

CONCEPT OF RIGHT TO LIFE AND ITS PROTECTION UNDER CONSTITUTION OF INDIA

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“Among the natural rights of the colonists are these: First a right to life, secondly to liberty, and thirdly to property; together with the right to defend in the best manner they can.”

- Samuel Adams (1722-1803)

Abstract

The constitution and jurist characterized Article 21 as, “the procedural magna carta, protective of life and liberty”. This right has been held to be the heart of the constitution, the most organic and progressive provision in Indian constitution, the foundation of our laws. Article 21 can only be claimed when a person is deprived of his “life” or “personal liberty” by the “State” as defined in Article 12. Violation of the right by private individuals is not within the preview of it. Article 21 applies to natural persons. The right is available to every person, citizen or alien. It, however, does not entitle a foreigner the right to reside and settle in India, as mentioned in Article 19 (1) (e). Everyone has the right to life, liberty and the security of person. The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. There would have been no fundamental rights worth mentioning if Article 21 had been interpreted in its original sense. This Article will examine the right to life as interpreted and applied by the Supreme Court of India.

Keywords: Personal liberty, Livelihood, Protection of life, Fundamental right, Judicial activism, Human Dignity, Article 21

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Introduction

As per constitution of India Article 21 reads as under. “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” Article 21 embodies a constitutional value of supreme importance in a democratic society. It is the fundamental right of everyone in this country 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 a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. “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.”

International scenario

Liberty of the person is one of the oldest concepts to be protected by national courts. As long as 1215, the English Magna Carta provided that, “No freeman shall be taken or imprisoned but by the law of the land”. 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. The fifth amendment of the American constitution also provided that ‘no person shall be deprived of his life, personal liberty, except according to procedure prescribed by that law, provided that the procedure is just, fair and reasonable. Thus, the “procedure established by law” has acquired the same significance in India as the “due process of law” clause in America.

The framers of Indian constitution were deeply influenced by the international document i.e. Universal Declaration of Human Right (UDHR) 1948 which had a great impact on the drafting of Indian constitution. The Article 9 of UDHR provides for ‘protection of life and personal liberty’ of every person. As India was signatory to the declaration, the constituent assembly adopted the similar provision as a fundamental right therein. The Hon’ble Supreme Court observed that the UDHR may not be a legally binding instrument but it show how Indian understood the nature of human rights at the time when constitution was adopted. Article 21 is the celebrity provision of the Indian constitution and occupies a unique place as a fundamental right. It guarantees right to life and personal liberty to citizens and aliens and is enforceable against state.

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In 1948, the Universal Declaration of Human Rights (Article 3) adopted by the United Nations General Assembly declaration - "Everyone has the right to life, liberty and security of person".

Also, in 1966, the International Covenant on Civil and Political Rights was adopted by the United Nation General Assembly declaring "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrary deprived of his life."

The constitution of India and concept of right to life

Article 21 reads as: "No person shall be deprived of his life or personal liberty except according to a procedure established by law." This right has been held to be the heart of the constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.

Though the phraseology of Article 21 starts with negative word but the word No has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. If an act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person. Such violation would not fall under the parameters set for the Article 21. In such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21.

The state cannot be defined in a restricted sense. It includes government departments, legislature, administration, local authorities exercising statutory powers and so on so forth, but it does not include non-statutory or private bodies having no statutory powers. For example: company, autonomous body and others.

Objective of article 21

The main object of Article 21 is that before a person is deprived of his life or personal liberty by the state, the procedure established by law must be strictly followed. Right to life means the right to lead meaningful, complete and dignified life. The meaning of the word life cannot be narrowed down and it will be available not only to

every citizen of the country. As far as personal liberty is concerned, it means freedom from physical restraint of the person by personal incarceration or otherwise and it includes all the varieties of rights other than those provided under Article 19 of the constitution. Procedure established by law means the law enacted by the state. Deprived has also wide range of meaning under the constitution. These ingredients are the soul of this provision. The fundamental right under Article 21 is one of the most important rights provided under the constitution which has been described as heart of fundamental rights by the Apex Court.

