

ARTICLE-21 OF THE CONSTITUTION OF INDIA

*Justice N. K. Jain**

As you all know, Article 21 deals with one of the fundamental Rights guaranteed by the Constitution of India. The Right to Protection of Life and personal liberty is the main object of Article 21 and it is a right guaranteed against **State Action** as distinguished from violation of such right by private individuals. In other words, in case of violation of such rights (which are guaranteed under Part III of the Constitution of India) by private individuals, the person aggrieved must seek his remedies under the general law. Article 21 being one of the fundamental rights guaranteed by the Constitution, the same cannot be taken away by statutes. It is also necessary to mention at this juncture itself before we proceed to analyse Article 21 in detail that it has been held by our Hon'ble Supreme Court in *Behram Vs. State of Bombay* (1995 (1) SCR 613) that fundamental rights have been put into our Constitution on grounds of public policy and in pursuance of the objects declared in the preamble; though these rights are primarily for the benefit of individuals and hence there can be no question of a fundamental right being waived.

INGREDIENTS OF ARTICLE 21 :

Article 21 of the Constitution read thus :

"No person shall be deprived of his life or personal liberty except according to procedure by law."

Article 21 of the Constitution came up for interpretation number of times before our Apex Court, and the Supreme Court dealt with each aspect of Article 21 exhaustively and from a reading of those decisions the following ingredients emerge.

PERSON :

It is clear from a bare perusal of the Article that the protection extended by it covers all 'Persons'. In other words the expression of 'Person' is not confined only to citizens but extends to every persons regardless of nationality or the circumstances in which a person is placed. This implies that the protection guaranteed under article 21 extends even to persons who are undergoing imprisonment in jails. A prisoner does not lose all the fundamental rights belonging to all persons under the Constitution merely because he is convicted and imprisoned. Therefore the right under Article 21 of the Constitution can also be pressed into service by a prisoner as regards his right to freedom of expression, reading and writing, right to acquire, hold and dispose of property and right against discrimination.

In view of the clear provisions of Article 367(1) of the Constitution, Section 3(42) of General Clauses Act can be pressed into service in so far as the definition of 'Person' is concerned. As per the definition of 'Person' in General Clauses Act, that expression includes not only a natural person but also a juristic person, a deity or a Gurudwara.

DEPRIVED :

The second ingredient of Article 21 is that the said Article comes into picture only when there is deprivation of life or

personal liability of a person. The term 'Deprived' came for consideration in the famous case of A.K. Gopalan v/s. State of Madras (AIR 1950 SC 27). In the said case the Supreme Court held that Article 21 gets attracted only in case of deprivation in the sense of 'total loss' and that the said article had no application in case of restriction upon the right to move freely. However, it is to be mentioned that this meaning given to the term deprivation came to be modified by later decisions of the Supreme Court. In Kharak Singh vs. State of U.P. (AIR 1963 SC 1295) the Supreme Court held that Article 21 would require authority of law even for restrictions on personal liberty and in Kiran vs. Govt. of A.P. (1990 (1)SCC 328) the Supreme Court held that '**deprived**' does not mean that the Court is powerless to interfere when there is imminent threat to the freedom of life or personal liberty and that it must await until the person has actually been taken into custody". Expanding the said expression further, the Supreme Court held in Ramsharan vs. Union of India (AIR 1989 SC 549) that to constitute 'deprived' there must be some direct and tangible act which threatens the feelings of life of a person or member of community.

In the light of the above expanded interpretation given to the term 'deprivation', it can be said that in cases of interference with the freedom of a person viz., visit by the police at night, interference with the right of prisoner in jail to publish a book or any other restriction imposed while in jail but not authorized by law would attract Article 21 of the Constitution.

LIFE :

The next important ingredient of Article 21 is the expression 'Life'. Right to life under Article 21 is something

more than mere survival or animal existence. It is something more than mere breathing. The Supreme Court has held in Francis vs. Union Territory (AIR 1981 SC 746) that right to life would include the right to live with human dignity. With this interpretation given to Article 21, the door was made open for various kinds of rights which will have to be read into the Right to life with human dignity. Thus right to minimum subsistence during suspension (Chandrabhan's case AIR 1983 SC 803), right of a person not to be subjected to bonded labour or to unfair labour conditions, (People's Union vs. Union of India (AIR 1982 SC 1473), right to livelihood by means which are not illegal, immoral or opposed to public property (DTC vs. Mazdoor (AIR 1991 ASC 102), immediate medical aid to every patient regardless of the question whether he is innocent or a guilty person (Paramanand vs. Union of India (AIR 1989 SC 2039) all come under the fold of Article 21 as these rights are in one way or the other connected with the right to live with human dignity.

