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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHT TO LIFE (ART. 21) AND IT'S VARIOUS DIMENSIONS- ANALYTICAL DISCUSSION

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Abstract

The word 'life' in the Article 21 cannot be limited to only physically being alive or just vegetative state rather it has to have so many implied things within it. Life always means dignified life and it means anything and everything which is essential or which goes in the line with the dignified life all that will fall under the word 'life'. In US the word 'personnel' has not been used for 'liberty' but in India we have qualified the word 'liberty' by the word 'personal'. So does the word 'personal liberty' mean liberty to only arms and limbs? It is not so, personal liberty does not mean freedom or Liberty of just arms and legs it is much broader. When we interpret the word 'life and personal liberty' in broader sense to give it a real meaning to these terms and to serve the larger purpose of the Constitution then whatever things are implicit in them they will also become fundamental rights and those fundamental rights will be called implied fundamental right. Implied fundamental rights are those fundamental rights which are not explicitly provided in the text of the Constitution rather which are seen as being implicit in the express terminology used in the fundamental rights. Since they are part of these terms they will be called incidental or implied fundamental. They will be equally as important as terms which are explicitly used in the constitution.

Keywords: Personal Liberty, Protection of Life and Personal Liberty, Due Process, Dignified Life, Right to Life, Magna Carta of 1215

(1) Introduction

The cornerstone of civilised human existence has always been human rights. They are unalienable, universal, sacrosanct, and inviolable. They guard the sacredness of human life. The right to life is one of these rights that is most important. Nobody's life or personal freedom can be taken away from them without following the legal requirements, according to the right to life. The right to life and personal freedom is guaranteed by Article 21 of the Indian Constitution. It contains three

crucial components: life, liberty, and dignity. As judicial activism and concern for human rights have increased over time, the meaning of Article 21 has been widened to encompass a range of other factors that make human beings One of the fundamental tenets of human existence is the right to a free, abundant, and dignified life. Everyone has the right to live their life as they see fit, free from unjustifiable interference from others. A strong democracy must provide its people the freedom to safeguard their own lives and liberties. In India, Part III of the Constitution of India, 1950 grants people the Fundamental Right to the Protection of Life and Personal Liberty. These Fundamental Rights are provided against governmental activities, which means that no act by any state authority can infringe any such right of a citizen unless in accordance with the mechanism set by these Fundamental Rights, which represent the fundamental values valued by the people.

Article 21 of this part states that “No person shall be deprived of his life or personal liberty except according to the procedure established by law”, and this is known as the Right to Life and Personal Liberty.

As a result of the courts' evolving interpretation of Article 21 throughout time, the phrases "life" and "personal liberty" now refer to a broad range of individual rights. Here, we'll look at this Fundamental Right's numerous facets, but first, let's take a closer look at how this idea has evolved in law and the relevance of one of the most well-known decisions that has anything to do with it.— Maneka Gandhi v. Union of India (1978)ⁱ.

(2) Concept of Personal Liberty, Procedure Established by Law & Due Process of Law Article 21 of the Indian Constitution

Article 21 of the Indian Constitution covers the arena of protection of human life and liberty. It prescribes that “*no person shall be deprived of his life or personal liberty except according to the procedure established by law.*”

Article 21 gives everyone the right to life and personal liberty, which cannot be infringed upon even by the state, save where necessary to uphold the law and avoid harm to or loss of life. Justice Iyer aptly referred to it as the "procedural Magna Carta protective of life and liberty" in this way. The right to life is guaranteed in this article to both citizens of our nation and foreigners, which is its most remarkable aspect. As a result, anybody can ask for protection under Article 21 in India. Article 21 can only be used against the state and not against private parties, though. The

Honourable Supreme Court is accessible to everyone whose right under Article 21 has been infringed.

Meaning and Concept of Right to Life

Thus, the right to life is the most basic of all other rights. Fundamentally, this right seeks to protect the unjust deprivation of human life by the state. It prescribes that no one can be deprived of his/her life, except as per the law.

The right to life has been given a fairly broad definition in India. According to Article 21 and the court's interpretations, breathing is not the only bodily activity that constitutes "life." It encompasses a variety of different things in addition to just animal life. It encompasses a number of comparable rights, such as the right to privacy, the right to health, and the right to a decent standard of living. Without a question, of all the other essential rights, it is the most important. Being the most important of all rights, it serves as the foundation for all others.

