

# ARTICLE 21 OF CONSTITUTION OF INDIA AND RIGHT TO LIVELIHOOD

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**ABSTRACT**-In any prearranged society, right to live as a human being is not ensured by assembly only the animal needs of man. It is protected only when he is assured of all services to develop him and is free from boundaries which slow up his development. All human rights are intended to achieve this object. Right to live assurance in any cultured society implies the right to food, water, well-mannered environment, education, medical care and shelter. The word „life“ as engaged by Article 21 takes in its sweep not only the concept of mere physical existence by also finer values of life including the right to work and right to livelihood. This right is a fundamental right certain to all persons residing in India, citizens and non-citizens alike. Right to life including right to livelihood and work as guaranteed by Article 21 is not abridged to a mere paper tired expression but is kept alive, lively and pulsating so that the country can successfully march towards the affirmed goal of company of an egalitarian society as envisaged by the beginning fathers while enacting the constitution of India along with its preamble.

**Keywords: Article 21, Constitution of India, right to livelihood**

## INTRODUCTION

Article 21 is one of the prime Articles comprised in part III of the Constitution of India manufacture with fundamental rights. Fundamental rights listed in Part III are enforceable beside State as defined by Article 12 of the Constitution of India. State includes the Government and Parliament of India and the Government and Legislature of each of the states and local or other authorities within the countryside of India or under the control of the government of India. As laid down by Article 13 laws conflicting with or in derogation of fundamental rights to the extent of such inconsistency or derogation are treated to be void .The state is also enjoined not to make any law which takes away or abridges the rights conferred by part III of the Constitution of India and any law made in contravention of Article 13 shall to the extent of the flouting, be void. So far as Article 21 is concerned it lays down that no person shall be deprived of his life or personal liberty except for according to procedure established by law. Will it include right to livelihood or right to work or will it connote only bare physical existence? In this connection it is gainful to keep in view the pertinent observations made by erudite author Justice B.L. Hansaria in the Introduction to his book.<sup>1</sup>

“The fundamental right to life which Article 21 deals with is the most valuable human right and „forms the area of all other rights. What is more, this Article has given to the people of India as much they have required from it. We are sure it is able of giving more, if they would so want in future. The founding fathers has perhaps not visualized that a short condition they were embodying in the foundation has so much potentiality. Hardly ever such a provision has so long strides as this Article. Dr. Ambedkar and large part of the Constitution assemblage who has felt dissatisfied“ with the reach of Article 15, as was Article 21 numbered in the draft constitution ,to „compensate“ which Article 15A was inserted must be feeling happy in the heaven because of the immense content poured in Article 21 by lesser mortals. The journey is continuing in all its dignity. Law is never still, it cannot be. It has also to be moulded by deft hands to get together the brave of time.as. It has been well said that life of law is not reason, it is experience“.

Article 21 in Constitution Settings: This Article is couched in a negative form and enjoins the state not to deprive any person not necessarily only a citizen, of his life or personal liberty except according to procedure established by law. It is axiomatic that the State can leave without any person of his life liberty only through the medium of operation of any law which is a valid law. The procedure laid down by the said law should be as a result of suitable exercise of law-making power by the concerned law making authority. In other words only a competent legislature can enact such law. If the procedure laid down by such law is found to be established by an useless legislature such law would be a still born one or an useless one and ultra virus the powers of the concerned legislature. Result would be that such a practice flowing fresh such invalid law will have no effect on the life or personal liberty of any person governed by the sweep of Article 21, and Even though the procedure established by law is create to have been laid downwards by a administration which is competent to enact such a law, if such a law is found to conflict with any of the fundamental rights guaranteed by part III of the Constitution then such law would be treated as still-born having no impact on the scarcity of life and liberty of the deprivation of life and liberty of the concerned person and Article

21 would fully protect such life and personal autonomy of that person.

Likewise Article 22 lays down the procedure which should be followed before any arrest or detention of any person is to be effected if the procedure lay down by any law enacted. If the procedure lay down by any law enacted by the competent legislature falls short of the requirements of Article 22 it will have no effect so far as the deficiency of life and personal liberty of the person worried is on the anvil. In short in such a case the fundamental right guaranteed under Article 21 will stand untouched so far as such person is concerned. Article 21 also will have to be read in the light of applicable directive principles of state policy found in part IV of the constitution of India. As laid down by Article 37 the provisions contained in part IV shall not enforceable by any court, but the principles there in laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles are beacons for the state both in its executive as well as legislative capacity to be guided by them and these functions of the state have to be monitored in the light of these directive principles. The relevant directive principles for our purpose are found in Articles 39(a) and 41. Article 39(a) lays down that state shall, in particular, direct its policy towards securing (a) that the citizens, men or women similarly, have the right to an adequate means of livelihood: while Article 41 provides that the state shall, within the limits of its economic capability and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. We have to cull out the correct connotation of the term „life“ as work by Article 21 keeping in view the constitutional duty of the state as flowing from the aforesaid directive principles of state policy under Articles 39(a) and 41. A conjoint reading of these provisions, therefore clearly indicates that it is the responsibility of the state while enacting laws in relationship with deprivation of life of any person which is protected by Article 21 to see to it that does not falter in its constitutional obligation of making effective provisions for securing right to work and also for providing adequate means of livelihood to its citizens. It is in the background of the aforesaid constitutional scheme that we now rotate to tackle the moot question as to whether right to livelihood or work is enclosed by the sweep of Article 21 or not.