Thus while interpreting the expression 'Right to live with Human Dignity' one must not lose sight of the other face. For instance, the Right to live with human dignity will not include a right under a settlement to claim bonus or DA, a right of wife not to be subjected to a decree in restitution of conjugal rights, a right not to be subjected to death penalty or conviction for an offence under the criminal law, a right to carry on any trade or business free from reasonable restrictions imposed under Article 19(6).

PERSONAL LIBERTY :

The next important ingredient of Article 21 is the

expression 'Personal Liberty'. This expression is of the widest amplitude and it includes various kinds of rights like Right to locomotion, Right to travel abroad, Right of a prisoner to speedy trial (Hussainara Khatoon vs. Home Secretary [AIR 1979 SC 1360]), Right of an employee in a disciplinary proceeding (Board of Trustees vs. Nadkarni [AIR 1983 SC 109]), Right to defence before an Advisory Board to take legal aid where the employer is represented by a lawyer (A.K. Roy vs. Union of India [AIR 1982 SC 710]).

In the light of decisions of the Supreme Court, the word 'Live' and 'Liberty' are liberally interpreted. Article 21 is now being invoked almost as a residuary right. Expansion of Article 21 has led to many of the directive principles (which are not justiciable) being enforced as fundamental rights. On account of this expanded interpretation, now the right to pollution free water and air, right to food clothing, environment, protection of cultural heritage, Right to every child to a full development, Right of persons residing in hilly areas to have access to roads and Right to education (Mohini vs. State of Karnataka [AIR 1992 SC 1858]) have all found their way into Article 21.

One other remarkable feature of the expanded meaning given to Article 21 is that though it is in the form of a negative duty cast upon the State not to interfere with life and liberty of individual, yet various decisions of Supreme Court have now imposed positive obligations on the State to take various steps for ensuring enjoyment of life by an individual with dignity.

Thus every condition, i.e., conducive for leading a better life with human dignity is brought within the fold of Article 21. The State is now enjoined to fulfill these positive obligations.

For eg. Maintenance and employment of public health, elimination of pollution, improvement of means of communication, rehabilitation of bonded labourers, providing human conditions in prisons and protective homes, all come under Article 21 of the Constitution.

PROCEDURE ESTABLISHED BY LAW :

A reading of Article 21 would go to show that a person may be deprived of his life or personal liberty only in accordance with the procedure established by law. In other words, those who are called upon to deprive other person's of their personal liberty will have to observe the forms and rules of the law strictly and scrupulously. The word 'Law' has been used here to mean state made or enacted law and not as an equivalent of law in the abstract or general sense. Therefore, the expression 'Procedure established by law' means prescribed by law of the State. The parliament has power to change the procedure by enacting a law by amending it and when the procedure is so changed it becomes the procedure established by law. The law that is mentioned in Article 21 must be a valid law. In other words, it should have been enacted by a competent legislature and the said law should not violate any other fundamental right declared by the Constitution. This leads to the further inference that notwithstanding Article 21 it is open to challenge the constitutionality of the law which deprives a person of his life or personal liberty on various grounds like, the law having not been enacted by competent legislature (A.K. Gopalan's case); that the law suffers from the vice of excessive delegation (Makhan Singh's case [AIR 1964 SC 381]); that it contravenes any of the fundamental Rights other than Article 21, for eg.,

Article 14 (A.R. Antulay vs. Naik [AIR 1988 SC 1531]); that it does not offer to the prisoner a right to legal assistance (Hussainara vs. State of Bihar [AIR 1979 SC 1369]); that it is unfair and unreasonable (Maneka Gandhi vs. Union of India [AIR 1978 SC 597]) and that it violates natural justice (Antulay's case).

