajagopal v. State of T.N.*, on 7th October, 1994, 1995 AIR 264. In recent year’s privacy and whether it is a right against the State has gained greater relevance owing to the nature and realities of modern life. Technology and its growing influence on our daily lives have resulted in increasingly blurred lines between private and personal life of the individual. Access by States, Governments and Organizations, to individual’s personal data and information is so pervasive that the privacy of the individual is increasingly compromised.

In the recent and the most debated case of Justice K.S. Puttaswamy (Retd.) v. Union of India and other, 2018 Online 1642, the Supreme Court’s 9 Judges Constitutional Bench held privacy to be a fundamental right under Articles 14, 19 and 21 of the Constitution of India. The Bench held that the right to privacy is a fundamental right protected under the Constitution. In the Aadhaar Card case, the Supreme Court, citing the evolving understanding and application of the right to privacy as interpreted by various judgments of Indian Courts, stated, “*firstly, “right to privacy” has multiple facets and though such right can be classified as a part of fundamental right emanating from Article 19(1)(a) and (d) and Article 21, yet it is not absolute and secondly, it is always subject to certain reasonable restrictions on the basis of compelling social, moral and public interest and lastly, any such right when asserted by the citizen in the Court of law then it has to go through a process of case-to-case development.*” Justice K.S. Puttaswamy’s

case (*supra*). “*Let the right of privacy, an inherent right, be unequivocally a fundamental right...*” *Ibid*.

The inherent right to life of dignity, protection of life and liberty requires respect and protection for individual’s private life, including personal information and as such the Courts have upheld the right of privacy to be within the scope and application of Article 21.

In recognition of the accepted principles of basic human rights as recognised internationally as well as within India’s own treaty obligations, the Courts have also recognized the right to social security and protection of family as well the right to know, *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.*, 1989 AIR 190. “*Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution*”. the right to information, *Essar Oil Ltd. v. Halar Utkarsh Samiti*, (2004) 2 SCC 392, (which is not absolute), Section 8(1), Right to Information Act, 2005, as being essential to the effective application of right to protection of life. Article 21 has also been applied to the rights of prisoners including in the understanding of right to speedy trial, *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 108, right to bail (not anticipatory bail), right against solitary confinement, *Sunil Batra v. Delhi Administration*, 1980 SCC (Cri.) 777, custodial violence, *A.G. of India v. Lachma Devil*, LAWS (SC) 1895-12-3, delayed execution, *T.V. Vatheeswaran v. State of T.N.*, (1983) 2 SCC 68, public hanging, *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 16, bar fetters (not absolute).

Limitations to the scope

Despite the Courts seeking to give liberal interpretation and application, there are certainly limitations to the provision contained in Article 21. A sentence of death/capital punishment is handed by Courts only in the

rarest of the rare cases, and being in accordance with the procedure laid down by the laws of the land and as such is intended to be a deterrent measure applied in the cases of the most heinous crimes.

In *Mohinder Singh v. State of Punjab*, (1977) 3 SCC 348, the Court citing the ruling under *Bachan Singh v. State of Punjab*, AIR 1980 SC 898, reiterated that, “The doctrine of “rarest of rare” confines two aspects and when both the aspects are satisfied only then the death penalty can be imposed. Firstly, the case must clearly fall within the ambit of “rarest of rare” and secondly, when the alternative option is unquestionably foreclosed. *Bachan Singh’s* case (supra), suggested selection of death punishment as the penalty of last resort when, alternative punishment of life imprisonment will be futile and serves no purpose. Hence, death penalty is not held to be in violation of the rights inherent in Article 21.

Furthermore, the right to life has not been recognized to include the right to die or commit suicide. However, the constitutionality of punishing a suicidal individual has been found to be violative of the principle of Article 21. In the *P. Rathinam v. Union of India*, 1994 AIR 1844, citing preceding judgments by the Indian Courts on the full scope of Article 21, the Supreme Court held that “.....right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life.”