Scope of Article 21

The scope of article 21 was a bit narrow till 50s as it was held by the Apex Court in *A.K.Gopalan vs State of Madras*² that the contents and subject matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case the word deprivation was construed in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). At that time Gopalan's case was the leading case in respect of Article 21 along with some other articles of the constitution, but post Gopalan case the scenario in respect of scope of Article 21 has been expanded or modified gradually through different decisions of the Apex Court and it was held that interference with the freedom of a person at home or restriction imposed on a person while in jail would require authority of law. Whether the reasonableness of a penal law can be examined with reference to Article 19, was the point in issue after Gopalan's case in the case of *Maneka Gandhi v. Union of India*³, the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable one. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty.

In another case of *Olga Tellis and others v. Bombay Municipal Corporation and others*⁴, it was further observed: Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must confirm the norms of justice and fair play. As stated earlier, the protection of Article 21 is wide enough and it was further widened in the case of *Bandhua Mukti Morcha v. Union of India and others*⁵ in respect of bonded labor and weaker section of the society.

² [1950 SCR 88].

³ [1978 SCR (2) 621].

⁴ [1985 SCC (3) 545].

⁵ [(1997) 10 SCC 549].

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The meaning of the word life includes the right to live in fair and reasonable conditions, right to rehabilitation after release, right to live hood by legal means and decent environment. It was observed in the case of *Unni Krishnan v. State of A.P.*⁶ that article 21 is the heart of fundamental rights and it has extended the scope of article 21 by observing that the life includes the education as well as, as the right to education flows from the right to life and the apex court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are listed below:

- (1) The right to go abroad.
- (2) The right to privacy.
- (3) The right against solitary confinement.
- (4) The right against hand cuffing.
- (5) The right against delayed execution.
- (6) The right to shelter.
- (7) The right against custodial death.
- (8) The right against public hanging.
- (9) Doctors assistance

Through various judgments the Apex Court also included many of the non-justifiable directive principles embodied under part IV of the constitution and some of the examples are as under:

- (a) Right to pollution free water and air.
- (b) Protection of under-trial.
- (c) Right of every child to a full development.
- (d) Protection of cultural heritage.

Maintenance and improvement of public health, improvement of means of communication, providing human conditions in prisons, maintaining hygienic condition in slaughter houses have also been included in the expanded scope of article 21. This scope further has been extended even to innocent hostages detained by militants in shrine who are beyond the control of the state.

The Apex Court in the case of *S.S. Ahuwalia v. Union of India*⁷ and others it was held that in the expanded meaning attributed to article 21 of the constitution, it is the duty of the state to create a climate where members of the society belonging to different faiths, caste and creed live together and, therefore, the state has a duty to protect their life, liberty, dignity and worth of an individual which should not be jeopardized or endangered. If in any circumstance the state is not able to do so, then it cannot escape

⁶ [1992 AIR 1858].

⁷ AIR 2001 SC 1309.

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the liability to pay compensation to the family of the person killed during riots as his or her life has been extinguished in clear violation of article 21 of the constitution.

In *Maneka Gandhi v. Union of India*, the Supreme Court gave a new dimension to Article 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity.

Procedure established by law

The expression “procedure established by law” has been the subject matter of interpretation in a catena of cases. The Supreme Court took the view that “procedure established by law” in article 21 means procedure prescribed by law as enacted by the state and rejected to equate it with the American “due process of law.” But, in *Maneka Gandhi v. Union of India* the Supreme Court observed that the procedure prescribed by law for depriving a person of his life and personal liberty must be “right, just and fair” and not “arbitrary, fanciful and oppressive,” otherwise it would be no procedure at all and the requirement of article 21 would not be satisfied. Thus, the “procedure established by law” has acquired the same significance in India as the “due process of law” clause in America.

Right to live with human dignity

The court in *Francis Coralie v. Union Territory of Delhi*⁸, observed that:

“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.”

Another broad formulation of the theme of life to dignity is to be found in *Bandhua Mukti Morcha v. Union of India*. The court gave it an expanded interpretation. Bhagwati J. observed:

“It is the fundamental right of everyone in this country, to live with human dignity free from exploitation. This right to live with human dignity enshrined in article 21

⁸ [1979] 1 SCR 392.

