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# Article 21: A Way towards Transfiguration

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RAHUL KUMAR KUMAWAT<sup>1</sup> AND SAKSHI SAXENA<sup>2</sup>

## ABSTRACT

*The right to life and personal liberty enshrined under Article 21 in the part III of the Indian Constitution is guaranteed not only to its citizens but also to the foreigners. This right under Part III of the Indian Constitution is considered as the most precious, sacrosanct, fundamental as well as heart of all the fundamental rights guaranteed by the Indian Constitution. In other words, denial of right to life and personal liberty is denial of other fundamental rights reason being there is no meaning of other rights unless the right to life and personal liberty is secured and protected. The Indian judiciary over the period of seven decades since the Constitution of India has enacted expanded the horizon of right to life and personal liberty by pronouncing various landmark judgements.*

*This research paper is categorized mainly in four major parts. In the first part of this papers, a detailed information of Article 21 of Indian constitution has been discussed thoroughly. Moreover, a detailed discussion on the words interpreted by the Hon'ble Supreme Court in its landmark judgements. In the second part of this paper, authors tried to incorporate the constituent assembly debates on Article 21, in addition to this, the concept of "due process of law" and "procedure established by law" has been discussed citing relevant case laws. The third part of the paper is dedicated to the international scenario on Right to Life and Liberty, for that purpose there is comparative study on British, US and Japanese Constitution. Finally, in the last part of the paper, relevant Indian case laws has been discussed which changed as well as leads to the transfiguration of the concept of the right to life and personal liberty envisaged under Article 21 of the Indian Constitution since its genesis.*

*The primary sources which are relied upon for the purpose of completing this research paper are judgements of Supreme Court of India and United States, debates of constituent assembly, and constitutions of India, Japan, United Kingdom and United States whereas secondary sources which are relied upon are commentaries by renowned legal jurists, research papers, articles, newspapers, etc.*

*Henceforth, this paper deal with the meaning of this provision, the constituent assembly debate over this provision, its evolution through judicial interpretation, global scenario and relevant Indian as well as foreign case laws.*

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**Keywords:** *Right to Life, Right to personal liberty, procedure established by law, due process of law, Indian Constitution.*

## I. INTRODUCTION

### Concept of Right to Life and Liberty under Article 21:

According to former President of United States, Franklin D. Roosevelt who defined Right to life as “Every man has a right to life, and this means that he has also a Right to make comfortable living.” In India, the concept of Right to Life and Liberty is envisaged in the Indian constitution under Article 21 of the part III which confers fundamental rights to Indian citizens<sup>3</sup>. The article 21 is considered as cornerstone of the Indian constitution. The very object of the article 21 is the protection of life and personal liberties of the Indian citizens against the actions of State which is defined under article 12 of the part III. Thus, Article 21 of the part III reads as “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”<sup>4</sup> Thus, this article protects two rights of the person, firstly, right to live and secondly, right to personal liberty. Moreover, it is interesting to note that Article 31 of the Japanese Constitution has similar wording as Article 21 of Indian constitution, article 31 of the Japanese constitution says “*No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.*”<sup>5</sup> The meaning of

words mentioned under article 21 hasn't been defined under Indian constitution, therefore it's imperative to understand the true meaning of the words interpret by the Hon'ble Supreme Court of India in its various landmark judgements.

#### A. Person

After reading Article 21, it becomes clear that the fundamental right of life and personal liberty is extended to all “person”, which signifies that this right isn't only conferred to every person regardless of their citizenship, religion, race, sexual orientation. In other words, rights under Article 21 is extended not only to Indian citizens but even to foreigners who aren't Indian citizens<sup>6</sup>.

Referring clause 1 of Article 21 of the Indian Constitution, which provides “Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of Liberty.” Therefore, clause 42 of section 3<sup>7</sup> of General Clauses Act, 1897 defines the word “person” as “*“person” shall include any company or association or body of individuals, whether Incorporated or not.*”<sup>8</sup> In other words, the word “person” doesn't only includes natural

<sup>3</sup> INDIA CONST. art. 21.

