

## **JUDICIAL DELINEATION OF EMERGING REGIME OF NEW RIGHTS AND REMEDIES.**

*by*

Geetha Lakshmi R

B.A. LL. B, LL.M

Guest Faculty at Government Law College, Salem

### **ABSTRACT**

This paper offers a comprehensive exploration of Article 21 of the Indian Constitution, which guarantees the fundamental right to "Protection of Life and Personal Liberty." It delves into how the Indian judiciary has consistently broadened the interpretation of this concisely worded provision, transforming it into a cornerstone of human rights and dignity. The study meticulously analyzes a series of landmark judicial pronouncements that have progressively expanded the scope of Article 21. The analysis demonstrates the initial, narrower understanding of this right, primarily as a safeguard against arbitrary state action, and then tracks its evolution through pivotal Supreme Court decisions. These decisions have fundamentally redefined "procedure established by law" to incorporate principles of natural justice and due process. The paper further illustrates how the "right to life" has been expanded beyond mere physical existence to encompass a broad spectrum of rights essential for a dignified human life. This includes, among others, the right to livelihood, a clean environment, health, education, and privacy. Similarly, the paper examines how the judiciary has imbued "personal liberty" with a more expansive meaning, covering various aspects of individual autonomy and freedom from unwarranted state interference. By systematically dissecting these significant legal rulings, this paper elucidates the profound impact of the Supreme Court's interpretative role in establishing Article 21 as the most dynamic and far-reaching fundamental right, serving as a robust guardian of human rights and dignity in India.

# JUDICIAL DELINEATION OF EMERGING REGIME OF NEW RIGHTS AND REMEDIES

## I. INTRODUCTION

Though our constitution is called as the bag of borrowing, it's the living document in India. The Constitution of India is the lengthiest of all the written constitutions of the world and originally, the constitution adopted on November 26, 1949, contained a Preamble, 395 articles in 22 parts and eight schedules. Currently, the number of articles has since increased to 448 due to 105 amendments since its enactment in 1950. Also, the constitution now has 25 parts and 12 schedules. The reason for stating the constitution as living document is that from time to time, the Indian Constitution must be amended to accommodate necessary changes. A living document is one that is updated and modified on a regular basis. Just like a living human being, the Indian constitution grows and changes over time<sup>1</sup>. The Constitution is therefore seen as a living document. Amendments are made just to meet the changing needs of the society. Likewise, there are many new rights included and introduced under the constitution through various amendments and through various landmark decisions by the Supreme Court and mainly this document will be discussing about the new rights that are specifically created under articles 21 and such other rights by various judicial decisions.

## II. FUNDAMENTAL RIGHTS

Part III of the constitution deals with the fundamental rights that are to be provided for the people and if these rights get violated or if not guaranteed by the state, the aggrieved person may opt for the constitutional remedies provided under the same part. Articles 12 to 35 deals about the fundamental rights which shall be provided to the people of India. Where did Article 21 come from? The inspiration to the Constitution makers for including Article 21 in the constitution has been taken from the US. The US Constitution, by its 5th and 14th Amendments, has added – that 'no person shall be deprived of his 'life, liberty, or property, without due process of law'<sup>2</sup>. Justice Krishna Iyer featured Article 21 as 'the procedural Magna

---

<sup>1</sup> Constitutional Law -I, [www.drnishikantjha.com/booksCollection/constitutional-law-i-sem-ii-2022-23-1--43527772408.pdf](http://www.drnishikantjha.com/booksCollection/constitutional-law-i-sem-ii-2022-23-1--43527772408.pdf)

<sup>2</sup> Kushagra Sharma and Ashish Ranjan, A study on Article 21 of the Constitution of India, 2021.

Carta Protection of life and liberty. The Constitution of Japan contains a similar provision under Article XXXI that follows- ‘No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law<sup>3</sup>’.