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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 a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

Right against sexual harassment at workplace

Sexual harassment of women has been held by the Supreme Court to be violative of the most cherished of the fundamental rights, namely, the right to life contained in article 21. In *Vishakha v. State of Rajasthan*⁹, the Supreme Court has declared sexual harassment of a working woman at her work as amounting to the violation of rights of gender equality and rights to life and liberty. The Supreme Court in the absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment laid down the following guidelines:

1. All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

b) The Rules/Regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

d) Appropriate work conditions should be provided in respect of work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

2. Where such conduct amounts to specific offenses under I.P.C, or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

3. The victims of sexual harassment should have the option to seek transfer of perpetrator or their own transfer.

⁹ (1997) 6 SCC 241.

Right against rape

Rape has been held to a violation of a person's fundamental life guaranteed under Article 21. Right to life, would, therefore, include all those aspects of life that go on to make life meaningful, complete and worth living. In *Bodhisattwa Gautam v. Subhra Chakraborty*¹⁰, the Supreme Court held that:

“Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society.

Right to reputation

Reputation is an important part of one's life. It is one of the finer graces of human civilization that makes life worth living. The Supreme Court referring to *D.F. Marion v. Minnie Davis* in *Smt. Kiran Bedi v. Committee of Inquiry*¹¹ held that “good reputation was an element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life, liberty, and property.

Right to livelihood

With the definition of the word “life” in Article 21 in a broad and expansive manner, the court in *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nandkarni*¹², came to hold that “the right to life” guaranteed by Article 21 includes “the right to livelihood”. The Supreme Court in *Olga Tellis v. Bombay Municipal Corporation*, popularly known as the “Pavement Dwellers Case” a five-judge bench of the Court now implied that ‘right to livelihood’ is borne out of the ‘right to life’, as no person can live without the means of living, that is, the means of Livelihood.

Right to shelter

In *U.P. Avas Vikas Parishad v. Friends Coop. Housing Society Limited*¹³, the right to shelter has been held to be a fundamental right which springs from the right to residence secured in article 19(1)(e) and the right to life guaranteed by article 21. In *Chameli Singh v. State of U.P.*¹⁴, a bench of three judges of Supreme Court had

¹⁰ 1996 AIR 922.

¹¹ 1988 AIR 2252.

¹² 1983 AIR 109 1983 SCR (1) 828.

¹³ 1995 SCC Supl. (3) 456.

¹⁴ 1995 (5) SCC 587.

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considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the constitution of India.

Right to social security and protection of family

Right to life covers within its ambit the right to social security and protection of family. O. K. Ramaswamy J., in *Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose*¹⁵, held that right to social and economic justice is a fundamental right under Article 21.

Right against honour killing

A division bench of Allahabad high court, In *Surjit Kumar v. State of U.P.*¹⁶, took serious note on harassment, in ill-treatment and killing of a person who was a major, for wanting to get married to a person of another caste or community, for bringing dishonor to family since inter caste or inter-community marriage was not prohibited in law, the court said that such practice of “honor killing” was a blot on society.

Right to health

In *State of Punjab v. M.S. Chawla*¹⁷, it has been held that the right to life guaranteed under article 21 includes within its ambit the right to health and medical care.

Right to medical care

In *Parmananda Katara v. Union of India*¹⁸, the Apex Court stated that ‘once life is lost, status quo ante cannot be restored. It was held that it is the professional obligation of all doctors (government or private) to extend medical aid to the injured immediately to preserve life without legal formalities to be complied with the police.

In another case *Paschim Bangal Khet Mazdoor Samity v. State of West Bengal*¹⁹, a person suffering from serious head injuries from a train accident was refused treatment at various hospitals on the excuse that they lacked the adequate facilities and

¹⁵ AIR (1992) S.C. 573.

¹⁶ (2004) 12 SCC 390.

¹⁷ 1997 (1) SC 416.

¹⁸ AIR 1989 SC 2039.

¹⁹ 1996 SCC (4) 37.

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infrastructure to provide treatment. In this case, the Supreme Court further developed the right to emergency treatment and went on to state that the failure on the part of the government hospital to provide timely medical treatment to a person in need of such treatment results in the violation of his right to life guaranteed under Article 21.