The right to life is fundamental to who we are as people. This is due to the fact that without access to all other linked aspects, such as health, liberty, and safety, which make life worthwhile and complete, we cannot completely thrive as humans. As a result, it covers the bare minimal requirements that must be provided to every person in order for them to live fully and enjoy their life to the fullest.

Meaning and Concept of Personal liberty

The mention of personal liberty formally dates back to 1215 when the English Magna Carta stated that '*No freeman shall be taken or imprisoned, except by the law of the land*'. Personal liberty, as defined by Black's Law Dictionary, is '*the right of freedom of a person to behave as they would like. Though following the code of conduct of the society in which a person resides is important*'. Personal liberty forms an essential part of life, as per Justice Field in the American case of *Munn v. Illinois (1877)*ⁱⁱ. It implies that all men are born free and must remain the same way. However, in order to live peacefully together in a society, liberty cannot be allowed to transform into license. Thus, some reasonable restrictions are placed on it. That is why personal liberty implies no one can be wrongfully restrained, except when it is required by the law.

In India, the concept of personal liberty came into the limelight with the case of *A.K. Gopalan v.*

*State of Madras (1959)*ⁱⁱⁱ. The case was about the detention of a communist leader who claimed that the detention was illegal and breached his personal liberty under Article 21. The Court described the ambit of personal liberty as including the liberty of the physical body, and even the right to sleep, eat, etc. Again in *Kharak Singh v. State of U.P. and Others (1964)*^{iv}, it was outlined that personal liberty not only contained the right to be free from restrictions on one's movements but also from restrictions placed on our private life.

Meaning and Concept of Personal Dignity

In the modern era, abstract ideas like caste, religion, race, and gender distinctions are also strongly tied to concepts like dignity. A human being can live with dignity thanks to a number of variables, including education, health, work, lack of hunger, social security, and social, economic, and political rights. Now, these elements may change based on the aforementioned abstract ideas. Everyone has equal access to these variables thanks to Article 21.

It was also held in the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)*^v, by the Supreme Court that-

“Right to life enshrined in Article 21 cannot be restricted to mere animal existence and goes beyond just physical survival. Right to life includes the right to live with dignity and all that goes along with it, namely the bare necessities of life like adequate nutrition, clothing and shelter, facilities for reading, writing, and expressing oneself in diverse forms, and freely moving and mixing with fellow humans.”

Procedure established by law

The procedure established by law is a technical term that implies the procedure prescribed by any statute or the law of the state. It was extensively dealt with in the case of *A.K. Gopalan v. State of Madras (1959)*^{vi}, where the validity of the Preventive Detention Act, 1950 was challenged.

The Court pointed out that the phrase "procedure established by law," as used in Article 21, only applies to legislation passed by the Indian legislature. As a result, if our Parliament passes a legislation that robs someone of their life or freedom, it would be enforceable. According to this concept, it was not relevant in this case whether the procedure's founding legislation was reasonable or legitimate. The following were the sole prerequisites:

1. There must be a law established by the legislature validly;
2. The law must lay down a procedure; and
3. The procedure must be followed by the executive while depriving a person of his life or liberty.

This was a very mechanical and positivist interpretation of the principle laid down by the judiciary. Thus, it was not under the power of the judiciary to check the validity of the law. It could merely test the validity of the procedure followed to bring that law into force.

There came a shift in this approach with the landmark judgment given in *Maneka Gandhi v. Union of India (1978)*^{vii}. In this Case, the idea of "procedure established by law" was given a substantive meaning, and the Indian Constitution was amended to include the American concept of "due process of law." Due process of law examined the fairness of the legislation defining the mechanism to revoke a person's life or freedom in addition to validating the course of action that was taken. It was emphasised that the legislation must also pass the reasonableness test in addition to the requirement that the process be fair and reasonable. As a result, "due process of law" was expanded to include "procedure established by law." Despite the fact that the founders of our constitution simply included "procedure established by law," the Court claimed that they did not.

History of Right to Life

The history of the right to life overlaps with the history of the development of human rights.

The Tablet of Hammurabi contains the earliest official enumeration of human rights. It was created by Sumerian King Hammurabi 4000 years ago and served as a legally binding document that shielded individuals from harassment and punishment that was arbitrary and unfair. With the advent of the natural school of law, "human rights" in Greece began to be equated with "natural rights." Greek philosophers like Socrates and Plato held the view that nature represented the divine intent that guided the law. With the advent of the notion of positive law, which put human rights under the positivist authority of the sovereign will, a new conception of human rights emerged. Ancient Indian literature also contains the ideas of life and individual independence.