### III. ARTICLE 21

#### **Protection of life and personal liberty**

No person shall be deprived of his life or personal liberty except according to procedure established by law. By reading this it is clear that Article 21 guarantees two important basis rights that are to be provided to any person and shall not be deprived of it. They are,

- Right to life and
- Right to Personal Liberty

The word no person under article clearly speaks that it applies to both citizens as well as non-citizens. The Supreme Court has described this right as the “heart of fundamental rights”

The only exception is that these rights can be deprived of only in accordance with the procedure established by law. Procedure established by Law means the law enacted by the State<sup>4</sup>. The main object of Article 21 is that before a person is deprived of his life or personal liberty by the State, the procedure established by law must be strictly followed. The state cannot be defined in a restricted sense. It includes Government Departments, Legislature, Administration, Local Authorities exercising statutory powers and so on so forth, but it does not include non-statutory or private bodies having no statutory powers.

Article 21 appears to be a negative right. A person thus can be deprived of his life and personal liberty according to the procedure established by the law. Article 21 of the Constitution is written in negative language but by a process of creative and innovative interpretation, today Article 21 has become the source of many positive rights by extraordinary interpretation of the expression of life, personal liberty, and procedure established by law occurring in Article 21.

The Supreme Court has recognized and enforced various socio-economic rights such as the right to food, health, education, and means of livelihood, etc. by integrating non enforceable DPSP into enforceable fundamental rights.

---

<sup>3</sup> Article 21 of the Constitution

<https://blog.finology.in/constitutional-developments/article-21> (last visited Apr. 2, 2025).

<sup>4</sup> Neepa Jani, Article 21 of constitution of India and right to livelihood, 2013.

## Right to life

We must have basic life and only on that basis, we can enjoy our other rights provided under part III of the constitution. If this right is taken away, all the others will lose their significance. The primary thing is that we should be alive to enjoy the rights and freedom available to us. Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning, so it can include numerous rights to enjoy the right to life. Right to life differs from person-to-person i.e., the basic necessities for living a life differs from person to person but the most common necessities were and still been included under art.21 through various judicial decisions<sup>5</sup>. Life' in Article 21 doesn't merely mean the physical act of breathing or mere animal existence. To understand the word 'life', one must go to the roots and understand the basic element which distinguishes living beings from all other materials. It has a much wider scope including the right to live with human dignity, right to livelihood, right to health, right to pollution-free air, etc.

*Kharak Singh vs State of UP*<sup>6</sup> that life means something more than mere animal existence. Justice. P.N. Bhagwati in the case of *Francis Coralie vs Union Territory of Delhi*<sup>7</sup> held that 'any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21'.

## Right to Personal Liberty

According to Blackstone, "Personal liberty consists in the power of locomotion, of changing situation or moving one's person to whatsoever place one's own inclination may direct." It is submitted that Blackstone's main emphasis on the freedom of movement.

Another view is of Dicey who says, "The right to personal liberty means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification". It is submitted that Dicey's definition is primarily concerned with the negative aspect of personal liberty which prohibits the State from taking any unjustified action against an individual.

## IV. NEW RIGHTS EMERGED UNDER ARTICLE 21

---

<sup>5</sup> Swapnil Pattanayak, "The Aspects and Provisions of Personal Liberty under Article 21 of the Constitution of India – A Detailed Study", 2019.

<sup>6</sup> *Kharak Singh vs State of UP*, 1963 AIR 1295.

<sup>7</sup> *Francis Coralie vs Union Territory of Delhi*, 1981 AIR 746.

