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Demystifying Article 21: Heart and Soul of the Indian Constitution

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ABSTRACT

The fundamental objective and core principle of human life is to live and let live. Both in public and private spheres, we're all entitled to certain liberties which at no cost can be put at stake. Article 21 is like a shield enumerated in the Indian Constitution that extends protection to safeguard human life from prejudices and any violation of the same is met with legal ramifications. In the contemporary era, the ongoing debates around the legalization of same-sex marriage and the conflicts regarding the abolition of the death penalty have brought the unwavering significance of Article 21 to the forefront once again. But is this Article restricted to the right to life only? Or it's an umbrella that has given shelter to a myriad of concomitant rights which although aren't explicitly defined yet hold an integral place in the Constitution? This paper attempts to demystify the broad scope and ambit of Article 21 by throwing light upon the Golden Triangle of the Constitution, the expanded horizon of this article, and most importantly the theoretical interpretation of its significance in respect of Modern India and its not-so-modern approach towards life. And, in the end, this paper strives to draw an outline of the probable road map that can protect Article 21, the heart and soul of our Constitution, from every arbitrary intervention and violation.

Keywords: *Fundamental, constitution, safeguard, concomitant, demystify, significance, scope, intervention.*

I. INTRODUCTION

“Freedom is never dear at any price. It’s the breath of life. What would a man not pay for living?”- Mahatma Gandhi.

India, a Sovereign, Socialist, Secular, Democratic, and Republic nation, that stands on the very foundation of justice, liberty, equality, and fraternity. These objectives, although, are enshrined in the Preamble yet, attempts have been made time and again to jeopardize these ideals which form the bedrock of our Parliamentary Democracy. A democratic nation presupposes the existence of liberty for administrative convenience and most importantly good governance.

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Etymologically, the term liberty means “freedom” but different definitions have been laid down to make it more conspicuous.

According to **Merriam-Webster’s Dictionary**, liberty means “*The quality or state of being free, the power to do as one pleases, freedom from physical restraint, freedom from arbitrary or despotic control, the positive enjoyment of various social, political, or economic rights and privileges, the power of choice.*”

According to **Oxford Dictionary**, liberty means “*freedom to live as you choose without too many limits from government or authority.*”

Liberty is also an integral element of Natural Justice. The idea of an independent Judiciary, fairness, and access to justice will continue to be a far-fetched dream if there’s a transgression against the concept of natural justice. This doctrine is like a safeguard that protects people from halfway judgment. Liberty of thought, expression, belief, faith, and worship are the objectives that the Preamble of our Constitution secures for every citizen. But these will never become a reality if personal liberty is at stake. Hence, Article 21 was incorporated into the Constitution to secure the required protection of life, liberty, and property. It states:” *No person shall be deprived of his life or personal liberty except according to procedure established by law.*”

1. **The Golden Triangle Of The Indian Constitution:**

The widely recognized golden triangle of the constitution comprises of, Article 14,19, and 21 which makes it evident that these three articles are intermingled and interconnected. Article 14 of the Indian Constitution secures the right to equality before the law and equal protection of the laws for every citizen. It prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. This means that every person in India is entitled to equal protection of the law and equal treatment under the law, irrespective of their background or social status.²

All citizens of India are guaranteed certain freedoms under Article 19 of the Indian Constitution, including the freedoms of speech and expression, peaceful assembly, the formation of associations and unions, the freedom to move around India without restriction, and the freedom to engage in any profession or carry on any business or occupation.

Article 21 of the Indian Constitution guarantees the right to life and personal liberty to all persons. It ensures that no person shall be deprived of their life or personal liberty except

² Golden Triangle Of The Constitution Of India: Articles 14, 19 And 21, Legal Service India - Law, Lawyers and Legal Resources, <https://www.legalserviceindia.com/legal/article-10701-golden-triangle-of-the-constitution-of-india-articles-14-19-and-21.html>

according to the procedure established by law.

The interdependence and interconnection of these three Articles of the Constitution show that each of these Articles should be read and interpreted in the light of each other and not in isolation. The Indian Constitution's Golden Triangle is a reflection of its values and guiding principles which together form the Constitutional fabric of India that binds its citizens with harmony and fraternity. This is essential in upholding India's democracy and rule of law. It makes sure that everyone is treated fairly and has equal access to fundamental liberties and rights. Therefore, any violation of any of these three pillars of the Constitution can cause havoc and wreckage to the basic foundation of our motherland.