<sup>4</sup> supra note 2.

<sup>5</sup> Japanese CONST. art.31, 1947.

<sup>6</sup> supra note 2.

<sup>7</sup> General Clauses Act, 1897, No.10, Acts of Parliament, 1897(India).

<sup>8</sup> supra note 5.

person but also juristic as well as artificial person, etc.

### B. Deprived

The Hon'ble Supreme Court for the first time interpret the word "deprived" in the famous case of *A.K. Gopalan V/s. State of Madras*<sup>9</sup>, this case for the very first time came before the Hon'ble Supreme Court to decide the scope of personal liberties of person, though the Hon'ble Court gave the narrow interpretation to the meaning of deprivation, it observed that this article 21 come into force only when the deprivation in the case of "total loss" and merely the restriction upon the freely movement of a person. In other words, Supreme Court came to the conclusion that deprivation of personal life and personal liberty is when there is absolute loss and not merely a partial loss. However, the apex court has changed its view in another famous case of *Kharak Singh V/s. State of U.P.*<sup>10</sup>, it observed that ambit of deprivation isn't restricted only to life but also to personal liberty of a person. Therefore, the court has expanded the scope of the word "deprived" under article 21. In its various later judgements, the Hon'ble Court expanded the horizon this expression.

### C. Life

The word "life" is one of the essential element of the Article 21. The Hon'ble Supreme Court in various landmark judgements over the period of 70 years held the right to life enshrined in Article

21 cannot be restricted to mere animal existence. It means something much more than just physical survival or merely an animal existence. In *Kharak Singh V/s. State of U.P.*<sup>11</sup>, the Hon'ble Court observed "By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed." Again in *Francis Coralie Mullin vs The Administrator Union*,<sup>12</sup> Justice PN Bhagwati held that "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 one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings." The most landmark judgement of Hon'ble Supreme Court which is considered as the milestone in the constitutional history of India is *Maneka Gandhi Vs. Union of India*<sup>13</sup>, the court in this case gave the liberal interpretation to the meaning of Life and allowed various essential rights under the ambit of right to life enshrined in Article 21 of the part III of the Indian Constitution. Of all the rights, the right to one's life is the most valuable. (Maneka Gandhi case) after reading the abovementioned judgements that the Hon'ble Supreme Court has expanded the ambit and the horizon of life under article 21 of part III of the Indian Constitution. Again 1997, the Hon'ble Supreme Court in *Samatha Vs. State Of Andhra Pradesh*<sup>14</sup>

<sup>9</sup> A.K. Gopalan V/s. State of Madras, AIR 1950, SC 27.

<sup>10</sup> Kharak Singh V/s. State of U.P., AIR 1963 SC 1295.

<sup>11</sup> supra note 9.

<sup>12</sup> Francis Coralie Mullin vs The Administrator Union, AIR 1981 SC 746.

<sup>13</sup> Maneka Gandhi Vs. Union of India, AIR 1978 SC 597; (1978) 1 SCC 248.

<sup>14</sup> Samatha Vs. State Of Andhra Pradesh, AIR 1967

reiterated that the right to life enshrined in Article 21 is merely an animal existence, it's more than mere animal existence.

#### D. Personal Liberty

The right to personal liberty is another imperative right which is enshrined in Article 21 of Indian Constitution. This expression "personal liberty" has given the wide and liberal interpretation by the Hon'ble Supreme Court in its various landmark judgements. Moreover, the apex Court included various essential rights under the ambit of right to personal liberty.