At this stage, the position prior to 1978 has to be referred to in order to understand the path traveled. The Supreme Court, in interpreting Article 21 with regard to the expression 'Procedure established by Law' was called upon to consider the validity of an order made under Section 3(1) of Preventive Detention of Act IV of 1950. The petitioner U/s 31(1) of the Constitution of India prayed for a writ of habeas corpus against his detention in Madras Jail on the ground that while he was under detention under one of the orders of Madras State on 1st March, 1950 he was served with an order U/s. 3(1) of the above Act. He challenged the legality of this order by contending that Act IV of 1950 contravened the provisions of the Preventive Detention Act was not in accordance with Article 22 of the Constitution. The Supreme Court held that the Preventive Detention Act 1950 is intra vires of the Constitution with the exception of Section 14 and illegal and ultra vires and went on to hold that the validity of Section 14 does not affect the rest of the provisions in the Act. It was further held that the expression 'Procedure established by Law' means procedure prescribed by Law of the State, which has a statutory origin. Article 21 has to be read as supplemented by Article 22 and therefore the proper mode of construction will be that to the extent that procedure is prescribed by Article 22, the same is to be observed. The

word 'established' ordinarily means fixed or laid down and agency which fixes the limits could be either the legislature or an agreement between the parties. Therefore, it was held that the word 'Law' in Article 21 has not been used in the sense of "General law connoting what has been described as the principles of natural justice outside the realm of positive law". As stated, 'Law' in Article 21 is equivalent to state made law.

Therefore, the bone of contention in A.K. Gopalan's case, was whether the test of valid procedure for a deprivation of person's liberty by Preventive Detention must be found exclusively in Article 22 of the Constitution or whether they could be gathered from outside it. The elements of 'due process of Law' were examined by the Supreme Court. It was held that the tests of 'due process of Law' with regard to such laws are to be found in Article 22 and they constitute a self-combined code. This has been the ratio decided in A.K. Gopalan's case. Thus there was no scope to contend that the laws which prescribed the procedure for deprivation of person's life or liberty must also satisfy the test of reasonableness. Therefore challenge to the validity of law on the ground of the same being opposed to principles of natural justice, was not accepted in A.K. Gopalan's case.

But the decision of the Supreme Court in Maneka Gandhi vs. Union of India (AIR 1978 SC 597) opened up a new dimension and now a limitation is imposed upon the law making itself. In other words, the procedure prescribed for law must also satisfy the test of reasonableness, fairness and justness. In the words of his Lordship P.N. Bhagwati:

Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The enquiry must, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected?

The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

Therefore, the Supreme Court in Maneka Gandhi's case held that the power conferred U/s. 10(3)(c) of the Passports Act on Passport Authorities to impound a passport is quasi-judicial power and as such the rules of natural justice would be applicable in exercise of the power of impounding a Passport.

After referring to number of judgments both of Indian Courts and other Countries, ultimately the Supreme Court came to the conclusion that the order impounding the passport without even giving an opportunity to be heard to the petitioner was thus violative of principles of natural justice. The Court further held that even executive authorities, while taking administrative action which involves deprivation of or

restriction on inherent fundamental rights of citizens, have a duty to proceed in a way which is free from arbitrariness and unreasonableness and that having to act in the manner which is impartial and meets the requirement of natural justice.

The consequences of new dimension given to the expression 'Procedure established by Law' in Maneka Gandhi case, is that we now have a situation where every action of the State is being decided on the test of reasonableness while interpreting Article 21. The effect is that if a penal law imposes a restriction on the freedom of expression or freedom of business, the reasonableness of such restriction imposed by such penal law would be open to question by the Court. Thus if a citizen's passport is impounded for an indefinite period of time, if the punishment is too cruel or torture-some or if there is unjustifiable delay in executing sentences, Article 21 would be attracted to such situations. The fairness of the Law would be impaired if the procedure does not provide for speedy trial of the accused (Sher Singh vs. State of Punjab [AIR 1983 SC 465]) or if an under-trial is kept in jail for a period longer than the maximum term of imprisonment (AIR 1979 SC 1377 Hussainara Khaton's case) or where an accused is not offered free legal aid when he is too poor to engage a lawyer, and Article 21 gets attracted.

By expanding further the concept of fairness and reasonableness in the 'Procedure established by Law' as interpreted in Maneka Gandhi's case, the Supreme Court has rendered number of decisions to give effect to the full meaning of the expressions 'life' and 'liberty' of a person.

Thus in common Cause, Registered Society vs. Union

of India (AIR 1996 SC 1619), the Supreme Court giving directions to Subordinate Courts to dispose of long pending Criminal cases was quite consistent with the spirit underlying Part III of the Constitution. Telephone tapping was held to be violative of right to privacy (AIR 1997 SC 568).

In Vishaka and others vs. State of Rajasthan (AIR 1997 SC 3011), the Supreme Court observed that sexual harassment of a working woman amounts to violation of gender equality and violation of right guaranteed under Articles 14, 15 and 21 of the Constitution.

