

**CLASS- B.A. LL.B. IVSEMESTER**

**SUBJECT- HUMAN RIGHTS**

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**INCLUSION OF HUMAN RIGHTS JURISPRUDENCE UNDER THE CONSTITUTION  
OF INDIA THROUGH JUDICIAL INTERPRETATION**

Article 21 of the Constitution of India recognizes such universally adopted principles safeguarding the life and liberty of man. Article 21 reads as:-

Protection of life and Personal Liberty- "No person shall be deprived of his life or personal liberty except according to procedure established by law".

Ray C.J. held: "Art.21 is the sole repository of rights to life and personal liberty against the State. Any claim to a writ of habeas corpus is enforcement of Article 21 and is, therefore, barred by the presidential order."

In Kharak Singh Vrs. State of U.P<sup>1</sup>. the Supreme Court took the opportunity to examine the width, scope and content of expression 'personal liberty' and departed from the narrow interpretation as stated above and observed: "... 'personal liberty' is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the 'personal liberties' of man other than those dealt with in the several clauses of Art.19 (1). In other words, while Art.19(1) deals with particular species or attributes of that freedom, 'personal liberty' in Art.21 takes in and comprises the residue".

In Maneka Gandhi Vrs. Union of India<sup>2</sup> the true meaning, scope and content of expression personal liberty again came up for consideration and interpretation wherein the court observed: "the expression 'personal liberty' in Art.21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Art.19".

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<sup>1</sup> AIR1963 SC 1295

<sup>2</sup> AIR 1978 SC

Further,,if a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Art.21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex hypothesi it must also be liable to be tested with reference to Art.14.

The meaning of life under Article 21 came for interpretation in *Olga Tellis Vrs. Bombay Municipal Corporation*<sup>3</sup>, when the permanent and slum dwellers, who were eking out their living in the pavement, leading a life of filth in the slum area of Bombay and life, shelter, occupation and everything mean to them the pavement and the slum, were asked to be evicted with no place to go and take shelter and no means and area to pursue to their avocation to feed their family.

The Supreme Court's ruling in *Sunil Batra Vrs. Delhi Administration*<sup>4</sup> marks the beginning of new era in the annals of history of prison Administration. In this case the appeal court came forward to safeguard the human rights of man behind the bars, to act as true sentinel on the qui vive. The protagonistic, catalytic role of the Supreme Court in relation to fundamental rights of man (prisoner) could seen when the Court applied the very sanctified rights of life and liberty inside the prison honouring the dignity of the prisoners, as they too are human beings endowed by the nature all the natural rights as that of free man, as the mere incarceration does not reduce their quality of humanness.

In *Unni Krishnan Vrs. State of A. P.*<sup>5</sup> the Supreme Court agreed with Mohini Jain decision and held that the right to education is a fundamental right under Article 21, as it directly flows from the right to life, although the Court differed as to the content of the Mohini Jain decision and held that the right to free education is available only to children until they complete the age of 24 years.

The Supreme Court, in *Paschim Banga Khet mazdoor Samity & othrs v.State of West Bengal & others*<sup>6</sup>, while widening the scope of art 21 and the government's responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people.

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<sup>3</sup> AIR 1986 SC 181

<sup>4</sup> AIR 1978 SC 1675

<sup>5</sup> AIR 1993 SC 2178

<sup>6</sup> AIR 1996 SC 2426

Further in, *State of Punjab and Others v. Mohinder Singh*<sup>7</sup> the Supreme Court held that “It is now a settled law that right to health is integral to right to life. Government has a constitutional obligation to provide health facilities.”

In *L.K.Koolwal v. State of Rajasthan*<sup>8</sup>, the Rajasthan High Court observed that a citizens duty to protect to protect the environment under Article. 51-A (g) of the Constitution bestows upon the citizens the right to clean environment.