#### E. Procedure Established by Law

The concept of "Procedure established by law"<sup>15</sup> in Article 21 has been adopted by the constituent assembly of India from article 31 of the Japanese Constitution. Article 21 provides that life and personal liberty of a person can be deprived only according to procedure established by law, which means life and personal liberty of a person can only be curtailed or snatched only by the state following the procedure mentioned in the existing law and not in any other way. Therefore, it interesting to note here that a law must be made or enacted by the competent legislative assembly or a lawful authority. For this purpose, both parliament and the state legislatures are empowered to enact a law and prescribed the procedure through which life and liberty of a person can be curtailed. Thus, a law must not only be constitutionally valid but also be enacted by the competent lawful authority which is empowered to enact that law. However, there is

a paradigm shift in the approach of Hon'ble Supreme Court to decide the scope and ambit of the expression "Procedure established by law" under article 21 from *AK Gopalan V state of Madras*<sup>16</sup> to *Maneka Gandhi vs. Union of India*<sup>17</sup>. In *AK Gopalan Vs. State of Madras*<sup>18</sup>, the bone contentions raised by the appellant before the Hon'ble Supreme Court was that the word "procedure established by law" used in Article 21 has wider in sense and approximate in the meaning to the expression "due process of law" as interpretation by the Supreme Court of United States observed "The word "established" is taken to mean "sanctioned" or "settled" or "made firm" then the question will arise as to the meaning of the word "law" in that context."<sup>19</sup> word "due" in the expression "due process of law" in the American Constitution is interpreted to mean "just," according to the opinion of the Supreme Court of U.S.A. That word imparts jurisdiction to the Courts to pronounce what is "due" from otherwise, according to law. The deliberate omission of the word "due" from Article 21 lends strength to the contention that the justiciable aspect of "law", i.e., to consider whether it is reasonable or not by the Court, does not form part of the Indian Constitution. The omission of the word "due", the limitation imposed by the word "procedure" and the insertion of the word "established" thus brings out more clearly the idea of legislative prescription in the expression used in Article 21. By adopting the phrase "procedure established by law" the Constitution gave the

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SC 1836.

<sup>15</sup> INDIA CONST. art. 21.

<sup>16</sup> supra note 8.

<sup>17</sup> supra note 12.

<sup>18</sup> supra note 8.

<sup>19</sup> HM Seervai, Constitutional Law(4<sup>th</sup> ed.2015).

legislature the final word to determine the law. As a result, while determining on the issue of the scope and ambit of procedure established by law, that whether a law should be passed the test of reasonableness, the Hon'ble Supreme Court of India held the law which prescribed to deprive the life and personal liberty of a person must not satisfied the test of reasonableness.

However, this traditional view of the apex court had been changed after 27 years in *Maneka Gandhi Vs. Union of India*<sup>20</sup>, 1978 wherein the Hon'ble Supreme Court held that "the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary". That means procedure cannot be arbitrary, unfair, or unreasonable. In other words, in this landmark judgment, the Hon'ble Supreme Court accept that the expression "procedure established by law" contains the element of "due process of law". Thus, the court has given the expansive interpretation to article 21. It's interesting to note that the expression "procedure established by law" includes not only substantive law but also procedural law.

Beginning in the 1970s, an activist Supreme Court started incorporating the U.S. constitutional doctrines of "procedural due process" and "substantive due process" in India.

## II. CONSTITUENT ASSEMBLY'S VIEW ON ARTICLE 21:

In order to understand why the expression "procedure established by law"<sup>21</sup> has been incorporated in Article 21 by the constituent

assembly instead of the expression "Due process of law", we have to look into debates of constituent assembly. However, there was a clear diversion of opinion among the members of constituent assembly, it is pertinent to note that that a faction of the constituent assembly was in support to incorporate "procedure established by law" whereas the other faction of the assembly was in favour to incorporate the expression "due process of law" in article 21.

But before we proceed further it's imperative to understand the meaning of both the expressions, "procedure established by law"<sup>22</sup> and "due process of law". The expression "procedure established by law"<sup>23</sup> means it empowers judiciary to check that right of a person is infringed by following a valid procedure mentioned in the law which is enacted by the competent legislature and the same concept has been originated from British Constitution whereas in "due process of law" which empowers to check not only right of a person curtailed following a valid procedure enacted by the competent legislature but it also check whether the law which empower executive authorities to curtail rights of person is just, fair, reasonable or not arbitrary, due process of law originally originated from the US constitution. Therefore, a law which provides for procedure to restrict the citizen's rights enshrined in Article 21 must pass the test of reasonableness. Thus, the ambit and scope of "Due process of law" to check on the power of authorities who abused the rights of person is much wider than "procedure

<sup>20</sup> supra note 1.