In Samatha vs. State of Andhra Pradesh (AIR 1997 SC 3297), THE supreme Court reiterated its stand that right to life was something more than mere animal existence.

The above trend continued in later cases also and in Mr. 'X' vs. Hospital 'Z' (AIR 1999 SC 495), the Supreme Court explained that Article 21 of the Constitution entitles a person to lead a healthy life and therefore the woman who was to marry a person was entitled to know whether her prospective husband has any deadly and communicable disease.

In AIR 2000 SC 988 (Chairman, Railway Board vs. Mr. Chandrama Das), the Supreme Court upheld the order of High Court of Calcutta awarding a sum of Rs. 10 lakhs as compensation to a Bangladesh national who was gang-raped by the Railway employees and thereby it once again gave full expression to the term 'Person' as to include not only citizens of this country but any person including foreign nationals.

Some of the important cases of the Supreme Court on the subject can be summarized thus:

1. M/s. J.K. (Bombay) Ltd., vs. Mrs. Bharati Matha Mishra & others (2001 AIR SCW 282). There, the right of the family members of an erring employee who had wrongfully, withheld the property of the company, was upheld. Though the legal heirs of the deceased employee were held liable to prosecution, it was observed that all the members of the family could not be proceeded against.
2. In 2001 AIR SCW 1236 – Smt. Akhtari Bi vs. State of Madhya Pradesh, it was observed that to have speedy justice is a fundamental right which flows from Article 21; however, prolonged delay confers a right on the accused to apply for bail.
3. In 2001 AIR SCW 1500 – Uday Mohanlal Acharya vs. State of Maharashtra; it was held: Detention beyond the prescribed period, without a challan being filed, would be subterfuge and against the provisions of CPC and Art. 21.
4. In 2001 AIR SCW 1560 – M.C. Mehta vs. Union of India, it was held that the direction to convert all buses operating in Delhi to CNG fuel mode was given for safeguarding health of people and would override the provisions of other statutes.
5. In 2001 AIR SCW 2159 – Ram Deo Chauhan vs. State of Assam: the law enabling the State to take away the life of a person by way of punishment would be hit by the forbid contained in Article 21. Death penalty can be permitted to survive Article 21 only if the lesser alternative can be foreclosed unquestionably.

In cases for compensation for death of or personal injury

- to housewives or infants caused in vehicular accidents, if there exists a reasonable expectation of pecuniary advantage, claim can be maintained – 2001 AIR SCW 3086 – Lata Wadhwa vs. State of Bihar.
6. In Mahendra Lal Das vs. State of Bihar (2001 AIR SCW 4186). For violation of constitutional mandate of speedy justice, proceedings against an official on allegation of corruption, were quashed on the ground that the appellant lost his chance of promotion and was deprived of love and affection in his family.
 7. In 2001 AIR SCW 4249 – Narenderjit Singh vs. Union of India: Where an accused could not be released even on getting bail because of pendency of several cases in which production warrants had been issued, it was held there was no violation of Article 21. However, it was observed that he could maintain a petition under Article 32 by reason of supposed infraction of Article 21.
 8. In 2001 AIR SCW 3386 – State of Andhra Pradesh vs. Nallamili Rami Reddy : Merely because S.82 of the A.P. Charitable & Hindu Institutions and Endowments Act provides for cancellation of leases of agricultural lands of institutions which results in some hardship to some of the tenants, it could not be held that it deprives them of their livelihood and there was violation of Article 21.
 9. In 2001 AIR SCW 4505 – Murali S. Deora vs. Union of India: Since a non-smoker is afflicted to various diseases including lung cancer or of heart, only because he is required to go to public places and it is indirectly depriving of his life without any process of law. Hence smoking in public places was banned.

10. In AIR 2002 SC 3523 – Ram Ekbak Missir vs. Ram Niwash Pandey: It is the duty of courts to see that neither victim nor accused suffers by mischief of the Investigating Agency or staff of Court.
11. In AIR 2002 SC 2977 – State through CBI vs. Narayan Waman Nerukar: Held: While considering the question of delay in trial, the Court has a duty to see whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay.
12. In AIR 2002 SC 2225 – Secy. Minor Irrigation and Rural Engineering Services, U.P. vs. Sahngoo Ram Arya: Right to life includes the right to live without being hounded by the police or the CBI to find out whether he has committed any offence. Direction to hold an inquiry by CBI can only be given after considering the material on record and concluding that it does disclose a prima facie case calling for such direction.
13. In AIR 2002 SC 1856 – P. Ramachandra Rao vs. State of Karnataka, it was held that in its zeal to protect the right to speedy trial of an accused, the Court cannot devise and almost enact bars of limitation beyond which trial shall not proceed and arm of law shall lose its hold though the Legislature and the Statutes have not chosen to do so. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of

Court. This is permissible for judiciary to do. But it may not, like legislature, enact a provision akin to or on the lines of Chap. XXXVI of the Code of Criminal Procedure 1973.