### Salient Features of Article 21:

It is true that in the beginning when this Article was cleared by the Constituent meeting for its inclusion in the Constitution the founding fathers emphasized the term „life“ or the term „personal liberty“ with special reference to imprisonment as per the established procedure under any legal and valid law. But the term „deprivation of life“ as working by Article 21 in its present form cannot essentially mean total destruction of only physical existence. The term „life“ as employed by Article 21 has external an expanded meaning in the light of a series of decisions of Supreme Court. Life can be extinguished or become worthless for anyone who cannot have adequate financial support or economic nutrition. If a person is hungry and famished life for him is not worth living. He may be only

„breathing“ but he would not be „living life“ Such hungry people are prone to commit any type of misdeed for eking out their miserable existence. Article 21 has one more salient feature, namely Article 21 is available to all persons residing in India whether citizens or not while the positive right guaranteed under Article 19(1)(g) is only available to citizens of India and not to outsiders. In other words the negative injunction contained in Article 21 has a wider field to operate upon and its sweep even non-citizens while the positive mandate of Article 19 (1)(g) caters to smaller section of the residents in India. Article 21 knows of no exceptions and is not subject living in India, no matter he is a citizen of India unlike Article 19. It opened with an emphatic not. Use of the words „shall“ and except“ makes the command of the people of India the sovereign absolute.

### Review of Literature

In the case of **Kharak Singh v. state of U.P.**<sup>2</sup> a Constitutional form of the Supreme Court observed “We shall now proceed with the examination of the width, scope and content of the appearance „personal liberty“ in Art 21. Having regard to the terms of Art 19(1)(d), we must take it that an expression is used as not to include the right to be in motion about or rather of locomotion. The right to move about being excluded its narrowest analysis would be that it comprehends, nothing more than freedom physical restraint or freedom from imprisonment within the bounds of a prison, in other words freedom from arrest and detention from false custody or wrongful confinement. We have already extracted a passage from the judgement of field. **J. In Munn v. Illinois**<sup>3</sup> where the learned judge pointed out that „life“ in the 5<sup>th</sup> and 14<sup>th</sup> amendments of the U.S. Constitution corresponding to Art 2, means not merely the right to the organize of each of his organs- his arms and legs etc. we do not entertain any doubt that the word „life“ in Art 21 bears the same signification.....” and in this way Supreme Court earmarked a very wide ground for the operation of Article 21 for the concept of life and liberty as enshrined therein. **Olga Tellies and others v. Bombay Municipal Corporation and others**<sup>4</sup> reiterated that, “As we have stated while summing up the petitioners case, the main plank of their argument is that the right to life which is guaranteed by Art 21 includes the right to livelihood and since, they will be deprived livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the villages is the struggle for survival that is the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live. That they can do, namely, eat, only if they have the means of livelihood. That is context in which it was said by Douglas J. In **Baksey**,<sup>5</sup> that the right to work is work is the most precious liberty that man possess. The same view was taken by the Supreme Court while rendering decision in the case of **Delhi Transport Corporation D.T.C.v. Mazdoor Congress and others**<sup>6</sup> as “The right to life includes right to livelihood, The right to living therefore cannot hang on to the fancies of individuals in authority. Income is the foundation of many fundamental rights and when labour is the sole source of Income, the right to work becomes as much fundamental.

In this connection a judgment rendered by the Supreme Court in the case of *The Board of Trustees of port of Bombay v. Dilipkumar R. Nadkaarni and ors.*<sup>7</sup> must be referred which has been made in connection with Article 21...Article 21 mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. As laid down by **Bhawati, J. In the case of Smt. Maneka Gandhi v. Union of India & Anr**<sup>8</sup> the law envisaged by Article 21 must stand the test of Article 14 and procedure laid down by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. In the case of **M.J. Sivani & Ors.v. State of Karnataka &Ors.**<sup>9</sup> Court held that right to life under Article 21 does protect livelihood but added a rider that its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injuries to public interest or has insidious effect on public moral or public order. It was, therefore, held that regulation of video games prohibition of some video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair, or unjust. In the case of **Chameli Singh &Ors. V. State of U.P. and Anr.**<sup>10</sup> had to examine the question whether the term „life“ as found in Article 21 would include all components of right to life. The same view reflected while delivering the judgment by the Supreme Court in *Dr. Haniraj J.Chulani.v. Bar Council of Maharashtra & Goa*<sup>11</sup> that right to livelihood. However on facts it was in that case that the said right is not denied to a person who is already carrying on a profession of a medical practitioner and who is not permitted to simultaneously practice law. This discussion may be closed by citing a decision of the **Apex Court in Narendra v State of Haryana**<sup>12</sup> where in the similar view has been taken. It, therefore must be taken as a settled legal location that Article 21 guarantees to all persons residing in India right to lead distinguished life which would include right get sufficient livelihood and work and no procedural law can deprive them of this right unless such a law is enacted by competent legislature and is not violative of any other fundamental rights especially Article 14 and 19(1)(g) of the Constitution of India. Article 14 and 19, therefore, must be treated as a trinity of rights projecting golden triangles ensuring a healthy and effective life to all the residents in India including its citizens.

#### Conclusion:

Now is the time to take stock of the situation for bringing down the curtain. As seen above by a catena of decisions of the Supreme Court spread over decades it is now well settled that the word life as employed by Article 21 takes in its brush not only the concept of mere physical survival by also all finer values of life including the right to work and right to livelihood. This right is a fundamental right guaranteed to all persons residing in India as contradistinguished with only citizens covered by the sweep up of Article 19(1)(g). This right cannot be interfered with by the state save and except by a procedure emanating from a valid law which should be passed by a competent legislature and which should not come in disagreement in any of the other fundamental rights those guaranteed under Article 14 and 19 in so far as they are available to concerned person invoking such a fundamental right.

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