Fundamental rights were first formally demanded during the British era. The rights of Indian citizens were entirely disregarded as the British only enacted rules that benefited them. To stifle anti-British actions and emotions, many laws that unfairly violated Indians' rights to life and

personal liberty were introduced. As a result, between 1917 and 1919, the Indian National Congress voted a number of resolutions calling for the passage of a Fundamental Rights Bill. The Nehru Report of 1928 concluded that *“No one shall be deprived of his liberty, sequestered or confiscated, save in accordance with the law.”*

Finally, with the coming of the Indian Constitution in 1950, all Indian citizens were granted certain fundamental rights, including the right to life and personal liberty.

(3) Landmark Judgments –Article 21

A.K. Gopalan v. The State Of Madras^{viii} the Supreme Court held that-

The Supreme Court analyzed the arguments of the parties and held that there is no connection between Article 21 and 19 of the constitution. The court finally dismissed the writ petition filed by Mr Gopalan. The **A K Gopalan and the State of Madras** is a landmark case in Indian legal history. It is one of the important cases in which the apex court of India interpreted the provisions of the Indian constitution. The case set the precedent for how the Indian courts would interpret and apply the provisions of the Indian constitution in future cases. It is also significant because it was among the first cases in which the **principles of natural justice** were applied in India. The case is also important because it established the principle that the Indian constitution is a living document and that it can be interpreted in light of changing times and circumstances.

“This principle requires that decisions be made without bias or prejudice and that all parties involved have a chance to be heard. The principle of natural justice states the following features-i) No one shall be judged on his own matter ii) No person shall be left unheard and iii) Every person has the right to know the reason on which his decision has been made.”

Maneka Gandhi v. Union of India^{ix} the Supreme Court held that-

This immensely important judgment was delivered on 25th January 1978 and it altered the landscape of the Indian Constitution. This judgment widened Article 21’s scope immensely and it realized the goal of making India a welfare state, as assured in the Preamble. The unanimous judgement was given by a 7-judge bench. The judgment’s most important feature was the interlinking it laid down between the provisions of Articles 19, 14 and 21. Through this link, the supreme court made these provisions inseparable and into a single entity. Now, any procedure has to meet all the requirements mentioned under these three articles to be held valid. As a result, this judgement enlarged the scope of personal liberty significantly and preserved the fundamental &

constitutional right to life.

“This judgement, apart from protecting citizens from the unchallenged actions of the Executive, also preserved the sanctity of parliamentary law, when it refused to strike down the 1967 Act’s Sections 10(3)(c) and 10(5). The judgement paved the way for the Apex Court to bring into the ambit of Article 21 other important rights like Right to Clean Water, Right to clean Air, Right to freedom from Noise Pollution, Standard Education, Speedy Trial, Fair Trial, Right to Livelihood, Legal Aid, Right to Food, Right to Clean Environment, Right to Medical Care, etc.”

Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar^x the Supreme Court held that-

“The court observed the above case and also directed that the under-trial prisoners whose name and particulars were filed by Mrs. Hingorani should be released. It had been because imprisonment like false imprisonment were considered to be an illegal and also violative of their Fundamental Rights enshrined under Article 21 of the Indian Constitution. The court also mandated that in the time of charging bailable offences, they need to be produced before the Magistrate on remand dates. The government ought to name a legal advisor at their own expenses for making an application for bail. A quick trial is much required for securing justice. The court also ordered both the government as well as High Court to display the particulars regarding the location of the courts of magistrate and court of sessions in the State of Bihar along with the cases pending in each court on 31st December, 1978. They were also asked to state the rationale of pendency of cases. On next remand dates the under-trial prisoners should be produced before the court in order that the state government must ought to designate a lawyer of its own expense. The state cannot avoid its constitutional obligation to supply speedy trial to the accused by the way of pleading. Free legal service to the poor and therefore the needy people is an essential elementary factor of legal aid. Another direction by the honorable court was to supply the under-trial prisoners charged with bailable offences, free legal aid by the state, on their next remanded dates before the Magistrates. The court further observed that detaining them for any long would be illegal and is clearly against the elemental rights under Article 21 as these prisoners are behind the bars. Although nowadays human rights are being demanded for everyone in this world but are these under-trial prisoners not to be protected from such harm or even torture, in fact they too are human rights hence their rights must not be

denied. Equal access to justice must be central point which has to be given due recognition”.