14. In AIR 2002 SC 1752 – All India Judges Association vs. Union of India, in view of the huge backlog of undecided cases due to inadequate strength of judges qua population of country, direction was issued to increase the judge strength of 50 judges per 10 lakh people.
15. In AIR 2002 SC 1109 – Avtar Singh vs. State of Haryana: By a valid legislative act, the period of temporary release on parole was denied while counting the actual sentence undergone. It is not violative of Article 21.
16. In AIR 2003 SC 3357 – State of Bihar vs. Lal Krishna Advani; it was held: Under the Commissions of Inquiry Act (60 of 1952), S. 8-B, common prejudicial to reputation of person could be made only after the person concerned is given an opportunity of being heard.
17. In AIR 2003 SC 3057 – Javed vs. State of Haryana : Test of individual liberty cannot be given so much stress so as to give a go-bye to ideals of social and economic justice, advancement of nation etc. Disqualifications for being a candidate cannot be tested on the touch-stone of fundamental rights. Sec. 175(1)(q) disqualifying a person with more than 2 children, does not violate any fundamental right nor is it unreasonable.
18. In AIR 2003 SC 2363 – Peoples Union for Civil Liberties vs. Union of India : While considering the right of voters to know antecedents of candidates vis-à-vis right of

privacy of candidate, declaration about criminal antecedents of candidate and about assets and liabilities it was held that S.33-B inserted in the Representation of the People Act does not violate his right to privacy.

19. In AIR 2003 SC 2189 – a.k. Bindal vs. Union of India: Non-revision of pay scales does not ipso facto amount to violation of fundamental right to livelihood, particularly when there is no material to show that salary paid currently is wholly inadequate to lead life with human dignity.
20. In AIR 2004 SC 456 – Peoples Union for Civil Liberties vs. Union of India: Support to terrorist organization – either verbal or monetary, is not an offence unless committed with criminal intention. Mens rea element is constituent ingredient for an offence under Sec. 20, 21, 22 of Prevention of Terrorism Act. So construed, apprehension of misuse of sections is ruled out. Sections are not constitutionally invalid.
21. In AIR 2004 SC 1290 – State of Punjab vs. Ramdev Singh: It was observed that rape was violative of the right to life and therefore, sexual crime against woman has to be dealt with sternly and severely.
22. In AIR 1986 SC 849 - State of HP vs. Umed Ram: For residents of hilly area access to road is access to life itself.
23. In AIR 1967 SC 1836 – Satwant Singh Sawhney Vs. APO : No one can be deprived of his right, except according to the procedure prescribed by law.
24. In AIR 1978 SC 1548 : Right to Legal Aid – Accused

who cannot afford legal action is entitled to free legal aid at the cost of the State. So also in the case of AIR 1979 SC 1369 Hussainara Khatun vs. State of Bihar.

I may also quote some cases topic-wise:

RIGHT TO LIFE :

25. A grand step was taken by the Court in expanding the scope of Art. 21 when it argued that 'life' in Art. 21 does not mean merely 'animal existence' but living with 'human dignity'. The Court has thus given very extensive parameters to Art 21.
26. In **Francies Coralic v. Administrator, Union Territory of Delhi, AIR 1981 SC 746 at 753:**
 "But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. 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 over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.
27. In **Bandhua Mukti Morcha vs. Union of India AIR 1984 SC 802** : Characterizing Art. 21 as the heart of the Fundamental Rights, the Court gave it an expanded interpretation – "...the minimum conditions which must exist in order to enable a person to live with human dignity. No government can take action to deprive a person of enjoyment of these basic rights."

28. In **Chamali Singh V. State of U.P. AIR 1996 SC 1051 –**
 The court observed in this connection :
 "In any organized society, right to live as a human being is not insured by meeting only the animal need of man it is secured when he is assured of all facilities to develop himself and is freed from restrictions which enables his growth. All human right are designed to achieve this object. Right to live granted in any civilized society implies the right to food, water, decent environment, education and medical care and shelter. These are basic human right known to any civilized society.