2. **The Evolution of Indian Society and the broadened horizon of Article 21:**

While discussing Article 21, one thing that must be kept in mind is that the interpretation of this Article shouldn't be restricted only to the right to life, as with the growing needs and changes in the socio-cultural domain, the ambit of this Article has widened which now encompasses a myriad of concomitant rights. Prior to Maneka Gandhi's ruling³, Article 21 only protected citizens' rights to life and personal liberty against the executive's arbitrary action and not from legislative action. However, following Maneka Gandhi's ruling, Article 21 now safeguards the right to life and personal liberty against both legislative and executive action. The right guaranteed in Article 21 is available not only to the 'citizens', but to the 'non-citizens' as well. This rationale exemplifies that the right to life, liberty, and property must be secured and protected at any cost irrespective of nationality and other measuring factors.

Art 21 requires certain prerequisites that must be fulfilled before a person is deprived of the property. Those are:-

- A valid and reasonable law must exist
- The law/legislation shall provide a procedure
- The procedure shall be just, fair, reasonable
- The law must adhere the provisions of Arts.14 and 19.

However, it's pertinent to throw some light upon the latter significant part of Art. 21 which is a "procedure established by law".⁴ In *A.K. Gopalan v State of Madras*,⁵ the Hon'ble Supreme

³ *Maneka Gandhi vs Union Of India*, Supreme Court, Jan. 25, 1978, 1978 AIR 597, 1978 SCR (2) 621 (India).
<https://indiankanoon.org/doc/1766147/>

⁴ DR J.N PANDEY, *CONSTITUTIONAL LAW OF INDIA* Pg 287-293 (Central Law Agency 2022) (1969).

⁵ *A.K. Gopalan vs The State Of Madras.Union Of India*, Supreme Court, May 19, 1950, 1950 AIR 27, 1950 SCR

Court held that the phrase "procedure established by law" does not refer to the American concept of "due process of law." In America, the "due process of law" phrase has been considered to apply to both substantive and procedural law; however, this is not the case in India. It is only intended to safeguard procedural law. There is no reason to embrace the meaning of the word "law" as the Supreme Court of America defined it in the phrase "due process of law" just because it appears in Article 21. In this decision, the majority ruled that the phrase "procedure established by law" must refer to a process outlined by state law.

3. **An array of rights under the umbrella of Article 21**

The scope of Article 21 is substantially broader, and it covers rights to human dignity, a means of subsistence, health, and clean air, among other things. A man's right to life encompasses all those parts of life that make his existence meaningful, complete, and worthwhile. It is vital to our own existence. It is the only article in the Constitution that has been interpreted as broadly as possible. A vast array of rights have found shelter, room to flourish, and nutrition under the protection of Article 21. Thus, the fundamental idea of the right to life is to have access to the minimal necessities, the minimum, and the basic needs that are necessary and inevitable for a person and his survival.

The scope and ambit of Article 21 were further widened in the case of *Sunil Batra v. Delhi⁶ Administration*. The Supreme Court stated in the case that the "right to life" comprises the right to live a healthy life, with human dignity, and take advantage of all of the faculties of the human body in their optimal state. It would even cover the right to the preservation of one's tradition, culture, heritage, and everything else that gives one's life significance. It involves the freedom to breathe freely, to rest peacefully, and to enjoy good health.

Another right which is of paramount importance is the right to free education. In *Unni Krishnan v. State of A.P.*,⁷ the purview of Article 21 was further expanded with the inclusion of the Right to Education in it.

The scope and ambit of Article 21 gradually incorporated various significant rights that once again kindled the fire of discourse.

A. Right to Privacy:-

88, (India). <https://indiankanoon.org/doc/1857950/>

⁶ *Sunil Batra vs Delhi Administration*, Supreme Court, Dec. 20, 1979, 1980 AIR 1579, 1980 SCR (2) 557, (India).

⁷ *Unni Krishnan, J.P. And Ors vs State Of Andhra Pradesh And Ors*, Supreme Court, Feb. 4, 1993, 1993 AIR 2178, 1993 SCR (1) 594, (India).

In a democratic society, “arbitrary intervention” of one’s privacy is a downright transgression of not only Article 21 but the basic human rights secured to its citizens as well. It’s needless to say, that a human being irrespective of his gender, caste, creed, or religion, is entitled to the right to privacy of his own, his family, marriage, procreation, motherhood, child-bearing, and education among other matters.

All people have the right to privacy just by virtue of being alive. Physical integrity, individual freedom, freedom of speech, expression, and movement are also included. Thus, privacy encompasses more than just the physical body and also includes integrity, individual autonomy, data, voice, consent, objections, movements, thoughts, and reputation. As a result, it is a relationship that is neutral and free from arbitrary intervention, unwelcome intrusion, or invasion of personal space on the part of the state. All contemporary societies agree that maintaining one's privacy is crucial, and they do it not only for ethical considerations but also for legal ones.