Vineet Narain & Others v. Union Of India & Another^{xi}, the Supreme Court held that-

‘This case has develop a procedure within the discipline of law for the conduct of such a proceeding in similar situation. It has also generated awareness of the need of probity in public life and provided mode of enforcement of accountability in public life. Even though the matter was brought to the court by certain individuals claiming to represent public interest, yet as the case progressed, in keeping with the requirement of public interest, the procedure devised was to appoint the petitioners' counsel as the amicus curiae and to make such orders from time to time as were consistent with public interest. Intervention in the proceedings by everyone else was shut out but permission was granted to all, who so desired, to render such assistance as they could, and to provide the relevant material available with them to the amicus curiae for being placed before the court for its consideration. In short, the proceedings in this matter have had great educative value and it does appear that it has helped in future decision making and functioning of the public authorities.’

Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer^{xii}, the Supreme Court held that-

There is no doubt a fundamental right to, equality in the matter of grant of passports (subject to reasonable classifications) but there is no fundamental right to travel abroad or to the grant of a passport. With all due respect we say that the Court has missed one for the other. The solution of a law of passports will not make things any better. Even if a law were to be made the position would hardly change because the utmost discretion will have to be allowed to decide upon the worth of an applicant. The only thing that can be said is that where the passport authority is proved to be wrong, a mandamus will always right the matter. In the present cases we found no valid ground for the issuance of a mandamus. We had, therefore, earlier ordered the dismissal of the petitions. ORDER In accordance with the opinion of the majority a writ of mandamus will issue directing the respondents to withdraw and cancel the decision contained in their letters dated August 31, 1966, and September 20, 1966 and to forbear from taking any steps or

proceedings in the enforcement or implementation of the aforesaid decision and further to forbear from withdrawing and depriving the petitioner of his two passports and of his passport facilities. The petitioner will have his costs.

Kharak Singh v. The State Of U. P. & Others^{xiii} the Supreme Court held that-

The term 'personal liberty' is used in Art. 21 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 (I). While Art. 19 (1) deals with particular Species or attributes 'of that freedom, 'personal liberty' in Art. 21 takes in and comprises the residue. The word "life" in Art. 21 means no merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organsarms, legs, etc.

Sunil Batra v. Delhi Administration^{xiv} the Supreme Court held that-

The learned Solicitor General brought this key-note thought to our notice in the matchless diction of Sir Winston Churchill and briefly referred to in Batra in a speech seventy years ago:

The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm dispassionate recognition of the rights of the accused, and even of the convicted criminal, against the State-a constant heart searching by all charged with the duty of punishment a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment: tireless efforts towards the discovery of curative and regenerative processes: unfailing faith that there is a treasure, if you can only find it in the heart of every man. These are the symbols, which, in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it.

Prem Shankar Shukla v. Delhi Administration^{xv} the Supreme Court held that-

Handcuffing is prima facie inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Art. 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and

protecting his personality from barbarity have to be harmonised. To prevent the escape of an under-trial is in public interest, reasonable, just and cannot, by itself, be castigated But to bind a man hand-and- foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture. Where then do we draw the humane line and how far do the rules err in print and praxis?

Pt. Parmanand Katara v. Union Of India^{xvi} the Supreme Court held that-

We are of the view that every doctor wherever he be within the territory of India should forthwith be aware of this position and, therefore, we direct that this decision of ours shall be published in all journals reporting decisions of this Court and adequate publicity highlighting these aspects should be given by the national media as also through the Doordarshan and the All India Radio. The Registry shall forward adequate number of copies of this judgment to every High Court so that without delay the respective High Courts can forward them to every Sessions Judge within their respective jurisdictions and the Sessions Judges in their turn shall give due publicity to the same within their jurisdictions. The Medical Council of India shall forward copies of this judgment to every medical college affiliated to it. Copies of the judgment shall be forwarded to every State Government with a direction that wide publicity should be given about the relevant aspects so that every practicing doctor would soon become aware of the position. In case the State Governments and the Union Territories which have not been heard file any representation against the direction, they shall have liberty to appear before this Court and ask for appropriate direction within three months from now. Applications filed after that date shall not be entertained by the Registry of this Court. Until altered, this judgment shall be followed.

