



**DELHI LAW ACADEMY**

**CONSTITUTION OF INDIA**

**THE RIGHT TO LIFE**

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## RIGHT TO LIFE

### ARTICLE 21

- No person shall be deprived of his life or personal liberty
  - *except according to procedure established by law*

### Salient Features:

- This right is available **to all persons**, not only to citizens; unlike the rights granted by Article 19, which are available only to citizens.
- This right is available **against all persons**, not only against the State; unlike Article 14 which is available only against the State.
- This right is **not absolute**, like all other Constitutional and legal rights. It can be taken away by a procedure established by law.
- Article 21 has two limbs: Prohibition against deprivation of **life** and prohibition against deprivation of **personal liberty**.

### What kind of procedure?

#### Question:

- Is the prescription of any sort of **procedure** enough or must the procedure comply with any particular requirements?

#### Ans:

- The procedure contemplated by Article 21 must answer the test of **reasonableness** in order to be in conformity with Article 14.
- It must be “**right and just and fair**” and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

Source: Maneka Gandhi v. Union of India [1978 SC]



## Remedy for deprivation or breach

Question :

- What is the remedy when the right to personal liberty is taken away or violated?

Ans:

- Article 32 guarantees the right to move the Supreme Court by appropriate proceedings whenever the right to personal liberty is taken away or violated, either by the State or by a private person.

Question:

- What are the appropriate proceedings in case of a breach of the right to personal liberty?

Ans:

- The Supreme Court can be moved to issue a writ of Habeas Corpus.

Question:

- What is a writ of Habeas Corpus?

Ans:

- 'Habeas Corpus' literally means "to have the body". This writ is used to release a person who has been unlawfully detained.
- Through this writ, Court directs the person detained to be brought before it so as to examine the legality of his detention.
- If the Court finds the detention unlawful, it directs the person to be released immediately.

Question:

- Who can file this writ?

Ans:

- This writ can be filed by the detained person himself or his relatives or friends on his behalf



Question:

- **Against whom can this writ be issued?**

Ans:

- It can be issued against both public authorities and individuals

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Examples of unlawful detention by the State:

- When a detained person is not produced before a Magistrate within 24 hours, the detention is not in accordance with the procedure laid down and is therefore unlawful
- When a person is arrested even when he had not violated any law, this arrest and the consequent detention is unlawful.

Examples of unlawful detention by private persons

- When someone causes wrongful confinement as described in section 340 IPC, it is punishable by section 342 IPC, but this section provides no remedy to the wrongfully confined person. A writ of Habeas Corpus is the quickest and the most effective remedy for the detained person.
- Similarly, when someone causes kidnapping or abduction to confine a person as described in section 365 IPC, he is punishable with imprisonment upto 7 years, but this section provides no remedy to the kidnapped or abducted person. Once again, a writ of Habeas Corpus is the remedy.
- IPC punishes the wrong-doer but provides no relief to the victim. It has no provisions for the release of the detained person. However, the right to personal liberty being a Fundamental Right, the highest Court in the country can be directly moved for its enforcement, that is, for the release of the detained person.

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## SCOPE OF “PERSONAL LIBERTY”:

Question:

- What is the scope of the expression ‘personal liberty’ in Article 21?

Ans:

- The expression ‘personal liberty’ in Article 21 is of the **widest amplitude**. It covers a variety of rights which go to constitute the personal liberty of a man.
- Some of these rights have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19, viz **the right to move freely throughout the territory of India**, granted by Article 19(1)(d).
- ‘Personal liberty’ within the meaning of Article 21 includes within its ambit **the right to go abroad** and consequently no person can be deprived of this right except according to procedure prescribed by law.

Authority: Satwant Singh v. Union of India [1967 SC]

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## SCOPE OF “LIFE”

Question:

- Will the right to live include right not to live, i.e., **right to die**?

Ans:

- The Supreme Court answered this question in the following way in 1994 in **P. Rathinam v. Union of India**:
  - Fundamental rights have their positive as well as negative aspects. One may refuse to live if his life be not according to the person concerned worth living or if the richness and fullness of life were not to demand living further.



- A person cannot be forced to enjoy the right to life to his detriment or disliking.
- *The right to live of which Article 21 speaks of can be said to bring in its trail the **right not to live a forced life**.*

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- That judgment was reversed by the Court in 1996 in **Smt. Gian Kaur v. State of Punjab** with the following arguments:
  - *Article 21 is a provision guaranteeing **protection of life** and personal liberty and by no stretch of imagination can **extinction of life** be read to be included in 'protection of life'.*
  - Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself.
  - The 'right to die', if any, is inherently inconsistent with the 'right to life' as is 'death' with 'life'.

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## EXPANSION OF THE RIGHT TO LIFE....

### **(1) RIGHT TO LIVE WITH DIGNITY**

- The right to life under Article 21 means the right to live with dignity, free from exploitation.

Authority: **Bandhua Mukti Morcha v. UoI** [1984 SC]

### **(2) RIGHT TO DIE WITH DIGNITY**

- The right of a dying man to die with dignity **when life is ebbing out** constitutes a right to live with dignity.



- In case of a terminally ill patient or a person in PVS, where there is no hope of recovery, **accelerating the process of death** for reducing the period of suffering constitutes a right to live with dignity.
- A competent person who has come of age has the **right to refuse treatment** even if such decision entails a risk of death. Where a patient has already made a valid **Advance Directive** which is free from reasonable doubt specifying that he/she does not wish to be treated, then such directive has to be given effect to.
- The right to live with dignity also includes **smoothening of the process of dying** in case of a terminally ill patient or a person in PVS with no hope of recovery.