The requirements of the society are changing continuously as our constitution is the age-old document, so the rights which are guaranteed during its commencement is not enough and the constitution has been amended numerous times. Though the constitution provides the amendment procedure, frequently it cannot be amended and as an indispensable way the courts provide with a landmark decisions or judgements which will be acting as a precedent. The following are the rights that are created or inserted under article 21 as the fundamental rights of the people. The document remains unchanged but the rights are guaranteed by the constitution which can be seen through the cases decided by the Supreme Court of India. Below are the case laws ranging right from the next year of the constitution to till the newest decisions given by the Supreme Court of India,

### **1. *A.K. Gopalan vs Union of India*<sup>8</sup>**

#### Brief gist of the case

In this case the petitioner was detained under the Preventive Detention Act, 1950. The act was challenged by the petitioner stating that it violated his right to movement u/art 19(1)(d) which is the basic of right to personal liberty under art 21. He would have contended that the legislation action cannot take away his right guaranteed under the constitution.

#### Court held

This was the first case that interpreted the article 21 and, in this case, the Supreme court held a narrow interpretation that the protection under the article was only limited to the arbitrary executive actions and not to the arbitrary legislative actions. That is to say more precisely the words “procedure established by law” not included the meaning due process of law, where in due process of law both the substantive and procedural aspects of law are protected ie., it includes the principle of natural justice. According to the court’s decision it can be concluded that article 21 provides no protection or immunity against a competent legislative action.

### **2. *Maneka Gandhi vs Union of India*<sup>9</sup>**

#### Brief gist of the case:

In this case the petitioner’s passport was impounded by the central government under section 10(3)(c) of the Passport Act,1967. The act authorised the government to do so if it was necessary in the interest of the general public. The petitioner challenged its validity on the

---

<sup>8</sup> A.K. Gopalan vs Union of India, AIR 1950 SC 27.

<sup>9</sup> Maneka Gandhi vs Union of India, AIR 1978 SC 597.

ground that it didn't prescribe procedure within the meaning of the article 21. The Supreme Court held that the government was not justified in withholding the reasons for impounding the passport from the petitioner.<sup>10</sup>

### Court held

In this case the Supreme Court overruled its judgement of A.K.Gopalan case. After this case only the scope of Article 21 widened and the protection was given not only from executive actions but also from legislative actions. So, we can understand that a person can be deprived of his life and personal liberty when the following conditions get fulfilled,

- There must be a law.
- There must be procedure prescribed by that law.
- The procedure should be just, fair, and reasonable.
- The law must satisfy the requirements of article 14,19 that is it must be reasonable<sup>11</sup>.

### **3. Right To Livelihood:**

*Olga Tellis vs Bombay Municipal Corporation (Pavement Dwellers case)*<sup>12</sup>

#### Brief gist of the case:

In this case the constitutional validity of few provisions of the Bombay Municipal Corporation Act,1888 was challenged. This act empowered the concerned authorities to remove their huts from pavement and public places. The persons affected contented that this removal amounts to depriving them of their right to livelihood.

#### Court held

A five judges' bench of the court finally decided that the term right to life under Art 21 includes the right to livelihood. As the easiest way to deprive a person right to life is by depriving his right to livelihood and so this right should be treated as the part and parcel of the constitutional right to life. After the right to livelihood included under article 21 any person who is deprived of the right to livelihood without just and fair procedure set by law can challenge the same.

---

<sup>10</sup> Case Laws Related to Article 21 of the Indian Constitution, [www.writinglaw.com/14-famous-cases-on-right-to-life](http://www.writinglaw.com/14-famous-cases-on-right-to-life) (last visited Apr 3, 2025).

<sup>11</sup> Dr. J.N. Pandey, Constitutional Law of India, Central law agency, (6<sup>th</sup> edn, 2024).

<sup>12</sup> Olga Tellis vs Bombay Municipal Corporation (Pavement Dwellers case), AIR 1992 SC 789.

#### **4. Freedom from noise pollution**

##### ***Re Noise Pollution***<sup>13</sup>

###### Brief gist of the case

The petitioner in this case is an engineer, moved to the court by filling a public interest litigation. And requested the court to direct the government to strictly enforce the laws that are specially enacted for restricting the use of loudspeakers and High-volume noise producing audio and video systems. The petitioner cited many examples, one of them were reported in the newspaper of January 1998 stating that a 13year old girl was raped and her cries were not heard due to the blaring noise of music and she set herself on fire and died.