Euthanasia however has been interpreted to be “within the scope of right to life of dignity”; *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648. The inherent right to life of dignity under Article 21, cannot be adequately or effectively applied without the right of individuals at the end of life to have recourse to accelerate the natural processes of death that are medically deemed to already be in process and their right against unnecessary suffering.

The Supreme Court has held that “..... the law of the land as existing today is that no one is

permitted to cause death of another person including a physician by administering any lethal drug even if the objective is to relieve the patient from pain and suffering.” *Common Cause (A Regd. Society) v. Union of India*, (2008) 5 SCC 511.

In the recent Passive Euthanasia case *Aruna Ramchandra Shanbaug v. Union of India and others*, (2011) 4 SCC 524, which examined and clarified further the *Aruna Shanbaug’s* case (supra) ruling, “The right to life including the right to live with human dignity would mean the existence of such a right up to the end of natural life. The Constitution Bench further explained that the said conception also includes the right to a dignified life upto the point of death including a dignified procedure of death or, in other words, it may include the right of a dying man to also die with dignity when his life is ebbing out. It has been clarified that the right to die with dignity at the end of life is not to be confused or equated with the right to die an unnatural death curtailing the natural span of life.”

Therefore, although in the *Aruna Shanbaug’s* case (supra), the Court disallowed the petition to withdraw life-support citing reasons of inability of patient to provide consent as well as the absence of family and/or next of kin, in the recent Passive Euthanasia ruling, it was reiterated that the withdrawal of life support and passive euthanasia was within the constitutional scope of the right to life of dignity provided a set of guidelines¹ were adhered to in order to safeguard the rights of the patient who may not be in a position to make such decisions herself.

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1. (a) The right to die with dignity as fundamental right has already been declared by the Constitution Bench judgment of this Court *Gian Kaur’s* case (supra) which we reiterate. (b). We declare that an adult human being having mental capacity to take an informed decision has right to refuse medical treatment including withdrawal from lifesaving devices. (c). A person of competent mental faculty is entitled to execute an advance medical directive in accordance with safeguards as referred to above.

Exceptions to the application of the Article 21

The exception to the application of Article 21 is included succinctly within the article itself.

“except according to procedure established by law.”

This preempts any undue extension or abuse of the inherent rights guaranteed by the Article 21. It cannot therefore be applied in case of arrest and detention of an individual if such arrest and detention is according to the procedures and rules under Indian laws.

Declaration of Emergency is a formal declaration by State or federal Government that as per Article of the Indian Constitution stipulates the suspension of certain rights including Article 21 as per the procedures and regulations provided in law.

In the *Habeas Corpus* case, *Additional District Magistrate, Jabalpur v. S. Shukla Etc. Etc.*, AIR 1976 SC 1, the constitutionality of the Presidential order was upheld since the Emergency procedures as set out in the Constitution expressly provides suspension of the rights conferred under Part III of

the Indian Constitution which includes Article 21.

It was stated that: “*The power of the President therefore extends under Article 359(1) to the suspension of the right to move any Court for the enforcement of the right to life and personal liberty. The President cannot suspend the enforcement of any right unless that right is included in Part III which confers fundamental rights. The President, in my opinion, would be acting within the strict bounds of his constitutional power if, instead of declaring the suspension of the right to enforce the right conferred by Article 21 he were to declare that “the right not to be deprived of life and personal liberty except according to procedure established by law” shall remain suspend during the emergency.*”

The judgments cited above which have echoed and reinforced the basic principles set out in the early decisions pertaining to *Maneka Gandhi's* case (supra), *Kharak Singh's* case (supra) and the *Justice K.S. Puttuswamy (Retd.)'s* case (supra), which explicated the significance and meaning of the phrase ‘procedure according to law’. “*Every act which offends against or impairs human dignity would constitute deprivation pro tan to 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.*”