



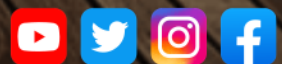
# VAJIRAO IAS ACADEMY

*India's Premier Coaching Institute for Civil Services (IAS/PCS)*



## MAINS HACKER

# ARTICLE 21



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## DIRECTOR'S MESSAGE



“Civil Service is not just a job; it is an opportunity, to do your bit for society and to contribute to nation-building. It is an opportunity to realise your potential and make a meaningful contribution in the emancipation of masses.”

**Mr. Dilip Kumar**  
**Director, Vajirao IAS Academy**

Good Civil Servants ensure efficient and smooth governance. They are the backbone of the country and they have the power to make a difference in people's life.

We have set up extremely tough targets for ourselves. Now a day's, most of the students are well aware and focused about their aim. They just need a streak of guidance. We feel that we have done our bit in providing that blue streak of guidance and we are honoured to be a reason of smile on certain lips, proud to be your teacher, friend and guide.



## Preface

Governance has an important role in the examinations conducted by the Union Public Service Commission and State Public Service Commissions. It is necessary for the aspirants to have knowledge of relevant and updated information on issues of national and international importance related to the analytical aspects. Mains Hacker Series is being presented to the students to fulfill this requirement to clear and secure the mains. Preparation of the civil services exam is only completed when the aspirants have holistic knowledge and analysis of the dynamic nature of the various angles of the subject. Keeping this vision and approach and understanding the multidimensional need of students at the content level, these magazines will present current affairs, its basic static portion with relevant issues of general studies. Keeping in mind the mains exam, current articles burning issues, Ethics Case Studies, Biographies of important and eminent personalities, coverage of most useful topics of various important sections of General Studies and the most important current affairs issues are being covered under this series.

**Khyati Khare**

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## 1. Introduction

Article 21 states that "No person shall be deprived of his life or personal liberty except according to a procedure established by law." Thus, article 21 talks about two rights:

- Right to life, and
- Right to personal liberty

The Government of India Act, 1935 presided over the establishment of Article 21 of the Indian Constitution. It states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 21 comes under the Part 3 of the Indian constitution and is one of the fundamental rights exercised by all citizens of India.

Since the enactment of the Indian Constitution, the scope of Article 21 has widened vertically and horizontally according to the changing needs of society. Article 21 is a proof the law is not static rather it is dynamic and evolving.

## 2. Judiciary's Interpretation

### a. 1st Case: Supreme Court's states on meaning of word, "Law" for article 21 in A. K. Gopalan Case

Due process of law and procedure established by law

A.K. Gopalan v. State of Madras was the first landmark case in the process of evolution of Article 21. This case challenged the validity of the Preventive Detention Act, 1950

- The Supreme Court in this case took a very narrow interpretation of 'procedure established by law'. In this case it was held that with article 21 protections is available only against the arbitrary actions of the executive i.e. against the procedure that has been established by a law.
- This protection does not include the arbitrary legislative actions by which laws are constructed.
- It means when a law has been presented by the legislature for taking away personal liberty then a law itself may not be held invalid. The only protection that will be exercised is against how this law has been implemented by the executive.
- If the executive has taken any arbitrary decision or arbitrary action in the use of specific law then this action can be held null and void by the Court but not the law itself on the grounds that law is unreasonable, unfair or unjust.
- Whereas the term 'due process of law' means law and procedure both should be reasonable which basically establishes principles of natural justice.

### Other important aspects of the judgment

- SC presented the meaning of the word law is not to be interpreted as inclusive of Principles of Natural Justice.
- In essence, SC held that Article 21 is not a substantive right, it is a mere procedural right.
- SC held that Article 14, 19 and 21 should be mutually exclusive. That is, one article need not come in the way of implementation of the other article.

### **b. 2nd Case: Habeas Corpus case- ADM Jabalpur Versus Shivkant Shukla case 1975**

Emergency Article 352 read with Article 359, Right to Constitutional Remedies under Article 32 and 226 will also be suspended.

- Article 352: Proclamation of National Emergency.
- Article 359, Suspension of the enforcement of the rights presented by Part 3 during proclamation of Emergency.
- The Supreme Court submitted before the State by agreeing that Right to approach the Court Under article 32 and 226 will also be suspended during Emergency even in case of violation of Right to Life and Personal Liberty.

Take Away from Apex Court's judgment in Habeas Corpus Case:

1. Parliament and Executive have unrestrained powers during the time of Emergency.
2. Even Right to Life can be dispensed at the time of Emergency.
3. Part III was subservient to Part XVIII.

### **c. 3rd Case: Maneka Gandhi Case, 1978**

In this case, Maneka Gandhi's passport was confiscated and she was restrained from traveling abroad. There was no case of violation of any Fundamental Right *per se*. Maneka Gandhi challenged the Supreme Court's stance in A.K. Gopalan Case, in which SC had postulated the Doctrine of Mutual Exclusivity of Fundamental Rights under Articles 14, 19 and 21.