#### **5. Right to speedy trial**

##### ***Hussianara Khatoon vs Home Secretary, State of Bihar***<sup>14</sup>

###### Brief gist of the case

A writ petition of Habeas Corpus was filed by the undertrial prisoners and they were waiting for many years for their trial.

###### Court held

The Supreme Court held that right to speedy trail is a fundamental right which is implicit under article 21 that guaranteeing the right to life and personal liberty.

#### **6. Right against handcuffing:**

##### ***Prem Shankar vs Delhi Administration***<sup>15</sup>

###### Brief gist of the case

In this case the validity of certain clauses of Punjab Police Rules challenged stating that it was violative of article 14,19,21. The provision in the rules stated that every undertrial prisoner who was accused of a non bailable offence punishable with more than 3 years would be handcuffed.

---

<sup>13</sup> Re Noise Pollution, AIR 2005 SC 3136.

<sup>14</sup> Hussianara Khatoon vs Home Secretary, State of Bihar, AIR 1979 SC1360.

<sup>15</sup> Prem Shankar vs Delhi Administration, AIR 1980 SC 1535.

### Court held

The main point to be noted under this case is that handcuffing amounts to deprivation of life and liberty under article 21. It is stated that handcuffing should be made when there appears a danger of escape. And before handcuffing the escorting authority must record the reason for doing it, if this is not followed then such procedure shall amount to unfair and bad in law in the purview of article 21.

### **Right to free legal aid**

Legal aid is the provision of free Legal assistance to the members of the underprivileged and vulnerable sections of the society who cannot afford to hire an advocate to represent them in the court or in any other legal proceedings.

#### **7. *M.H. Hoskot vs State of Maharashtra*<sup>16</sup>**

#### Brief gist of the case:

In this case the petitioner, a M.Sc. and Ph.D. degree holder was convicted for the offence of attempting to issue counter university degree. He was tried by the sessions court which found him guilty of grave offences but took a very lenient view and sentence them to simple imprisonment<sup>17</sup>. The High Court allowed these state appeal and enhanced the punishment to 3 years. And in this case a special leave petition to appeal against the three years imprisonment was challenged.

### Court held

The Supreme Court in this case held that right to free legal aid plays an important role in establishing the fair procedure in a suit. Also stated that it is the duty of the state to ensure that the needy are provided with the free legal aid.

### **Right to Food**

#### **8. *Chameli Singh vs State of Uttar Pradesh*<sup>18</sup>**

### Court held

---

<sup>16</sup> M.H. Hoskot vs State of Maharashtra, AIR 1978 SC 1548.

<sup>17</sup> Article 21, <https://www.legalpedia.co.in/articlecontent/article-21-introduction.html> (last visited Apr. 16, 2025).

<sup>18</sup> Chameli Singh vs State of Uttar Pradesh, (1996)2SCC 549.

The Supreme Court held that in any organised society, the right to live as a human being cannot be fulfilled without the basic rights that are very much essential such as the right to food, water, decent environment, education, medical care and shelter. The court has stated that shelter for a human being is not mere a right to roof over one's head but it's a right enabling them to live and develop as a human being. It's where the opportunity of growing mentally, physically, spiritually and intellectually.

## **9. Right to health**

### ***Paramananda Katara vs Union of India*<sup>19</sup>**

In this case, the Supreme Court held that it is the obligation of the state to preserve the life of an individual by extending the medical aid to the injured person immediately rather than waiting for the legal formalities that are to be executed by the police official under Cr.P.C and it is held that It is the professional obligation of all the doctors irrespective of the ownership of the hospital (maybe government or private).