The petitioner in *Kharak Singh v. State of U.P.* questioned if article (19)'s fundamental rights were violated by chapter 22 of U.P. Regulations. (21).

However, as a matter of law, the Supreme Court assessed whether surveillance conducted in accordance with the challenged chapter 22 of the U.P. Police rules constituted a violation of any of the essential liberties protected by part III of the constitution. Later, the issue of whether or not the right to privacy is a basic right was brought up.

The petition was found to be partially successful, and Regulation 236(b), which permitted domiciliary visits, was declared unconstitutional by the majority. The motion for Rest was denied.⁸

In the *State of Maharashtra v Madhukar Narain*, it was held that even a woman of easy virtues is equally entitled to the right to privacy. In this instance, a police inspector visited the house of a woman in his uniform and demanded to have sexual intercourse with her. He tried to coerce her when she refused. She screamed loudly. He argued in the Court of Law, that because she was a lady of simple virtue, her testimony could not be trusted. The Court quashed his plea and convicted him of violating her right to privacy under Article 21.⁹

⁸ *Kharak Singh vs The State Of U. P. & Others*, Supreme Court, Dec. 18, 1962, 1963 AIR 1295, 1964 SCR (1) 332, at XXXX (India).

⁹ *State Of Maharashtra And Another vs Madhukar Narayan Mardikar*, Supreme Court, Oct. 23, 1990, AIR 1991 SC 207, 1991 (61) FLR 688, JT 1990 (4) SC 169, (1991) ILLJ 269 SC, 1990 (2) SCALE 849, (1991) 1 SCC 57, 1991 (1) UJ 109 SC, (India).

B. Right to health and medical assistance:-

In *Paramananda Katara v Union of India*,¹⁰ it was held that providing people with medical aid and extending assistance to them in their time of need is the professional obligation of all doctors, whether government or private, to preserve life without waiting for legal formalities to be complied with by the police under Cr. P.C. It's the primary responsibility of the State to preserve life and to make sure that the life of every citizen is protected and not at stake. Therefore, the ambit of Article 21 was expanded to incorporate the right to health.

C. Right to sleep:-

Superficially, the importance/significance of this right isn't paid enough attention but from the perspective of Article 21, the right to sleep is as important as any other fundamental right. In that regard, it's pertinent to mention the case of *Ramlila Maidan v. Home Secretary, Union of India*.¹¹ In this case, it was held by Justice Dr. B.S Chauhan that the necessity of sleep in everyone's life is indisputable without which it's not possible for anyone to function properly. For the sake of health, the right to sleep can't be trivialized as it directly affects the quality of one's life. For the functioning of cognitive faculties, and balance of emotional health, sleep should be given equal importance as other rights. It's a necessity and not a luxury. It's known how deprivation of adequate sleep can affect the lives of every human being in various ways. It results in mental health issues as the mind gets disoriented, which disrupts the health cycle of people. Therefore, the right to have a sound sleep should also be considered constitutional freedom acknowledged under Article 21, and any interference with the same will be a blatant violation of basic human rights.

D. Right to die and Euthanasia:

Life and death are like the two sides of the same coin. Inevitability of the death can never be evaded, whether it comes naturally, or not. Article 21, apart from emphasizing the right to live with dignity, has also highlighted another basic human right, that's, the right to die. In that regard, the concept of euthanasia comes into being. Going by the literal meaning of euthanasia, it means deliberately taking away a patient's life, who's undergoing a terminal illness to relieve suffering. To be more specific, euthanasia can also be called mercy killing as it aims at freeing a terminally ill patient from the insufferable pain and its agonizing repercussions on his/her

¹⁰ Pt. Parmanand Katara vs Union Of India, Supreme Court, Aug. 28, 1989, 1989 AIR 2039, 1989 SCR (3) 997, (India).

¹¹ Re-Ramlila Maidan Incident Dt ... vs Home Secretary, Supreme Court, Feb. 23, 2012, (2012) 5 SCC 1, 2012 AIR SCW 3660,(India).

family members. Seeing loved ones sustaining the agony of terminal illness or fighting with irreversible coma every day is extremely doleful. In *P Rathinam v Union Of India*,¹² the Supreme Court decriminalized Section 309 I.P.C which made attempting to commit suicide a punishable offense. But this case opened a new door of discourse where the SC observed that the right to life and right to die goes hand in hand, and hence making suicide a punishable offense was arbitrary and draconian. If a person undergoing any mental trauma or health issues attempts to commit suicide, that never becomes a threat to society as long as he doesn't instigate someone else to do the same. Hence, Section 309 of IPC was held unconstitutional and void. Similarly, in several other cases like *Gian Kaur v State of Punjab*,¹³ in *Aruna Ramchandra Shanbaugh v Union of India*,¹⁴ the right to die was elaborately discussed along with further articulation of euthanasia.