In *Puttappa Honnappa Talavar v. Deputy Commissioner, Dharwad*<sup>9</sup>, the High Court has held that the right to dig bore wells therefore can be restricted or regulated only by an Act of legislature and that the right to life includes the right to have access to clean drinking water. The Allahabad High court in *S.K Garg v. State of Uttar Pradesh*<sup>10</sup>, the right of water is part of the right to life guaranteed by Article 21 and the use of agricultural land for aquaculture causes pollution of underground water on the neighbouring properties.

*In Chameli Singh v. State of UP*<sup>11</sup> Hon’rable Supreme Court of India has reiterated in several of its decisions that the Right to Life guaranteed in Article 21 of the constitution in its true meaning includes the basic right to food, clothing and shelter.

In the case of *Virender Gaur v. State of Haryana*<sup>12</sup> honorable Supreme Court observe that

*“Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence.*

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<sup>7</sup> AIR 1997 SC 1225

<sup>8</sup> AIR 1988 Raj 2

<sup>9</sup> AIR 1998 Kerala 10

<sup>10</sup> (1998) 2 UPLBEC 1211

<sup>11</sup> 1996(2) SCC 549

<sup>12</sup> 1995(2) SCC 577

*Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment.”*

In *JP v. State of A.P.*<sup>13</sup> Justice Unnikrishanan held that maintenance and improvement of public health is the duty of the state to fulfill its constitutional obligation cast on it under article 21 of the Constitution. The recognition that the right to health is essential for human existence and is, therefore, an integral part of the Right to Life.

In case of *People Union for civil liberties v. Union of India*<sup>14</sup> Supreme Court focus on the importance of right to food and mention in its judgment that without food there is no meaning of right to life and same time directed all state governments to ensure that all Public Distribution Shops are kept open with regular supplies and fix the prime responsibility of the government to prevent hunger and starvation by providing people access to food.

In *Dakshin Haryana Bijli Vitaran Nigam v. Environment Pollution (Prevention & Control) Authority*<sup>15</sup> the NGT while deciding a appeal held that “Citizens are entitled to breathe in fresh air.” Adding to the above, tribunal held that,

Impugned action is an undoubted need for protection of environment and public health. If the appellant cannot supply electricity, it is for the appellant to find out ways and means within the purview of law. This cannot be ground to use DG sets in violation of air quality protection norms. Citizens are entitled to breathe in fresh air. Thus, no interference is called for.

In *Narmada Bacho Andolan Vrs. Union of India*<sup>16</sup> The Court held that the right to water is a fundamental right under Article 21 of the Constitution. Water is the basic need for the survival of human beings and is part of right to life and human rights as enshrined Constitution of India and can be served only by providing source of water where there is none."

In *Vellore Citizen's Welfare Forum Vrs. Union of India*<sup>17</sup>, a writ petition by way of Public Interest Litigation drew the attention of the Court how the tennaries and other industries are discharging untreated affluent into agricultural fields, waterways, open lands and Rivers

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<sup>13</sup> AIR 1993 SC 2178

<sup>14</sup> AIR 1997 SC 568

<sup>15</sup> Appeal No. 88 of 2019

<sup>16</sup> AIR 1999 SC 3345

<sup>17</sup> AIR 1996 SC 2715

rendering the river water unfit for human consumption, contaminating the subsoil water and had spoiled the physico-chemical properties of the soil making it unfit for agricultural purposes.

Article 21 does not say anything like 'right to life' or 'liberty', because such right are not at all conferment of the State, neither they are created by the State, simply they are endowment of nature and are basic human rights of man. So what Art.21 does is simply spell out the protective mechanism to safeguard the right to life or personal liberty of man. As evidently the right to life and liberty are inviolable, inalienable rights. But in a civil society, howsoever sacrosanct and inviolate a right may be, it cannot be absolute or unfettered in nature, it is always subject to certain limitations or restrictions as a part of the social/civil agreement. Such fetters are put and permitted in a social compact by the Law or Constitution of the compact for the better enjoyment of rights and liberties.

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