## **10. Right to minimum wages**

### ***People's Union for Democratic Rights vs Union of India*<sup>20</sup>**

#### Brief gist of the case

In this case, the workers were employed for the purpose of various Asiad Projects in Delhi. They were not given their basic minimum wages and so this was brought to light by a union called People's Union for Democratic Rights.

#### Court held

The Supreme Court held that nonpayment of the minimum wages prescribed by the legislation also amounts to the violation of article 21 under the right to live with basic human dignity.

## **11. Right against sexual harassment**

Justice Varma has quoted that "the meaning and content of the fundamental rights guaranteed in the constitution of India are of sufficient amplitude to compass all the facets of

---

<sup>19</sup> Paramananda Katara vs Union of India, AIR 1989 SC 2039

<sup>20</sup> People's Union for Democratic Rights vs Union of India, AIR 1982 SC 746

gender equality including prevention of sexual harassment or abuse” in the judgement of Vishaka case.

### ***Vishaka vs State of Rajasthan***<sup>21</sup>

#### Court held

The Supreme Court held that sexual harassment at working place is a clear violation of the article 14,15,21 of the constitution. The Supreme Court established the following rules in this case, because there was no law particularly to ensure the effective implementation of the fundamental human rights such as gender equality<sup>22</sup> and protection against sexual harassment:

- All employers or persons in charge of the workplace whether in the public or private sector should take appropriate steps to prevent it.
- Express prohibition of sexual harassment at workplace should be notified, published and circulated in appropriate ways.
- As regards private employers, steps should be taken to include prohibitions in the standing order under the Industrial Employment (standing orders) Act,1946.
- The rules and regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide appropriate penalties in such rules against the offender.
- Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplace and no employee should have reasonable grounds to believe that she is disadvantaged in connection with her in employment.
- Where such conduct amounts to specific offence under IPC or any other law, the employer shall initiate appropriate action by making a complaint with the appropriate authority.
- The victims of sexual harassment should have the option to see the transfer of the preparatory or their own transfer.

In lieu of executing this judgement, The Sexual Harassment of Women at workplace (prevention, prohibition, redressal) act,2013 was enacted.

---

<sup>21</sup> Vishaka vs State of Rajasthan, AIR 1997 SC 3011

<sup>22</sup> V.N. Shukla, Constitution of India, Eastern Book Company Pvt., Ltd

## 12. Right to pollution free water and air

### *Subhas Kumar vs State of Bihar*<sup>23</sup>

#### Brief gist of the case

The public interest litigation was filed by the petitioner against two iron and steel companies stating that health risks occur due to the dumping of the wastes from the factories in nearby Bokaro river.

#### Court held

The court stated that for a full enjoyment of life and the right to life guaranteed by article 21 includes the enjoyment of pollution free water and air. In this case the court acknowledged that the fundamental right to life includes the right to a healthy environment and this case also indicated that municipalities and various other concerned governmental organization could no longer be satisfied with a lack of pollution abatement and preventive measures.

## 13. Right to clean environment

United Nations, Stockholm 1972 has quoted that “Both aspects of man’s environment, the natural and the man-made, are essential to his wellbeing and to the enjoyment of basic human rights, the right to life itself.” The first principle of the Stockholm declaration, 1972 is “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being.”<sup>24</sup>

### *Indian Council for Enviro-legal Action vs union of India*<sup>25</sup>

#### Brief gist of the case

The troubles and hardships of the people living in the village of Bichhri, Udaipur district, Rajasthan brought to the light by an environmental organization. The contention of Bichhri was the industrial complex produced large amount of chemicals. Due to that the villagers’ life were made uncomfortable by the release of the concentrated sulphuric acid and aluminium sulphate from Hindustan agro chemical limited. The factories effluence were

<sup>23</sup> Subhas Kumar vs State of Bihar, AIR 1991 SC 420.

<sup>24</sup> Right to healthy environment, <https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment> (last visited Apr. 17, 2025).