NO RIGHT TO DIE

This question came for consideration for the first time before the High Court of Bombay in *State of Maharashtra v. Maruti Sripati Dubal*²⁰. In this case, the Bombay High Court held that the right to life guaranteed under Article 21 includes right to die, and the Hon'ble High Court struck down Section 309 of the IPC that provides punishment for an attempt to commit suicide by a person as unconstitutional.

In *P. Rathinam v. Union of India*²¹, a two-judge division bench of the Supreme Court, took cognizance of the relationship/contradiction between Sec. 309, I.P.C., and Article 21. The court supported the decision of the High Court of Bombay in *Maruti Sripati Dubal's* case held that the right to life embodied in article 21 also embodied in it a right not to live a forced life, to his detriment disadvantage or disliking. The court argued that the word life in article 21 means right to live with human dignity and the same does not merely connote continued drudgery. Thus, the court concluded that the 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 and right to life

Euthanasia is termination of the life of a person who is terminally ill or in a permanent vegetative state. In *Gian Kaur v. State of Punjab*²², the Supreme Court held that death due to termination of natural life is certain and imminent and the process of natural death has commenced. The court further held that this may fall within the ambit of right to live with human dignity up to the end of natural life. This may include the right of a dying man to also die with dignity when his life is ebbing out. This cannot be equated with the right to die an unnatural death curtailing the natural span of life.

²⁰ 1986 Mah LJ 913.

²¹ 1994 3 SCC 394.

²² (1996) SCC (2) 648.

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Sentence of death – rarest of rare cases

In *Bachan Singh v. State of Punjab*²³, the leading case of on the question, a constitution bench of the supreme court explained that Article 21 recognized the right of the state to deprive a person of his life in accordance with just, fair and reasonable procedure established by valid law. It was further held that the death penalty for the offense of murder awarded under section 302 of I.P.C did not violate the basic feature of the constitution.

Right to get pollution free water and air

In *Subhas Kumar v. State of Bihar*²⁴, it has held that a Public Interest Litigation is maintainable for ensuring enjoyment of pollution-free water and air which is included in 'right to live' under Article 21 of the constitution. The court observed:

Right to clean environment

In *M.C. Mehta v. Union of India*²⁵ (1988) the Supreme Court ordered the closure of tanneries that were polluting water.

In *M.C. Mehta v. Union of India*²⁶ (1997) the Supreme Court issued several guidelines and directions for the protection of the Taj Mahal, an ancient monument, from environmental degradation.

In *M.C. Mehta v. Union of India*²⁷ (2006) the Court held that the blatant and large-scale misuse of residential premises for commercial use in Delhi violated the right to salubrious and decent environment. Taking note of the problem the court issued directives to the government on the same.

Right against noise pollution

In *Re: Noise Pollution*²⁸ the case was regarding noise pollution caused by obnoxious levels of noise due to bursting of crackers during Diwali. The Apex Court suggested to desist from bursting and making use of such noise making crackers and observed that:

²³ (1980) (2 SCC 684).

²⁴ (1991) 1 SCC 598.

²⁵ 1987 SCR (1) 819.

²⁶ (1997) 2 SCC 353.

²⁷ (2006) 3 SCC 399.

²⁸ (2005) 5 SCC 733.

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“Article 21 of the constitution guarantees the life and personal liberty to all persons. It guarantees the right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person’s life meaningful, complete and worth living. The human life has its charm and there is no reason why life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort, and quiet within his house has a right to prevent the noise as pollutant reaching him.

Right to know or right to be informed

Holding that the right to life has reached new dimensions and urgency the Supreme Court in *R.P. Ltd. v. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd.*²⁹, observed that if democracy had to function effectively, people must have the right to know and to obtain the conduct of affairs of the State.

In *Essar Oil Ltd. v. Halar Utkarsh Samiti*³⁰, the Supreme Court said that there was a strong link between Article 21 and right to know, particularly where “secret government decisions may affect health, life, and livelihood”.

Right against illegal detention

In *Joginder Kumar v. State of Uttar Pradesh*³¹, the petitioner was detained by the police officers and his whereabouts were not told to his family members for a period of five days. Taking the serious note of the police high headedness and illegal detention of a free citizen, the Supreme Court laid down the guidelines governing arrest of a person during the investigation:

An arrested person being held in custody is entitled if he so requests to have a friend, relative or other person told as far as is practicable that he has been arrested and where he is being detained.