II. MODERN INDIA AND THE CONTRAVENTION OF ARTICLE 21

The concept of freedom has an ancient origin, or perhaps its origin is non-traceable. It has existed since the era of Apes. We've come a long way since then, but the importance of this concept has remained unaffected. However, subversion of freedom and infringement of the same is on the rise. The recent ongoing debate on same-sex marriage and how the legalization of it can turn into a "threat" to society indicates the sheer transgression of Article 21.

Just like any other fundamental right, the right to get married to a person of one's own choice is also a fundamental right violation which would be equivalent to the transgressions of one's basic human rights. It was held by Supreme Court in *Lata Singh v State Of Karnataka*, that people have the freedom to select their spouses without being coerced and that the right to marriage is a crucial component of their right under Article 21. This ruling was made in lieu of the young people's right to life and to extend protection to those who want to marry the partners they personally select. The freedom to choose the partners one wants to live with is an element of both the right to liberty and the right to life, which includes the freedom from ongoing threats to life.

This rationale vividly exemplifies that legalization of same-sex marriage should be placed on the same footing and decided accordingly. Although there are no legal provisions that explicitly

¹² *P.Rathinam vs Union Of India*, Supreme Court, Apr. 26, 1994, 1994 AIR 1844, 1994 SCC (3) 394, (India).

¹³ *Smt. Gian Kaur vs The State Of Punjab*, Supreme Court, Mar. 21, 1996, 1996 AIR 946, 1996 SCC (2) 648, (India).

¹⁴ *Aruna Ramchandra Shanbaug vs Union Of India & Ors*, Supreme Court, Mar. 7, 2011, (2011) 4 SCC 454, (India).

penalize same-sex marriage but unlike heterosexual marriages, same-sex marriages have not been legally recognized which deprives the couples of availing basic rights as well.

This significance of marriage, in general, was well captured by the Calcutta High Court in 1901 as follows- "it's a union of flesh with flesh, bone with bone, the Union is sacred and subsists even after the death"

Specifically, it states marriage is nothing but a union of souls and a soul never has any gender. Hence, the heteronormative approach is nothing but a gross violation of Article 21.

Another infringement of Article 21 is the work of manual scavenging assigned to people,¹⁵ mostly to the people belonging to the lower caste in the caste hierarchy. Manual scavenging has been a concern since the time before independence. The fact that they are not even given safety equipment causes numerous deaths each year and violates their human rights. Therefore, it became vital for our legislature to enact the required laws and procedures to safeguard these workers from this dishonest practice and prevent them from further exploitation. Despite the enactment of legislation, this degrading practice is still continuing in many parts of the nation which is another instance of the violation of Article 21 in modern India.

III. CONCLUSION AND THE WAY FORWARD

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

- United Nations, Charter, 1945

In a democratic society like India, liberty and equality are of utmost importance. These two are complementary to each other, hence one can't exist without the other. Freedom is the underpinning of a civil society which is indispensable for a democratic nation to survive. However, a careful perusal of recent times will provide us with an altogether different picture. We come across incidents where fundamental rights lose their importance and therefore become a myth. The moment we fail to safeguard these rights, that very moment we fail as responsible citizens. We unknowingly end up violating Article 21 when we put up a strong resistance against inter-caste marriages, when we raise objections against same-sex marriages, when we deny someone of medical facilities or shelter, and when our regressive mindset frowns upon live-in relationships. We're not aware enough that Article 21 includes the right to life but it's not

¹⁵ Manual scavenging: Violation of Article 21, Times of India Blog, <https://timesofindia.indiatimes.com/readersblog/justcorporatethings/manual-scavenging-violation-of-article-21-37191/>

limited to that only. Hence, each of our regressive steps might face legal ramifications if properly addressed. This article is a reminder of the philosophy of “live and let live”, and we must not deviate from our ways ever. It’s about time to debate and discuss the rights that have been guaranteed to us in the Constitution more and more so that it can reach out to the masses. It’s time we took a hard look at our Constitution and instead of swearing on it or celebrating its tenure, we began celebrating its spirit. Only then will we do justice to our Preamble—“We, the people..”