<sup>21</sup> supra note 13.

<sup>22</sup> supra note 3.

<sup>23</sup> supra note 13.

established by law”<sup>24</sup>. In other words, due process of law vested wider powers in the hands of Hon’ble Supreme Court to protect the rights of citizens as compared to procedure established by law since the later one is narrower in its scope. Thus, Supreme Court can declare a law null and void if it finds that the said law is unfair, unjust, and arbitrary in due process of law. The elements of due process of law can be traced in clause 2 of Article 19 of Indian constitution which provide for reasonable restrictions on the freedoms of Indian citizens enshrined in Clause 1 of the same article.

It’s pertinent to mention that in 1947 Justice Felix Frankfurt of Supreme Court of United States advised to Sir BN Rau (Constitutional advisor to the constituent assembly) to delete the expression “due process of law” from the draft of the Indian Constitution, the reason Justice Frankfurt stated to sir BN Rau is that Due process of law is undemocratic since it empowers unelected members of the judiciary to invalidate a legislation enacted by competent legislature whose members got elected by the citizens<sup>25</sup>. Moreover, the Due process of law is burdensome to judiciary since it opens floodgates of Constitutional cases to invalidate the law which infringe the fundamental rights of citizens. Even before Sir BN Rau was advised by the Justice Frankfurt, he had qualm about the Due process of law to be inserted in Article 21. This meeting was the watershed moment in the formation of Article 21 as advice of justice Frankfurt was the final nail in the Due process of law’s coffin. Furthermore,

the constituent assembly wanted to avoid ambiguity of “due process of law” that created anomalies, ambiguities in relation to the legislations passed in the United States. Thus, in constituent assembly, Sir B.N. Rau expressed that the power of review implied in ‘due process’ clause which was not only undemocratic but also threw an unfair burden on the judiciary. Consequently, the constituent assembly came to the conclusion to delete the expression “due process of law” from Article 21 and inserted the “procedure established by law”.<sup>26</sup>

### **III. INTERNATIONAL SCENARIO OF RIGHT TO LIFE AND PERSONAL LIBERTY**

#### **1. United Kingdom**

The concept of “Due process of law”, was originally originated in English common law. The first traces of due process of law is found in famous Magna Carta signed by King John in 1215. Article 39 of the Magna Carta granted the rights to citizens against the actions of King, which is considered as constitutional granted due process of law. This document includes the clause which states, “No free man shall be seized or imprisoned or disseised or exiled or in any way destroyed except by the lawful judgement of his peers or by the law of the land”. Subsequently, in later statutes of Britain, the expressions “the lawful judgement of peers” and “law of the land” treated as synonymous to due process of law. However, the concept of Due process of law further evolved

<sup>24</sup> supra note 13.

<sup>25</sup> GRANVILLE AUSTIN, THE INDIAN

CONSTITUTION(9<sup>TH</sup> ed.1999).

<sup>26</sup> supra note 13.

## 2. United States of America

In USA, the fifth amendment<sup>27</sup> to the US constitution ratified in 1791 provides that federal government shall not deprived of life, liberty or property any person without due process of law. And the fourteen amendment<sup>28</sup> to the US constitution ratified in 1868 provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law. Therefore, it is evident that both abovementioned Amendments envisaged the concept of “due process of law” in the US constitution. Prima facie reading of 5<sup>th</sup> amendment act 1791 to US constitution ratified in 1791 give the impression that the concept of Due process of law is applicable to federal government only and not to state governments which was affirmed by the Supreme Court of United States in *Barron VS. City of Baltimore*<sup>29</sup>. However, in *Chicago, Burlington & Quincy Railroad Company v. City of Chicago (1897)*,<sup>30</sup> Supreme Court of US held that this concept of Due process of law is enforceable even against state governments. The incorporation of 14<sup>th</sup> amendment act made the Due process of law applicable on both federal as well as on state governments. In *Slaughterhouse case 1873*<sup>31</sup> the dissenting judgement of Justice Stephen J. Field is considered as milestone towards the evolution