The police officer shall inform the arrested person when he is brought to the police station of this right. An entry shall be required to be made in the diary as to who was informed of the arrest.

In the case of *D.K. Basu v. State of West Bengal*³², the Supreme Court laid down detailed guidelines to be followed by the central and state investigating agencies in all cases of arrest and detention till legal provisions are made in that behalf as preventive measures and held that any form of torture or cruel inhuman or degrading treatment, whether it occurs during interrogation, investigation or otherwise, falls within the ambit of Article 21.

²⁹ AIR 1989 SC 190.

³⁰ [2004] 2 S.C.C. 392.

³¹ 1994 SCC (4) 260.

³² 1997 (1) SCC 416.

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Article 21 & prisoner's rights

The protection of Article 21 is available even to convicts in jail. The convicts are not by mere reason of their conviction deprived of all the fundamental rights that they otherwise possess. Following the conviction of a convict is put into a jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India. But a convict is entitled to the precious right guaranteed under Article 21 and he shall not be deprived of his life and personal liberty except by a procedure established by law.

Right to free legal aid & right to appeal

In *M.H. Hoskot v. State of Maharashtra*³³, the Supreme Court said while holding free legal aid as an integral part of fair procedure. This right to free legal aid is the duty of the government and is an implicit aspect of Article 21 in ensuring fairness and reasonableness; this cannot be termed as government charity.

Right to speedy trial

In *Hussainara Khatoon v. Home Secretary*³⁴, State of Bihar it was brought to the notice of the Supreme Court that an alarming number of men, women, and children were kept in prisons for years awaiting trial in courts of law. The Court held that detention of under-trial prisoners, in jail for a period longer than what they would have been sentenced if convicted, was illegal as being in violation of Article of 21.

Right to fair trial

Free and fair trial has been said to be the sine qua non of Article 21. The Supreme Court in *Zahira Habibullah Sheikh v. State of Gujarat*³⁵ said that right to free and fair trial not only to the accused but also to the victims, their family members and relatives, and society at large.

Right to bail

The Supreme Court in the case of *Babu Singh v. State of Uttar Pradesh*³⁶ held that right to bail was included in the personal liberty under article 21 and its refusal would be

³³ AIR 1978 SC.

³⁴ 1979 SCR (3) 532.

³⁵ (2004) 4 SCC 158.

³⁶ 1965 AIR 1467.

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the deprivation of that liberty which could be authorized in accordance with the procedure established by law.

Article 21 and the emergency

In *A.D.M. Jabalpur v. S. Shukla*³⁷, popularly known as *habeas corpus* case, the supreme court held that Article 21 was the sole repository of the right to life and personal liberty and therefore, if the right to move any court for the enforcement of that right was suspended by the presidential order under article 359, the detune would have no locus standi to a writ petition for challenging the legality of his detention.

Such a wider connotation given to article 359, resulted in the denial of the cherished right to personal liberty guaranteed to the citizens. Experience established that during the emergence of 1975, the fundamental freedom of the people had lost all meanings.

In order that it must not occur again, the constitution act, 1978, amended article 359 to the effect that during the operation of the proclamation of emergency, the remedy for the enforcement of the fundamental right guaranteed by Article 21 would not be suspended under a presidential order.

Conclusion

Thus, it is clear that the provision Article 21 was constructed narrowly at the initial stage but the law in respect of life and personal liberty of a person was developed gradually and a liberal interpretation was given to these words. New dimensions have been added to the scope of Article 21 from time to time. It imposed a limitation upon a procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure must be reasonable, fair and such law should not be arbitrary, whimsical and fanciful. The interpretation which has been given to the words life and personal liberty in various decisions of the Apex Court, it can be said that the protection of life and personal liberty has got multi-dimensional meaning and any arbitrary, whimsical and fanciful act of the State which deprived the life or personal liberty of a person would be against the provision of Article 21 of the constitution.

“An unjust law is itself a species of violence.”
- MAHATMA GANDHI (1883-1944)

³⁷ (1976) 2 SCC 521.