RIGHT TO LIVELIHOOD :

29. In **Board of Trustees of the Port of Bombay V Dilip Kumar AIR 1983 SC 109** - the right to life guaranteed by Article 21 includes the right to livelihood.
30. In **Olga Tellis V. Bombay Municipal Corporation – AIR 1986 SC 180** - the 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.
- If the right to livelihood is not treated as apart and parcel of the constitutional right to life, the easiest way of depriving a person of his right to life would be deprived him of means of livelihood to the point of abrogation.
- Deprivation of livelihood would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet such deprivation of life would not be in accordance with the procedure established by law, if the right to livelihood is not regarded as part of the right to life.

Emphasizing upon the close relationship between 'life' and 'livelihood', the court stated: "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. Deprive a person of his right to livelihood and you shall have deprived him of his life."

RIGHT TO EDUCATION:

31. In **Mohini Jain V. State of Karnataka AIR 1992 SC 1858** - "The right to education flows directly from the right to life," and the right to education being concomitant to the fundamental right, "The state is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens."

SEXUAL HARASSMENT :

32. In **Vishaka V State of Rajasthan AIR 1997 SC 3011** the Supreme Court has declared sexual harassment of a working woman at her place of work as amounting to violation of rights of gender equality and right to life and liberty which is clear violation of Article 14,15 and 21.
33. The ruling of Vishaka has been reiterated by the Supreme Court in **Apparel Export Promotion Council V A.K. Chopra AIR 1999 SC 625**.

RIGHT TO HEALTH :

34. In **Vincent V Union of India AIR 1987 SC 990** that a healthy body is the very foundation of all human activities Article 47, a directive principle, lays stress on improvement of public health unprohibition of drugs

injurious to health as one of the primary duties of the State.

The court has observed in this case :

"Maintenance an improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority - perhaps the one at the top."

EQUAL PAY FOR EQUAL WORK :

35. In **State of M.P. V. Pramod Batiya AIR 1993 SC 286** - the doctrine of equal pay for equal work is implicit in the doctrine of equality enshrined in Article 14 and flows from it. The rule is as much a part of Article 14 and it is part of Article 16(1). The doctrine is also stated in Article 29(d), a directive principle, which ordains the State to direct its policy towards securing equal pay for equal work for both men and women.
36. In **Jaipal V. State of Haryana AIR 1988 SC 1504** the Court has enunciated the doctrine as follows:-
- "the doctrine of equal work for equal pay would apply on the premise of similar work but its does not mean that there should be complete identity in all respects. If the two classes of persons do some work under the same employer with similar responsibility, under similar working conditions, the doctrine of equal work equal pay, would apply and would not be open to the State to discriminate one class with the other in paying salary."

RIGHT TO MEDICAL CARE :

37. In **Parmanand Katara V Union of India AIR 1989 SC 2039** the Supreme Court has considered a very serious problem existing at present: in a medico legal case (such as accident) the doctor usually refused to give immediate a medical aid to the victim the legal formalities are completed. In some cases, the injured die for want of medical aid pending the completion of legal formalities. The Supreme Court has now very specifically clarified that preservation of life is of paramount importance. Once life is lost, status quo ante cannot be restored. It is the duty of the doctors to preserve life whether the concerned person be a criminal person or an innocent person. Article 21 cast on the State an obligation to preserve life. The court has made pithy observations in this connection :

“A doctor at the government hospital positioned to meet this stage obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a government hospital or otherwise has the professional obligation to extend his service with due expertise for protecting life. No law or state action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether and statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must therefore given way....”

The Court has also observed :

“Article 21 of the constitution casts an obligation on the State to preserve life. The patient whether he be an innocent or be a criminal liable to punishment and under the laws of the society, it is the responsibilities of those who are in charge of the health of community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to be tantamount to be legal punishment. Every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.”

38. In **Paschim Banga Khet Mazdoor Samiti v. State of West Bengal AIR 1996 SC 2426** - In a welfare State, the primary duty is to provide adequate medical facilities for the people. The government discharge this obligation by running hospitals and health centers to provide medical care to those who need them.

“Art. 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance.”