of modern concept of substantive due process of law, which empowers judiciary to protect the rights of citizens which aren't explicitly mentioned in the constitution. The word “due” is interpreted in US constitution as just, fair and reasonable.

## 3. Japan

Constitution of Japan was framed under the supervision of Supreme Command of Allied Power. It is pertinent to note here that Article 31 of the 1946 of Japanese Constitution provides, “No person shall be deprived of life or liberty nor shall any other criminal penalty be imposed except according to procedure established by law”<sup>32</sup>. The wordings of Article 31 are very similar to Article 21 of Indian Constitution, 1950. It's interesting to note that Article 31 of Japanese Constitution is derived from the Due process of law clause of the US constitution.

## IV. PROMINENT INDIAN CASE LAWS

It's pertinent to note here that in the post internal emergency Era (1975 – 77), the activist judiciary expanded the ambit of the expression mentioned in Article 21 part III of the Indian Constitution that is right to life and personal liberty. Until the Maneka Gandhi case<sup>33</sup>, the meaning of right to life and personal liberty was very narrower, however, in the landmark judgement of *Maneka Gandhi Vs Union Of India*<sup>34</sup>, the Hon'ble Supreme Court recognized that right to life and

<sup>27</sup> UNITED STATES OF AMERICA CONST., amended by The Constitution(Fifth Amendment) Act,1791.

<sup>28</sup> supra note 26.

<sup>29</sup> Barron v. Baltimore, 7 Pet. 243 (1833).

<sup>30</sup> Chicago, Burlington & Quincy Railroad Co. v. Chicago, Chicago, B. & Q. R. Co. v. Chicago, 166

U.S. 226 (1897).

<sup>31</sup> Slaughterhouse Cases, 83 U.S. 16 Wall. 36 36 (1872).

<sup>32</sup> Japanese CONST. art.31, 1947.

<sup>33</sup> supra note 11.

<sup>34</sup> supra note 11.

personal liberty includes freedom to go abroad. Moreover, in the same judgement, the court held that the procedure established by law to curtail the article 21 of a person must be just, fair and reasonable in other words the court overturns its AK Gopalan<sup>35</sup> judgement and accepted the concept of Due process of law is very much embedded in the article 21 itself and this is considered as the gaint leap in the evolution of the jurisprudence of Article 21. This paradigm shift in the view of Hon'ble Supreme Court regarding article 21 lead to the expansion of the horizon as well as the evolution of Jurisprudence of the right to life and personal liberty enshrined under Article 21. This also leads to the genesis of the compensatory Jurisprudence under article 21, the Court in its various judgments directed the state to provide adequate compensation whenever their was violation of the Fundamental right of a person under article 21. The Hon'ble Supreme Court over the period of seven decades recognized various essential rights as the part and parcel of right to life and personal liberty. Moreover, the Hon'ble Supreme Court in *NHRC vs. State of Arunachal Pradesh*<sup>36</sup> held that state is obliged to protect right of noncitizens under Article 21 I.e., right to life and personal liberty.

### 1. Right to Live with the human dignity:

In *Francis Coralie Vs. Administrator, Union Territory of Delhi*,<sup>37</sup> the Hon'ble Supreme Court said that right to life is not merely restricted to the animal survival and it's more than mere physical existence, in its judgement the court

held, "the right to life includes the right to live with human dignity and the bare necessities of life such as adequate nutrition, clothing shelter, facilities for reading, writing and expressing oneself in diverse forms, freely moving..."