<sup>25</sup> Indian Council for Enviro-legal Action vs union of India, (1996) 3SCC 212.

refractory in nature making them particularly challenging to handle. Many of the pollutants contaminated the groundwater the standing crops were also ruined by the filthy water. As a result, the villagers had to bear the brunt of barren agricultural land. This was challenged in this case.

#### Court held

The court for the first time in this case evolved the principal called as polluter pay principal which means the one who causes the pollution shall pay the compensation for the affected persons and the one who pollutes was made responsible for all the financial expenditure and bringing the surroundings back to its original condition. The court also held that right to clean environment is also one of the basic elements required for exercising the right to life guaranteed under article 21.

### **14.Right to Sleep**

#### ***Ramlila Maiden vs Home Secretary, Union of India*<sup>26</sup>**

#### Brief gist of the case

Yoga training camp had been organised in the Ramlila Ground and several people were participating, and they were sleeping in the night. Suddenly the permission to hold the camp was withdrawn and the police without any notice used force to disperse the gathering who were sleeping peacefully. Court held: The Supreme Court held that sleep is a necessity and not a luxury. The dispersion method was unlawful and in derogatory manner and that also violated the basic human rights of those people who were sleeping peacefully. In this case it declared that sound sleep is also a constitutional freedom acknowledged under article 21.

### **15.Right not to compel to vaccinate**

#### ***Jacob Puliyel vs Union of India*<sup>27</sup>**

#### Brief gist of the case

This case was filed at the time of Covid pandemic in 2021, a writ petition was filed to illustrate the adverse of the negative consequences of the emergency authorization for

---

<sup>26</sup> Ramlila Maiden vs Home Secretary, Union of India, 2012 Cr LJ 3516 (SC).

<sup>27</sup> Jacob Puliyel vs Union of India, W.P.(C)607 of 2021.

vaccines in India. The applicant claimed that it is unconstitutional to mandate vaccination without express consent of the person and it violates the right guaranteed under article 21.

### Court Held

The Court held that the Union of India's vaccination policy is neither unreasonable nor arbitrary. However, the court held bodily integrity is protected under Article 21 of the Constitution of India and no individual can be forced to be vaccinated. Further, the Court observed: “Personal autonomy of an individual involves the right of an individual to determine how they should live their own life, which includes the right to refuse to undergo any medical treatment in the sphere of individual health. People who did not wish to get vaccinated can avoid vaccination; however, if there is a likelihood of such individuals spreading the infection to other people or affecting community health at large, the Government can regulate such public health concerns by imposing certain limitations on individual rights that are reasonable and proportionate to the object sought to be fulfilled.”<sup>28</sup>

## **16.Right to Privacy**

***K.S. Puttaswamy vs Union of India***<sup>29</sup>

### Brief gist of the case

This case was filed by the retd. High Court judge Puttaswamy against the plan proposed by the government for accessing the government services and benefit. Case was filed for the reasons stating that it violates the right to privacy.

### Court held

It was held that each individual has the Right to Privacy. Under article 21 right to life and personal liberty contains the aspect to safeguards the right to Privacy. Right to privacy is not a fundamental right as held in the Judgements of Karak Singh vs State of UP and M.P. Sharma vs Satish Chandra<sup>30</sup> were overruled in this case.

## **17.Right of life to Sex Workers**

***Budhadev Karmaskar vs State of West Bengal***<sup>31</sup>

<sup>28</sup> 1Jacob Puliyeel Vs Union of India, <https://indiankanoon.org/doc/17990001/>.

<sup>29</sup> K.S. Puttaswamy vs Union of India, (2017) 10 SCC 1.

<sup>30</sup> Karak Singh case- 1963 AIR 1295; M.P. Sharma vs Satish Chandra- AIR 1954 SC 300.

<sup>31</sup> Budhadev Karmaskar vs State of West Bengal, AIR 2011 SC 2636.