Consumer Education & Research ... v. Union Of India & Others^{xvii} the Supreme Court held that-

The writ petition is, therefore, allowed. All the industries are directed (1) To maintain and keep maintaining the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever is later; (2) The Membrane

Filter test, to detect asbestos fibre should be adopted by all the factories or establishments at par with the Metalliferrous Mines Regulations, 1961; and Vienna Convention and Rules issued thereunder; (3) All the factories whether covered by the Employees State Insurance Act or Workmen's Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker; (4) The Union and the State Governments are directed to review the standards of permissible exposure limit value of fibre/cc in tune with the international standards reducing the permissible content as prayed in the writ petition referred to at the beginning. The review shall be continued after every 10 years and also as and when the I.L.O. gives directions in this behalf consistent with its recommendations or any Conventions; (5) The Union and all the State Governments are directed to consider inclusion of such of those small scale factory or factories or industries to protect health hazards of the worker engaged in the manufacture of asbestos or its ancillary produce; (6) The appropriate Inspector of Factories in particular of the State of Gujarat, is directed to send all the workers, examined by the concerned ESI hospital, for re-examination by the National Institute of Occupational Health to detect whether all or any of them are suffering from asbestosis. In case of the positive finding that all or any of them are suffering from the occupational health hazards, each such worker shall be entitled to compensation in a sum of rupees one lakh payable by the concerned factory or industry or establishment within a period of three months from the date of certification by the National Institute of Occupational Health.

L.I.C. Of India & Anr v. Consumer Education & Research^{xviii} the Supreme Court held that-

We have, therefore, no hesitation to hold that in issuing a general life insurance policy of any type, public element is inherent in prescription of terms and conditions therein. The appellants or any person or authority in the field of insurance owe a public duty to evolve their policies subject to such reasonable, just and fair terms and conditions accessible to all the segments of the society for insuring the lives of eligible persons. The eligibility conditions must be conformable to the Preamble, fundamental rights and the directive principles of the Constitution. The term policy under Table 58 is declared to be accessible and beneficial to the large segments of the Indian society. The rates of premium must also be reasonable and accessible. Accordingly, we hold that the declaration given by the High Court is not vitiated

by any manifest error of law warranting interference. It may be made clear that with a view to make the policy viable and easily available to the general public, it may be open to the appellants to revise the premium in the light of the law declared in this judgment but it must not be arbitrary, unjust, excessive and oppressive.

Chameli Singh v. State Of U.P 1995^{xix} the Supreme Court held that-

In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation, interest is payable under Section 23(1-A) as additional amount and interest under Sections 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification under Section 23(1-A) and from the date of possession till compensation is deposited. It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable

Delhi Transport Corporation v. D.T.C. Mazdoor Congress^{xx} the Supreme Court held that-

Considering from all these aspects Regulation 9(b) is illegal and void, as it is arbitrary, discriminatory and without any guidelines for exercise of the power. It confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. It is also void under Section 23 of the Contract Act, as being opposed to public policy and also ultra vires of Article 14 of the Constitution.

Vishaka & Ors v. State Of Rajasthan^{xxi} the Supreme Court held that-

In view of the above, and the absence of enacted law to provide for the effective

enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the parliament enacts to expressly provide measures needed to curb the evil.

Francis Coralie Mullin v. The Administrator, Union of India^{xxii} the SC observed as follows-

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic

necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner or detenu obviously cannot move about freely by going outside the prison walls nor can he socialise at his free will with persons outside the jail. But, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just.

Zahira Habibullah Sheikh & Anr v. State Of Gujarat & Ors^{xxiii} the SC observed as follows-

The procedure adopted during enquiry has been characterized to be unfair and not fair and transparent procedure. On a bare perusal of the proceedings of the enquiry, it is clear that the procedure adopted was quite transparent. The proceedings were conducted in the presence of learned counsel for the parties

and/or the parties themselves. After the questions were asked by the Inquiry Officer, learned counsel and the parties were asked if any further questions were to be asked and as the records revealed whenever any question was suggested that was asked. Grievance is made that scope for "cross examination" was not given. That according to us is really of no consequence. What questions in "cross examination" by learned counsel could have been put, were asked by the Inquiry Officer whenever any suggestion was made in that regard. If a party did not suggest any question to be put to a witness by the Inquiry Officer, it is not open for him or her to say that opportunity for "cross examination" was not given. A further grievance is made that a request to call the Chairman, NHRC was turned down without reasons. This according to us is a plea which needs to be noticed and rejected. The statement of Zahira was recorded by NHRC in the presence of the Chairman (a retired Chief Justice of this Court) and several members which included a retired Judge of this Court). The allegation that it was not properly recorded or that somebody else's statement was recorded and Zahira was asked to put the signatures, as she has tried to make out is clearly untenable. If we may say so, such a plea should not have been raised as it reflects on the credibility of functionaries of a body like NHRC.