HEALTH OF LABOUR :

39. In **CERC v. Union of India, AIR 1995 SC 922**. The court held that right to human dignity includes right to health, medical aid to protect the health and vigor of a worker while in service or post retirement is a fundamental right under Article 21, read with the directive principles in Article 39(1), 41, 43, 48A and all related Articles and fundamentals human rights to make the life of workmen meaningful and purposeful with dignity of person.

CARE HOMES :

40. In **Vikram Deo Singh Tomar V. State of Bihar AIR 1988 SC 1782** - The Court has emphasized that India is a welfare state and the Indian Constitution lays special emphasis on the protection and well being of the weaker section of the society including women and children. Article 21 envisages a quality of life consistent with his human personality. "the right to live in human dignity is the fundamental right of every Indian citizen."
41. In **Upendra Baxi vs. State of U.P. AIR 1987 SC 191** the Supreme Court gave directions to the State Government seeking improvement of the living conditions in the government protective home at Agra.

RIGHT TO SHELTER :

42. In **Shantisar Builders v. Narayan Khimal Totame AIR 1990 SC 630** the Supreme Court has ruled that the right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal it is the bare protection of body: for a human being it has to be a suitable accommodation which would allow him to grow in every aspect-physical, mental and intellectual.
43. In **Chameli Singh V. State of U.P. AIR 1996 SC 1050** the Supreme Court has emphasized upon the right to shelter and has expounded its own concept of a shelter. The court has observed :

"Shelter for a human being, therefore, is not a mere protection of his life and limbs. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other shelter, therefore, does not mean a mere right to roof over once head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right."

RIGHT TO ENVIRONMENT :

44. In **Subhash Kumar v. Bihar AIR 1991 SC 420** the Apex Court has held that enjoyment of pollution free environment is included in the right to life under Art. 21.
45. In **A.P. Pollution Control Board v. M.V. Nayudu AIR 1999 SC 812** the Supreme Court has made very valuable suggestions for improvement of adjudicatory machinery under the various environmental laws. The main burden of these suggestions is that in all environmental courts, tribunals and appellate authorities, there should be judge of rank of High court or a Supreme Court judge, sitting or retired, and a scientist or a group of scientist of high ranking and experience so as to help a proper and fair adjudication of disputes relating to environment and pollution.

Further, a provision ought to be made for an appeal to

the Supreme Court. The present day system of adjudication is not satisfactory. The scientific and technological issues arising in environmental matters are extremely complex and, therefore, there is need for technical persons well versed in environmental laws to handle these issues.

46. In Indian Council for Enviro-Legal Action V. Union of India, AIR 1996 SC 1446 – The Supreme Court ruled that :

“Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.”

To sum up the discussion on Article 21, the interpretation given by the Supreme Court with regard to Article 21 over the years, right from A.K. Gopalan’s case would go to show that our Supreme Court through several landmark judgments, has, in a remarkable and extraordinary manner, brought within the ambit of Article 21 of the Constitution several other rights including directive principles of the Constitution and the people of this country owe a great debt to the Apex Court for coming to rescue of every person in so far as protection of ‘life’ and ‘liberty’ is concerned.

□ □

* Chairperson, Rajasthan State Human Rights Commission and Former Chief Justice of Madars & Karnataka High Court.

क्या आप चाहते हैं कि आपके पट्टिवाद/शिकायत पट्टि आयोग द्वाारा शीघ्र प्रभावी कार्यवाही हो?

यदि हाँ, तो कृपया अपने परिवार/शिकायत में यथासंभव निम्न सूचना अवश्य अंकित करें :-

- (क) पीड़ित व्यक्ति का नाम, पिता/पति का नाम, जाति, निवास का पता/गाँव/शहर, डाकघर, पुलिस थाना, जिले सहित।
- (ख) जिस व्यक्ति/अधिकारी/कार्यालय के विरुद्ध शिकायत है, उसका पूरा विवरण।
- (ग) शिकायत/घटना/उत्पीड़न का पूरा विवरण (घटना, स्थान, तारीख, महीना, वर्ष सहित।
- (घ) घटना की पुष्टि करने वाले साक्षियों के नाम-पते, यदि ज्ञात हो तो।
- (ङ) घटना की पुष्टि करने में दस्तावेजी सबूत, यदि कोई हो तो।
- (च) यदि किसी अन्य अधिकारी/कार्यालय/मंत्रालय को शिकायत भेजी हो तो उसका नाम एवं उस पर यदि कोई कार्यवाही हुई हो तो उसका विवरण।
- (छ) क्या आपने पूर्व में इस आयोग या राष्ट्रीय आयोग में इस विषय में कोई शिकायत की है? यदि हाँ, तो उसका विवरण एवं परिणाम।
- (ज) क्या इस मामले में किसी फौजदारी/दीवानी/राजस्व अदालत में या विभागीय कोई कार्यवाही हुई या लम्बित है? हाँ, तो उसका विवरण।