In *Charles Sobraj Vs Superintendent Central Jail, Tihar, New Delhi*<sup>38</sup>, the Hon'ble Supreme Court held that the punishment of solitary confinement is considered as violation of right to life and personal liberty enshrined in Article 21 of the Indian Constitution, in addition to this the court ordered to restrict the barbaric and inhumane treatment towards prisoners.

### 2. Right Against exploitation at workplace:

In the case of *Bandhua Mukti Morcha Vs. Union of India & others*<sup>39</sup>, which is also known as bonded labour case, in the same case the Hon'ble Supreme Court characterized Article 21 as the heart of Indian constitution and expanded the ambit of Right to Life. In this case, while hearing plight of labourers working in the stone quarries under inhumane and unsuitable working conditions, in the light of Article 21 and 24, the full bench of Hon'ble Supreme Court held that the labourers working under the harsh and inhumane conditions is the clear violation of their fundamental right to life and personal liberty, enshrined in Article 21 of the Indian Constitution, consequently, the ordered for their release from their workplace and directed the government to provide them with adequate

<sup>35</sup> supra note 7.

<sup>36</sup> NHRC vs. State of Arunachal Pradesh, (1996) 1 SCC 742.

<sup>37</sup> supra note 10.

<sup>38</sup> Charles Sobraj Vs Superintendent Central Jail, Tihar, New Delhi, 1978 AIR 1514, 1979 SCR (1) 512.

<sup>39</sup> Bandhua Mukti Morcha Vs. Union of India & others, 1984 AIR 802, 1984 SCR (2) 67.

rehabilitation facilities. It's interesting to note that the apex court in this case considered the letter which revealed the condition of these labourers in stone quarries as Public Interest Litigation under article 32 of part III of Constitution and constituted a two member committee to enquire the conditions of labourers

### 3. Right to Livelihood:

In *Board of Trustees of the port of Bombay Vs. Dilip Kumar*,<sup>40</sup> the Hon'ble Supreme Court expanded the horizon of right to life and held that right to life under article 21 includes the right to livelihood. Again in *Olga Tellis vs. Bombay Municipal Corporation*<sup>41</sup>, the apex court reiterated its judgement in the abovementioned case law and held that no person can be deprived of their means of living that is means of Livelihood which is be part and parcel of right to life guaranteed by Article 21 of the Indian Constitution. Therefore, a person depriving a person from their livelihood would amount to violation of right to life.

### 4. Right to Speedy Trail:

Right to speedy trail hasn't been expressly mentioned under Part III of the Indian Constitution, in other words the right to speedy trail is not specifically enumerated as fundamental right under Part III. However, this right is impliedly derived its meaning from the broader definition of right to life and personal liberty enshrined in Article 21 of the Indian

Constitution. In *Hussainara Khaton Vs. Home Secretary State of Bihar*<sup>42</sup>, the Hon'ble Supreme Court held that right to life and personal liberty is a fundamental right implicit in the right to life and personal liberty under Article 21 of Indian constitution. Thus, the court held that the right to speedy trail is one of the dimensions of fundamental right to life and personal liberty under Article 21.

### 5. Right Against sexual harassment at workplace:

In the famous case of *Vishaka and Others Vs. State of Rajasthan*<sup>43</sup>, which deals with the sexual harassment of woman at her workplace, the Hon'ble Supreme Court held that sexual harassment of woman at her workplace is declared as violation of right to equality and right to life and personal liberty enshrined under Article 14, and 21 of the Indian Constitution respectively. Moreover, the court issued certain guidelines in order to protect women at workplace any from sexual harassment as a part of human dignity under Article 21 of Indian constitution, later those guidelines were later incorporated by the parliament in an act. In *Apparel Export Promotion Council Vs. A.K. Chopra*<sup>44</sup>, the Hon'ble Supreme Court reiterated its Vishaka's judgement.