Finally it has been accepted that A law has to be Just, Fair & Reasonable. Fortunately, S.C. took a 180 degree turn on the matter of the Maneka Gandhi case of 1978. The provocation was the arbitrary law that had permitted the Janata Party government to take away Maneka's passport without any solution. Importing the American concept of due process, the Apex Court ruled that the procedure established by law for depriving someone of their life or personal liberty had to be "*just, fair and reasonable*". This Passport related case led "*Judiciary to import and establish DPL feature of American Constitution*"

**Takeaways from Maneka Gandhi's case:**

1. The meaning of "Liberty" under Article 21 is of longest amplitude.
2. It established that Articles 19 and 21 are not mutually exclusive. That is, a law coming under article 21 should also satisfy article 19. In other words, a law made by the legislature which seeks to deprive a person of his personal liberty must prescribe a procedure for such deprivation and the procedure must not be in an arbitrary manner.

## **3. Implied Fundamental Rights**

The interpretation of Article 21 by the Apex Court has widened a new chapter of human rights jurisprudence. In multiple cases, the court has held the following as implied fundamental rights under Part 3, though not all of them have been specifically mentioned. These all are called Implied Fundamental Rights of part 3.

1. Right to Dignity
2. Right to Speedy Trial
3. Right to Travel Abroad
4. Right to Clean, Green Environment
5. Right to Livelihood
6. Right to Privacy
7. Right to marriage
8. Right against torture
9. Right against Bonded labor
10. Right to legal aid
11. Right to Food

#### **4. Important developments linked to Article 21**

Right to travel abroad in the case of Satish Chandra Verma vs Union of India, SC held that the right to travel abroad is one of an important basic human right. SC was hearing an appeal filed by the IPS Officer Satish Chandra Verma, who was denied permission to travel abroad on account of a pending departmental inquiry filed against him. The court also placed reliance on its verdict in the case of Maneka Gandhi vs Union of India, where the right to travel was upheld by the court. Recent developments on article 21 Vishaka & ors. v/s state of Rajasthan is one of the landmark judgment case in the history of sexual harassment case. Sexual Harassment is an uninvited sexual favor or sexual gestures from one gender towards another gender. The court ordered that the fundamental rights under Article 14, 19 and 21 of the Constitution of India provide that every profession, trade or occupation should provide a safe and secure working environment to the employees.

It violates the right to life and the right to live a dignified life. Sexual harassment infringes the right to life and the right to live a dignified life. The fundamental requirement was that there should be the availability of a safe working environment at the workplace. In this case, SC presented sexual harassment and established the guidelines that has to be followed by all workplaces, which also known as 'Vishakha guidelines.

##### **a. Right of Prisoners**

In the case of Sunil Batra vs. Delhi Administration, a prisoner on the death row was held in solitary partition since the date of conviction by the jail authority. A writ petition was filed against this order in the Apex Court. SC held that solitary confinement itself is a substantive punishment under the Indian Penal Code, 1860 and conviction of a person for a crime does not reduce him to non-person vulnerable to a major punishment given by jail authorities without observance of due procedural safeguards and mechanism, thus violative of Article 21. Right to legal aid in the case of Hussainara Khatoon vs. the State of Bihar, it was upheld that an accused who cannot afford legal services due to some or many valid established reasons, has the right to free legal aid at the cost of the State. This aid will form a part of fair, just and reasonable procedure established under Article 21 of the Indian Constitution.

## **b. Right to privacy**

- In Justice KS Puttaswamy (Retd.) Vs. Union of India case 2018 the nine judges Constitutional Bench of the central Court in rare unanimity given their verdict that individual privacy is intrinsic to life and liberty and an inherent and coherent part of the fundamental rights enshrined in the Article 21 of the Constitution.
- The right to privacy is not an ordinary law, not just a legal right, not just a fundamental right under the Indian Constitution. It is a natural right inherent in every individual.
- The decision in Khadak Singh case and MP Sharma case to the extent that it upheld that right to privacy is not protected by the constitution was overruled.
- It includes the preservation of personal intimacies, sanctity of family life, marriage, procreation, the home and sexual orientation.
- Privacy connotes a right to be left alone. It safeguards individual autonomy and recognizes one's ability to master vital aspects of his/her life.
- Privacy is not an absolute right exercised by individuals, but any invasion must be based on legality, need and proportionality.
- A violation of privacy in the context of an arbitrary State action would attract an enquiry under following three points test, a law:
  - ❖ Must be "*reasonableness*" inquiry under Article 14, right to equality
  - ❖ would have to be 'just, fair and reasonable' under article 21.
  - ❖ Must fall under the specified restrictions under article 19(2).
- Informational privacy is a facet of this right. Dangers to this can originate from both state and non-state actors.