Deena @ Deena Dayal Etc. Etc v. Union Of India And^{xxiv}, the SC observed as follows-

In the case it was held that if a prisoner is forced to do labour without giving him any remuneration, it is deemed to be forced labour and is violative of Article 23 of the Indian Constitution. This is because the prisoners are entitled to receive reasonable wages for the labour they did.

State Of Maharashtra v. Prabhakar Pandurang Sangzgiri^{xxv} the SC observed as follows-

The learned Judges of the High Court, who had gone through the table of contents of the book. expressed their opinion on the book thus:

"..... we are satisfied that the manuscript book deals with the theory of elementary particles in -in objective way. The manuscript does not purport to be a research work but it purports to be a book written with a view to educate the people and disseminate knowledge regarding quantum theory."

The book is, therefore, purely of scientific interest and it cannot possibly cause any prejudice to the defence of India, public safety or maintenance of public order.

Attorney General of India v. Lachma Devi^{xxvi} the SC observed as follows-

The apex court observed,

"It is undoubtedly true that the crime of which the accused have been found to be guilty is barbaric and a disgrace and shame on any civilised society which no society should tolerate; but a barbaric crime does not have to be revisited with a barbaric penalty such as public hanging."

It then held that execution of death sentence by public hanging would be a barbaric practice clearly violative of Article 21 of the Constitution.

Madhav Hayawadanrao Hoskot v. State Of Maharashtra^{xxvii}, the SC observed as follows-

In the case of Madhav Hayawadanrao Hoskot v. State of Maharashtra, the petitioner was convicted under Sections 417, 467, 471 and 511 of Indian Penal Code, 1860 and was condemned to simple lifelong imprisonment till the rising of the Court and a fine. Thereafter, two petitions were filed one by the State and on by the petitioner in the High Court. The High Court dismissed the petition of the petitioner and increased the term of imprisonment to three years. The petitioner knocked the door of the Supreme Court through Special Leave Petition in 1978. Although the High Court gave its judgement in 1973. This delay was due to the late delivery of the copy of the judgement to the petitioner. The Supreme Court dismissed the Special Leave Petition yet it thought it appropriate to discuss and highlight the provision of free legal aid and assistance.

In my opinion, the judgement is pertinent as the case not only discuss about the position of the free legal aid and assistance in India but it goes to an extent and discuss about the right to appeal of the prisoner, duties of the authorities in furnishing the copies of the verdict and the duty of the State to provide legal services.

Joginder Kumar v. State Of U.P on 25 April^{xxviii} 1994 the SC observed as follows-

It was ruled by the court that an arrest cannot be made on a mere allegation of offence against a person or in a routine manner without any genuine complaint and a proper investigation. Constitutional rights of a person mandate that he is

not arrested on simple suspicion of complicity in an offence and cannot be arrested without a reasonable satisfaction reached after some investigation to find out the genuineness of the complaint. The mentioned requirements must be followed in all the cases of arrest till the other legal provisions are made on their behalf. Those requirements were mentioned to be added to the rights of the arrested persons in the various police manuals. The mentioned requirements are not exhaustive. So, the Directors General of Police of all the States in India were asked to issue necessary instructions requiring due observance of these requirements. In addition, the departmental instructions were also asked to be issued that a police officer making an arrest should also record in the case diary mentioning the reasons for making the arrest.

Mr. 'X' v. Hospital 'Z'^{xxix} The Court concluded that

“where there is a clash of two Fundamental Rights, as in the instant case, namely, the appellant's right to privacy as part of right to life and Ms. Akali's right to lead a healthy life which is her Fundamental Right under Article 21, the [right] which would advance the public morality or public interest, would alone be enforced through the process of Court”. With regard to fundamental rights of Ms Akali under Article 21, the Court observed that this “right would positively include the right to be told that a person, with whom she was proposed to be married, was the victim of a deadly disease, which was sexually communicable. Since the "Right to Life" includes right to lead a healthy life so as to enjoy all faculties of the human body in their prime condition, the respondents, by their disclosure that the appellant was HIV(+), cannot be said to have, in any way, either violated the rule of confidentiality or the right of privacy.”