### Court held

In this case the Supreme Court recognised sex work as a profession and held that consenting practitioners to the sex work were entitled to dignity and equal protection under the law. And the court held that notwithstanding the profession every individual in the country has a right to dignified life under article 21.

## **18.Right to safe and legal abortion**

*X vs Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*<sup>32</sup>

### Brief gist of the case

This is a Delhi High court case, by a 25year old unmarried woman were seeking termination of her pregnancy of 23 weeks. As she was unmarried and her partner refused to marry, and the pregnancy was due to the result of consensual relationship.

### Court held

The court in this case held that “The right of reproductive autonomy, dignity and privacy under article 21 gives an unmarried woman the right of choice on whether or not to bear a child, on a similar footing of a married woman” in addition to this it also stated that all women are entitled to safe and legal abortion irrespective of their marital status.

## **19.Right to make reproductive choices**

*Suchitra Srivastava vs Chandigarh*<sup>33</sup>

### Brief gist of the case

In this case a woman of Chandigarh had become pregnant due to rape. The Chandigarh administration approached Supreme Court for the termination of pregnancy, reasons stating that she was mentally retarded and was orphan. The medical expert gives an opinion that she was only suffering from mild mental retardation and was capable of pregnancy. She has not given the concern for termination of pregnancy as required by the Medical Termination of Pregnancy act 1971.

### Court held

---

<sup>32</sup> X vs Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, Civil appeal no: 5802 of 2022.

<sup>33</sup> Suchitra Srivastava vs Chandigarh, AIR 2010 SC 235.

The high Court director to terminate her pregnancy by invoking the doctrine parents patriae. In this case the appellate was surprised party filed appeal against this order in the Supreme Court. The Supreme Court held that Right to Personal Liberty guaranteed under Article 21 includes the right to make reproductive choice for a woman either to produce child or not to produce.

## V. REMEDY OTHER THAN WRIT

Remedies that are provided other than the writ jurisdiction is that the Compensation. It is also given as a remedy which was first granted in the year of 1983 in the case.

### ***20. Rudal Shah vs State of Bihar***<sup>34</sup>

#### Brief gist of the case

In this case the petitioner was found not guilty of the alleged offence after spending imprisonment for 14 years. The fact that he was not guilty of an offence was found only when the writ of Habeas Corpus was issued.

#### Court held

The court for the first time in this case ordered the state of Bihar shall pay a sum of Rs. 35,000 as a compensation amount to the petitioner for detaining the petitioner illegally. The judgment of this case is a landmark one that stated about the jurisprudence of state liability. This case was now used as a precedent while giving compensation to the aggrieved person.

### ***21. Saheli vs Commissioner of Police***<sup>35</sup>

#### Brief gist of the case

In this case a 9year old boy was beaten to death' by police officer. Court held: And so the case was filed, the court in its judgment awarded a compensation of Rs.75000 to the deceased child's mother.

### ***22. Nilabeti Behera vs State of Orissa***<sup>36</sup>

#### Brief gist of the case

<sup>34</sup> Rudal Shah vs State of Bihar, (1983) 4 SCC 141.

<sup>35</sup> Saheli vs Commissioner of Police, AIR 1990 SC 513.

<sup>36</sup> Nilabeti Behera vs State of Orissa, AIR 1993 SC 1960.

In this case the petitioner's son was taken into custody for an inquiry by the police and the next day the mother of the deceased came to know that her son's body was lying in the railway track. and found dead. But multiple injury was identified in his body and that injury resulted in death. The mother of the deceased filed a case stating that the death was not natural and its custodial death.

#### Court held

The Supreme Court held that the compensation of Rs.1,50,000 must be paid to the deceased son's mother by the State of Orissa.

### ***23. Bhim Singh vs State of Jammu and Kashmir<sup>37</sup>***

#### Brief gist of the case

The petitioner was an MLA and was prevented by the police in order to prevent him from attending the legislative assembly. And the case was been filed that he was not allowed to attend the assemble and detained illegally and the honourable court passed an order stating that state shall be liable to pay the compensation of Rs.50,000.