### 6. Rights of Under Trail Prisoners :

The Hon'ble Supreme Court in *State of*

<sup>40</sup> Board of Trustees of the port of Bombay Vs. Dilip Kumar, 1983 AIR 109, 1983 SCR (1) 828.

<sup>41</sup> Olga Tellis vs. Bombay Municipal Corporation, 1985 SCC (3) 545.

<sup>42</sup> Hussainara Khaton Vs. Home Secretary State of

Bihar, 1980 SCC (1)98.

<sup>43</sup> Vishaka and Others Vs. State of Rajasthan, AIR 1997 SC 3011.

<sup>44</sup> Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625.

**Maharashtra Vs. Ravikant S. Patil**<sup>45</sup> has recognized that handcuffing and parading of undertrial prisoners violates their right under article 21 and directed the state to pay the compensation.

### 7. Right to Die with Human Dignity:

In **Gian Kaur vs The State Of Punjab**<sup>46</sup>, the Supreme Court emphasized that the right to Die is not a fundamental right under article 21 of the part III of the Indian Constitution. Later in **Aruna Ramchandra Shanbaug vs Union Of India**<sup>47</sup>, the divisional bench of Hon'ble Supreme Court permitted the passive euthanasia in India in certain exception situations. Now, Passive euthanasia is usually defined as withdrawing medical treatment with a deliberate intention of causing the patient's death. In **Common Cause Vs. Union of India**,<sup>48</sup> the three judges bench of Hon'ble Supreme Court held that the fundamental right of right to life and personal liberty under Article 21 includes right to Die with human dignity.

### 8. Right to Education:

In **Unni Krishnan, J.P. And Ors. Etc. ... vs State Of Andhra Pradesh And Ors.**<sup>49</sup>, the Hon'ble Supreme Court apprised, "The 'right to education' flows directly from right to life.' In other words, 'right to education' is concomitant to the fundamental right enshrined

in Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of citizens." The Supreme Court again reiterated in **Miss Mohini Jain vs State Of Karnataka And Ors.**,<sup>50</sup> that the right to education is a part and parcel of right to life and personal liberty, The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education, the state is under an obligation to make endeavors to provide educational institutions at all the levels. Thereafter, by the eighty- sixth constitutional amendment act, 2002 a new fundamental right that is article 21 A 'Right to Education' has been incorporated in the part III of the Indian Constitution which mandates the state to provide free and compulsory education to all the children of the age of 6 to 14.

In **Ashok Kumar Thakur Vs. Union of India**<sup>51</sup>, the Hon'ble Supreme Court held that right to education under **Article 21 A**<sup>52</sup> means providing quality education to all the children from aged 6 to 14.

### 9. Right Against custodial violence and police atrocities:

In another celebrated case namely, **D. K. Basu vs. State of West Bengal**<sup>53</sup>, the Hon'ble Supreme Court held custodial violence which includes

<sup>45</sup> State of Maharashtra Vs. Ravikant S. Patil , (1991) 2 SCC 373.

<sup>46</sup> Gian Kaur vs The State Of Punjab, 1996 AIR 946, 1996 SCC (2) 648.

<sup>47</sup> Aruna Ramchandra Shanbaug vs Union Of India, (2011)4 SCC 454.

<sup>48</sup> Common Cause Vs. Union of India, WRIT PETITION (CIVIL) NO. 215 OF 2005.

<sup>49</sup> Unni Krishnan, J.P. And Ors. Etc. vs State Of

Andhra Pradesh And Ors., 1993 SCC (1) 645.

<sup>50</sup> Miss Mohini Jain vs State Of Karnataka And Ors., 1992 SCR (3) 658, 1992 AIR 1858.

<sup>51</sup> Ashok Kumar Thakur Vs. Union of India ,(2008) 6 SCC 1.

<sup>52</sup> Inserted by the 86<sup>th</sup> Constitutional Amendment Act, 2002.