Mr. 'X' v. Hospital 'Z'^{xxx} the SC observed as follows-

In that view of the matter, we hold that the observations made by this Court, except to the extent of holding as stated earlier that the appellant's right was not affected in any manner in revealing his HIV positive status to the relatives of his fiancée, are uncalled for. We dispose of these applications with these observations.

People'S Union Of Civil Liberties v. Union Of India^{xxxi} the SC observed as follows-

The Supreme Court's, 1996 judgement in the case People's Union Of Civil

Liberties (PUCL) VS Union of India held that tapping someone's phone without any pertinent prevention, or without following the procedure established by law, was a infringement of the fundamental right to privacy of an individual. This was a public interest petition, in which the petitioner, People's Union of Civil Liberties (PUCL) who confront the constitutionality of section 5 (2) of the act Indian Telegraph Act, 1885 for the violation of the right to privacy. In the Central Bureau of Investigation report it was shown that the phone of a politician was tapped by Mahanagar Telephone Nigam Limited (MTNL) in which they failed to follow the procedure and have many faults.

In Re: Noise Pollution (2005)^{xxxii} the SC observed as follows-

These two matters before us raise certain issues of far- reaching implications in day-to-day life of the people in India relatable to noise pollution vis-a-vis right to life enshrined in [Article 21](#) of the Constitution of India as interpreted in its wide sweep by the constitutional courts of the country. Though a limited grievance was raised to begin with but several intervenors and interlocutory applications enhanced the scope of hearing and the cases were heard in a very wide perspective centering around [Article 21](#) of the Constitution. Several associated and incidental issues have also been gone into.

Murli S. Deora v. Union Of India and Others^{xxxiii} the SC observed as follows-

Fundamental right guaranteed under [Article 21](#) of Constitution of India, inter alia, provides that none shall be deprived of his life without due process of law. Then - why a non-smoker should be afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places? Is it not indirectly depriving of his life without any process of law? The answer is obviously - 'yes'. Undisputedly, smoking is injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution.

Smt. Gian Kaur v. The State Of Punjab^{xxxiv} on 21 March, 1996, the SC observed as follows-

*Court held that **Article 21** of the Indian Constitution states "Right to life and Personal Liberty" which does not include "right to die" or "right to kill" as it is against the*

nature or rule of God. No person has a right to accelerate the process of death. Hence, Section 309 of the IPC does not violate Articles 21 and 14. Therefore, it is constitutionally valid.

If we talk about the validity of Section 306, then every citizen in India may not be punished for an attempt to suicide, but if any person is abetting another to do suicide, then that person will be punished keeping in mind the interest of society. Thus, the decision made in *P. Rathinam vs UOI* was set aside and **it was held that section 306 and 309 of the IPC is constitutionally valid and made both appellants held liable for abetment for suicide.**

Olga Tellis & Ors v. Bombay Municipal Corporation & ...^{xxxv} **1985** the SC observed as follows-

The then Chief Justice of India, Y.V. Chandrachud delivered the unanimous judgement by the five-judge bench consisting of himself, and justices A.V. Varadarajan, O. Chinnappa Reddy, Syed Murtaza Fazl Ali, and V.D. Tulzapurkar. Some main points include:

- *"For the purposes of argument, we will assume the factual correctness of the premises that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood, We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Art. 21 is wide and far-reaching... That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life."*
- *"Two conclusions emerge from this discussion: one, that the right to life which is conferred by Art. 21 includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. But the Constitution does not put an absolute embargo on the deprivation of life or personal liberty. By Art. 21, such deprivation has to be according to procedure established by law"*
- *"In order to minimise the hardship involved in any eviction, we direct that the slums, wherever situated, will not be removed until one month after the end of the current monsoon season..."*

M.C. Mehta And Anr v. Union Of India,^{xxxvi} the SC observed as follows-

In the judgment, Chief Justice Bhagwati mentioned that yes, all these chemical industries are dangerous, but they can't be removed from the country as they improve the quality of life. Even if these industries are hazardous but they must be set up because they provide many supplies like in this case the plant supplies chlorine to Delhi water supply undertaking for the maintenance of clean drinking water. These industries are important for the economic growth of the country.