Authority: **Common Cause v. Union of India** [2018 SC]

Question:

- **What is the difference between active euthanasia and passive euthanasia?**

Ans:

- **Active euthanasia** entails a positive affirmative act, while **passive euthanasia** relates to withdrawal of life support measures or withholding of medical treatment meant for artificially prolonging life.
- In active euthanasia, a specific overt act **is done** to end the patient's life. In passive euthanasia, something **is not done** which is necessary for preserving a patient's life.

### (3) **RIGHT TO PRIVACY**

- The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21.
- “Right to privacy of an individual” is essentially a natural right, which inheres in every human being by birth.



- It is indeed inseparable and inalienable from a human being. In other words, it is born with the human being and extinguishes with him.

Authority: Justice K.S. Puttaswamy v. Union of India [2017 SC]

### **Popular meaning:**

- The most popular meaning of “right to privacy” is “**the right to be let alone**”.

### **Question:**

- **What is the source of this right to privacy?**

### **Ans:**

- The “right to privacy“ emanates from two expressions of the Preamble, namely, “liberty of thought, expression, belief, faith and worship” and “Fraternity assuring the dignity of the individual”
- It also emanates from Article 19(1)(a) which gives to every citizen “freedom of speech and expression”
- It further emanates from Article 19(1)(d) which gives to every citizen “a right to move freely throughout the territory of India”
- Lastly, it emanates from the expression “**personal** liberty” under Article 21.

### **Question:**

- **Whether the Aadhaar Act violates the right to privacy and is unconstitutional on this ground?**

### **Ans:**

- *All matters pertaining to an individual do not qualify as being an inherent part of right to privacy. Only those matters over which there would be a reasonable expectation of privacy are protected by Article 21.*



- *There needs to be balancing of two competing fundamental rights, the right to privacy on the one hand and the right to food, shelter and employment on the other hand.*
- Axiomatically both the rights are founded on human dignity.
- *In Aadhaar Act, the inroads into the privacy rights where these individuals are made to part with their biometric information, is minimal.*

Authority: **Justice K.S. Puttaswamy v. Union of India**

#### **(4) RIGHT TO PROTECTION OF REPUTATION**

- Protection of reputation is a fundamental right. It is also a human right.
- Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation.
- **Reputation being an inherent component of Article 21**, we do not think it should be allowed to be sullied solely because another individual can have its freedom.

Authority: **Subramanian Swamy v. Union of India** [2016 SC]

#### **Rape: A violation of the Right to Life**

- Rape is a crime against basic human rights and is violative of the victim's most cherished right, namely, right to life which includes right to live with human dignity.
- Thus, **"rape" amounts to violation of the Fundamental Right** guaranteed to a woman under Article 21 .

Authority: **Bodhisatwa v. Subdhra Chakroborty** [1996 SC]

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## EXTENDED SCOPE OF ARTICLE 21

- The Supreme Court summed up the extended scope of article 21 in 2014 in **National Legal Services Authority v. Union of India** in the following way:

### PART A : Scope enlarged to diverse aspects

- The meaning of words 'life', 'liberty' and 'law' in Article 21 have been considerably enlarged by judicial decisions to such diverse aspects as:
  - health hazard due to pollution
    - Mehta M.C. v. Union of India [1987 SC]
  - health hazard from harmful drugs
    - Vincent Panikurlangara v. Union of India [1987 SC]
  - handcuffing of prisoners
    - Aeltemesh Rein v. Union of India [1988 SC]
  - right of speedy trial
    - Raghubir Singh v. State of Bihar [1987 SC]

### PART B: Directive Principles resurrected as Fundamental Rights:

- Many of the non-justiciable Directive Principles embodied in Part IV of the Constitution have now been resurrected as enforceable Fundamental Rights by the magic wand of **judicial activism**, playing on Art. 21:
  - Right to pollution-free water and air
    - Subhash Kumar v. State of Bihar [1991 SC]
  - Right to food, clothing, decent environment and even protection of cultural heritage
    - Ram Sharan Autyanuprasi v. UoI [1989 SC]
  - Right of every child to a full development



- Shantistar Builders v. Narayan Khimalal Totame [1990 SC]
  - Right to education
- Mohini Jain v. State of Karnataka [1992 SC]
  - but not for a professional degree
- Unni Krishnan J.P. v. State of A.P. [1993 SC]

## **PART C : Negative duty changed to positive obligation**

- So far..... the negative language of Art. 21 and use of the word ‘deprived’ imposed upon the State the **negative duty** not to interfere with the life or liberty of an individual without the sanction of law...
- Now.....the width and amplitude of this provision has now imposed a **positive obligation** upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity:
  - Maintenance and improvement of public health
    - Vincent Panikurlangara v. UoI [1987 SC]
  - Elimination of water and air pollution
    - Mehta M.C. v. UoI [1987 SC]
  - Rehabilitation of bonded labourers
    - Bandhuva Mukti Morcha v. UoI [1984 SC]
  - Providing human conditions if prisons and protective homes
    - Sher Singh v. State of Punjab [1983 SC]

## **Article 21 is a tool to HUMAN DEVELOPMENT**

- The common golden thread which passes through all these pronouncements is that Art. 21 guarantees **enjoyment of life by all with dignity**, viewing this human right in terms of **human development**.

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