## **c. Right to health and livelihood**

- In a recent verdict, while hearing, the Apex Court refused to put a blanket ban or complete ban on firecrackers and allowed the manufacture and sale of only "green" and reduced-emission or "improved" crackers.
- On the other hand, it banned all firecrackers that are loud and toxic to man, animal and around the environment.
- The court had said that it needs to strike a balance between the fundamental right of livelihood of firecracker manufacturers and the right to health of the population. Both aspects are covered under Article 21 ,right to life, and Article 19(1)(g) of the Constitution.

## **d. Right to sleep**

- The Apex Court expanded the ambit of the right of life to bring in a citizen's right to sleep peacefully under its ambit.
- A citizen has a right to sound and peaceful sleep because it is fundamental to the life of an individual, the Apex Court said while ruling that the police action on a sleeping crowd gathered at Baba Ramdev's rally at Ramlila Maidan amounted to a violation of their fundamental right.



#### **e. Right to speedy trial**

- The Apex Court directed courts to dispose of bail pleas within one week.
- It also issued directions to crack pendency of criminal cases, reiterating that speedy trial is a part of the reasonable, fair and just procedure as enshrined by Article 21 of the Constitution of India.
- Supreme Court in a 2:1 majority in a separate judgment held that an accused is entitled to statutory bail (default bail) under Section 167(2)(a)(2) of Code of Criminal procedure if the police failed to file the charge-sheet within two months of his arrest for the offense punishable with 'imprisonment up to 10 years.

#### **f. Right to Die**

- Initially The Apex Court held that the right to life under Article 21 of the Indian Constitution does not include the right to die.
- But later in Aruna Ramchandra Shanbaug vs. Union of India the Supreme Court upheld that passive euthanasia can be permitted under exceptional circumstances under the strict monitoring of the Court.
- In Common Cause (A Regd. Society) Vs. Union of India (2018 SC), a five-judge Constitution Bench, judgment presented by Chief Justice Dipak Mishra, gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible state of coma. The SC held that the right to die with dignity is the fundamental right.
- Fundamental right to life and dignity includes the right to refuse treatment and die with dignity because the fundamental right to a "meaningful existence" includes a person's choice to die without any suffering (including terminally ill).

#### **g. Right to live with family**

- In a very recent case, Delhi High Court quashed the 'Leave India Notice' served to a Pakistani citizen, who is the wife of an Indian citizen and a mother of two kids.
- The Bench stated that "family", being the natural and fundamental unit of society, is entitled to protection of its integrity against arbitrary interference by the State.
- The right to life under Article 21 of the Constitution of India would include the right of young children to live with their mother and the right of a husband to consort with his wife.

### **5. Section 497 and article 21**

- The law under section 497 rules that any man who has an affair with a married woman will be punished under the law but it requires the consent of the husband of women involved in the other affair.
- If this affair took place with the consent of the husband of the women involved, there would be no punishment. It deprived married women of their own consent and autonomy.

- Autonomy is intrinsic in dignified human existence. Section 497 denuded the woman from making choices. That is the violation of article 21.
- It became one of the major reasons for quashing section 497.

## **6. Right to Die with Dignity (Euthanasia)**

- Euthanasia is the deliberate or purposefully ending of a person's life in order to alleviate or eradicate suffering and misery. It's also known as 'mercy killing.'
- Many people argue on whether the right to live includes itself the right to die, particularly the right to die with dignity.
- The practice of Passive Euthanasia is legalized in several countries such as Netherlands, Belgium, Denmark, Switzerland, Colombia, Luxembourg, and some of the states in the USA
- In countries like Netherlands, Belgium, and Switzerland the practice of Active Euthanasia which is also assistance that is legally allowed under various circumstances.
- Passive Euthanasia, occurs when a terminally ill person's therapy is withheld, i.e., the conditions that allow them to live are taken away
- Active Euthanasia, occurs When a doctor uses fatal substances to end someone's life.
- In India's Case, There is no law enacted by the Legislature in India that regulated the practice of Euthanasia all forms of practice of Euthanasia is completely illegal and it is punished in the law.
- The Supreme Court in Aruna Shanbaugh vs Union of India, 2011 case upheld that passive Euthanasia can be practiced on the case-by-case bench of the High Court.
- Consisting of not less than 2 judges giving permission provided a team of medical experts containing of a neurologist, a physician, a psychiatrist gives permission and a relative give a bonafide aid consent to practice passive euthanasia on a patient.
- The court clarified the practice of Active Euthanasia will remain illegal.

## **7. Way Forward**

Every Indian person has the right to life enshrined as a fundamental right and no one has the authority to infringe on a person's fundamental rights. If a public official or government official or state at large violates someone's fundamental right, that person can file a petition with the Central Court.