<sup>53</sup> D. K. Basu vs. State of West Bengal, (1997) 1 SCC 416; 1997 SCC (Cri) 92.

rape of a woman prisoner, torture, using of third degree methods, custodial death of prisoner is a clear violation of basic right to life enshrined in Article 21 as well as strikes a blow at the rule of law which is a fundamental feature of the Indian Constitution. Moreover, torture includes not only physical suffering but also mental agony. In addition to this, the court issued a list of 11 guidelines that are need to be followed in all cases of arrest and detention. In *Neelabati Bahera Vs. State Of Orrisa*<sup>54</sup>, the Hon'ble Supreme Court held that even prisoners and detainees have fundamental right to life and personal liberty guaranteed by Article 21 subject to restrictions imposed by the law.

#### 10. Right to Privacy:

The right to privacy hasn't been specifically enumerated as the fundamental right under Part III of the Indian Constitution. In *M.P Sharma versus Union of India*<sup>55</sup>, the Hon'ble Supreme Court's eight judges bench held that right to privacy hasn't been enshrined in the Indian constitution as a fundamental right. Again in *Kharak Singh*<sup>56</sup>, the Hon'ble Supreme Court reiterated the same view. However, later the court has changed its view, in *People's Union for Civil Liberties (PUCL) versus Union of India*<sup>57</sup>, the court held that the right to privacy is the essential part of the right to life and personal liberty enshrined under Article 21 of the Indian Constitution, therefore, it become imperative on

the part of government to follow a just, fair, reasonable procedure established by law in order to curtail this implied right under article 21. In the recent famous judgement that is *KS Puttaswamy versus Union of India*<sup>58</sup> on the issue of privacy, the Hon'ble Supreme Court reiterated its earlier view in *PUCL case* and held that right to privacy is part and parcel of right to life and personal liberty guaranteed under Articles 21 of the Indian Constitution. Thus, *K S Puttaswamy case* overruled the *MP Sharma case* and *Kharak Singh case*. Supreme Court held, "Privacy is the ultimate expression of the sanctity of the individual"<sup>59</sup>.

#### V. CONCLUSION

It's evident from the abovementioned judgements of the Hon'ble Supreme Court which over the period of seven decades emphasized the importance as well as preserved the fundamental right to life and personal liberty of Indian citizens guaranteed by the Article 21 of the Indian Constitution. Therefore, this right is considered as the heart, the most fundamental and sacrosanct of all the other fundamental rights guaranteed under Part III of the Indian Constitution. Moreover, the concept of Right to Life and personal liberty has undergone a significant transformation since the pronouncement of *Maneka Gandhi*<sup>60</sup> judgement in 1978, which is considered as the landmark in the field of evolution of right to life and personal liberty of

<sup>54</sup> Neelabati Bahera Vs. State Of Orrisa, (1993) AIR SCC 196.

<sup>55</sup> M.P Sharma versus Union of India, 1954 AIR 300, 1954 SCR 1077.

<sup>56</sup> supra note 8.

<sup>57</sup> People's Union for Civil Liberties (PUCL) versus Union of India, AIR 1997 SC 568, JT 1997 (1) SC

288, 1996 (9) SCALE 318, (1997) 1 SCC 301, 1996 Supp 10 SCR 321, 1997 (1) UJ 187 SC.

<sup>58</sup> Justice K.S. Puttaswamy v Union of India, (2017) 10 SCC 1.

<sup>59</sup> supra note 57.

<sup>60</sup> supra note 11.

Indian importance. It's pertinent to note here that in the initial years, the concept of Right to Life and personal liberty was construed in the very narrowed sense, however, the after the pronouncement of *Maneka Gandhi*<sup>61</sup> judgement the liberal interpretation has given to right to life and personal liberty. The ambit of right to life and personal liberty has been expanded by including several other essential rights including certain Directive Principles (enshrined in the part IV of the Indian Constitution) within the horizon of Article 21 of the Indian Constitution. According to former Supreme Court Judge, Justice PN Bhagwati, Article 21," embodies a constitutional value of Supreme importance in a democratic society".

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<sup>61</sup> supra note 11.