नोट : कृपया परिवार/शिकायत पर हस्ताक्षर/अंगुष्ठ चिन्ह लगाना नहीं भूलें।

परिवार/शिकायत अध्यक्ष/सचिव, राजस्थान मानवाधिकार आयोग, जयपुर के पते पर भिजवाएं।

आयोग का संगठनात्मक संरचना (06.07.2005)

1.	न्यायमूर्ति एन.के. जैन	अध्यक्ष
2.	न्यायमूर्ति जगतसिंह	सदस्य
3.	श्री धर्मसिंह मीणा	सदस्य
4.	श्री पुखराज सिरवी	सदस्य
	श्री गिरीराज सिंह	सचिव

आयोग का प्रमुख कार्यकारी अधिकारी आयोग का सचिव है। आयोग के अन्वेषण कार्य के लिये महानिरीक्षक स्तर का एक पुलिस अधिकारी नियुक्त है।

सम्पर्क सूत्र :

राजस्थान राज्य मानवाधिकार आयोग, जयपुर

टेलीफोन : 0141-2227868 (अध्यक्ष)

2227565 (सचिव), 2227738 (फैक्स)।

E-mail : rshrc@raj.nic.in Website : www.rshrc.nic.in

ARTICLE-21 OF THE CONSTITUTION OF INDIA

न्यायमूर्ति एन.के. जैन
चैयरपर्सन



राजस्थान राज्य मानवाधिकार आयोग
एस.एस.ओ. बिल्डिंग
शासन सचिवालय, जयपुर

ARTICLE-21 OF THE CONSTITUTION OF INDIA

न्यायमूर्ति एन.के. जैन
चैयरपर्सन



राजस्थान राज्य मानवाधिकार आयोग
एस.एस.ओ. बिल्डिंग
शासन सचिवालय, जयपुर

राजस्थान राज्य मानवाधिकार आयोग के जनोपयोगी प्रकाशन

मानवाधिकार साक्षरता का प्रसार, जागरूकता एवं अधिकारों के संरक्षण हेतु राजस्थान राज्य मानवाधिकार आयोग के जनोपयोगी प्रकाशन :-

1. मानवाधिकार संरक्षण अधिनियम, 1993 की पुस्तिका।
2. आयोग की कार्यविधि की जानकारी हेतु ब्रोसर।
3. राज्य आयोग के कार्य एवं उसमें निहित शक्तियां एवं प्रसंज्ञान लेने वाले प्रकरणों की जानकारी संबंधी लघु पुस्तिका।
4. मानवाधिकार संरक्षण लघु पुस्तिका।
5. आयोग का वार्षिक प्रगति प्रतिवेदन वर्ष 2000-2002.
6. आयोग का वार्षिक प्रगति प्रतिवेदन वर्ष 2002-2003.
- *7. आयोग का वार्षिक प्रगति प्रतिवेदन वर्ष 2003-2004.
8. आयोग का वार्षिक प्रगति प्रतिवेदन वर्ष 2004-2005.
9. आयोग का वार्षिक प्रगति प्रतिवेदन वर्ष 2005-2006.
10. त्रैमासिक न्यूज लेटर संयुक्तांक/विशेषांक- 2005.
11. त्रैमासिक न्यूज लेटर अप्रैल 2006 से जून 2006.
12. लघु पुस्तिकाएं
 - (i) बालकों के अधिकार।
 - (ii) अन्तर्राष्ट्रीय मानवाधिकार दिवस 10 दिसम्बर।
 - (iii) एच.आई.वी. एड्स एवं मानवाधिकार।
 - (iv) मानवाधिकार और जैन धर्म।
 - (v) आयोग की कार्यविधि, शक्तियां एवं परिवादों की निरस्तारण प्रक्रिया।
 - (vi) आयोग द्वारा जारी दिशा-निर्देश एवं अन्य गतिविधियाँ।
 - (vii) भारतीय संविधान की अनुच्छेद-21 'प्राण और दैहिक स्वतंत्रता का संरक्षण'।
 - (viii) महिलाओं के अधिकार- संबंधित अधिनियमों की संक्षिप्त जानकारी।