These are cases where compensation was provided and interpreted as an integral part of article 21 and as an integral aspect of the right to life guaranteed under article 21.

By following these cases, a remedy for compensation is now provided as a matter of right for the damages or the loss caused by the person. Compensation as a remedy is not new to us already section 357 of Criminal Procedure Code,1973 speaks about compensation. A concept of victim compensation was also provided and under section 357A ensures the scheme called Victim Compensation Scheme. This section was recommended by the Law Commission of India in its 154th report. Finally, this section was introduced under the Criminal Procedure Amendment Act of 2008 and it came into force on 2009. This scheme states about that the state government shall prepare a scheme for providing fund for the victim compensation by coordinating with the central government. And this provision shall be granted when the trail court is made satisfied that the compensation under section 357<sup>38</sup> is inadequate to meet the treatment of the expenses for the victim then the trail court recommends the district or state legal service authority. Bharatiya Nagarik Suraksha Sanhita

---

<sup>37</sup> Bhim Singh vs State of Jammu and Kashmir, AIR 1986 SC 494.

<sup>38</sup> The Code of Criminal Procedure,1973, sec 357 Order for Compensation.

(BNSS) also speaks about it in sec 357. The quantum of compensation will be finally decided by those authorities.

In addition to this scheme, the Ministry of Home Affairs launched the Central Victim Compensation Fund Scheme in August 2015 which doubled the compensation amount in the cases of rape and sexual assault. This scheme fixes a uniform compensation amount irrespective of the state but few states including Tamil Nadu had not amended in its laws accordingly.

## VI. CONCLUSION AND SUGGESTION

As is clear from the catalogue of decisions shown above, the supreme court in various decisions and now it's is well settled that the word life under article 21 not only includes the mere physical existence alone it includes all other rights which are very essential to exercise the right to life which few of the rights were discussed above. All the above said rights make the person live with dignity under the article 21. By viewing all these cases it's clear that the Supreme Court always interprets the provision as much as possible. In this way the court expanded and still expanding the state's liability, duties, responsibility.

The court by interpreting the article 21 and expands its scope and declare that many rights are implied under the article 21 and the Supreme Court act in giving maximum possible benefits to the public<sup>39</sup>. Article 21 needs to be expanded further to guarantee all wisdom reemphasized from time to time in the basic structure of our Constitution settled in it's Preamble. However, the Supreme Court has started to declare rights which are difficult to enforce and may only be law for namesake.

The Court should take into consideration the enforceability of a right or else it will just remain an empty promise. The court must look into the capability the country while providing with the rights that are introduced by interpreting the article 21 of our Constitution. Many of the directive principles are been enforced through Part III of the constitution.

Liberty exists only if the restrictions exist. The full-fledged liberty is not possible so far as civilized society. Though the state is servant of the constitution and his loyalty must be towards its citizens by means of enactment of welfare policy. In Lock's words, "Where there is no law, there can be no liberty." Liberty as a positive opportunity for self-development

---

<sup>39</sup> Wide Interpretation of the Right to Life,  
[www.download.ssrn.com/14/03/01/ssrn\\_id2403191\\_code2206317.pdf](http://www.download.ssrn.com/14/03/01/ssrn_id2403191_code2206317.pdf)

means the creation of law. Nothing can exist apart from the state. Some restrictions are necessary for the common interest, but they should be free from bias and the public should be confident of their prudence. The provisions of the Fundamental Right (Article 12 -32) as envisaged under Part III of the Constitution of India is in the true sense of “The Magna Carta” of the India. Certain restrictions would be imposed upon the fundamental rights but at the ends such restriction must be ensure the equal and fair treatment with all the civilians.



Journal of Multi-Disciplinary  
Legal Research