The following principles were laid down by the court:

- 1. Rs 20 lakhs were required to be deposited by the Shriram industry for the compensations. A bank guarantee of Rs. 15 lakhs were also to be furnished by the management which will be uncashed if any gas leakage happens in the next 3 years.*
- 2. Rs 30,000 must be deposited by the company for the travel expenses of the expert committee members.*
- 3. There should be a green belt of 1 to 1.5 km around these industries.*
- 4. M.C. Mehta was appreciated by the court for filing such a petition and the industry was asked to pay Rs 10,000 towards the cost.*
- 5. The central government was directed by the court to form an environment court.*

It was held by the Supreme court that a total ban on these industries will put a stop to the development of the country and closing them will also cause unemployment of 4000 workers. Because of all these reasons, the court suggested the government direct some conditions for the safety of people and the environment.

Rudul Sah v. State Of Bihar And Another,^{xxxvii} the SC observed as follows-

The petitioner who was detained in prison for over 14 years after his acquittal filed a habeas corpus petition under Art. 32 of the Constitution praying for his release on the ground that his detention in the jail was unlawful. He also asked for certain other reliefs including compensation for his illegal detention. When the petition came up for hearing the Court was informed by the respondent State that the petitioner had already been released from the jail. Allowing the petition,

Sheela Barse & Ors v. Union Of India & Ors,^{xxxviii} v the SC observed as follows-

- *All states must ensure that a Children's Act should be brought into force as soon as possible.*
- *States where a Children's Act already exists must ensure that the same is administered.*
- *The Jail Manuals should be strictly complied with.*
- *Every District and Sessions must visit the district jail at least once every two months to ensure that everything is up to code.*
- *The Union Government must deposit an amount of ten thousand rupees within two weeks in the Registrar of the Court, which the petitioner can draw to meet her expenses.*

Miss Mohini Jain v. State Of Karnataka And Ors,^{xxxix} the SC observed as follows-

In this case, a resident of Uttar Pradesh state challenged a notification issued by the Karnataka government that permitted private medical colleges to charge higher fees to students who were not allocated 'government seats'. The Supreme Court of India held that the charging of a 'capitation fee' by the private educational institutions violated the right to education, as implied from the right to life and human dignity, and the right to equal protection of the law. In the absence of an express constitutional right, the Court interpreted a right to education as a necessary condition for fulfilment of the right to life under Article 21 of the Indian Constitution. In addition, the Court held that private institutions, acting as agents of the State, have a duty to ensure equal access to, and non-discrimination the delivery of, higher education.

(4) Conclusion

The right to life is one of the most significant human rights that safeguard not only one's life and liberty but also other elements of life like livelihood, dignity, shelter, privacy, health, etc. that make living worthwhile. It is not absolute and can be curtailed by the procedure established by law. However, it has been upheld by the courts that not only the procedure followed should be valid, but it should also be reasonable and established by a valid and just law. In India, Article 21 guarantees the right to life and personal dignity and has been given a wide interpretation by our judiciary. It is also available in other countries and under international statutes. Also, it has come into controversy several times on issues like capital punishment and euthanasia. Nevertheless, the right to life has always triumphed in the debate.

The Indian judiciary has attributed wider connotation and meaning to Article 21, extending beyond the Constitution makers' imagination. These meanings derived from the 'right to life' present unique complexities. It is impossible to understand the expansive jurisprudence on Article 21 within the length of this piece. The drafters of the Indian constitution have drafted this Article in such a way that neither it is made any provision compulsory nor makes any individual free from fundamental duties that must be followed by every citizen of the country. The Supreme Court not only explained the instinctive human qualities of the Article 21 but also established certain procedure to implement them. This makes the Rule of Law elevated and meaningful. Each explanation or the procedure laid down with regard to Article 21 is particularly aimed to achieve justice mentioned in the Preamble through all round development of the citizens. Each explanation provided attempts to fulfil the basic needs of the human being while safeguarding ones propriety. It is difficult to find such noble, magnificent, dignified illustrations and explanation as provided by the Supreme Court of India to the concept of right to life and personal liberty elsewhere in the world. The Indian concept did not confine the right of life and personal liberty only to ones physical body. It means to strive for all round development of a person so that justice shall conquest

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