

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.

## Landmark cases on Article 21

### Personal Liberty

#### 1- AK Gopalan vs State of Madras

- Communist leader was arrested under Preventive Detention Act 1950.
- Detention challenged as violative of article 13,19 and 21.
- Court interpreted scope of article 21 and gave a very narrow interpretation to article 21.(Excluded principles of natural justice)
- Detention upheld

#### 2- Kharak Singh vs UP

- Kharak Singh was a habitual offender and arrested for dacoity but was released on lack of evidence.
- UP police kept him under surveillance by way domiciliary visits at night.
- Domiciliary visits under UP police regulation was challenged as violative of article 19(1)(d) and article 21.
- The court held domiciliary visits as unconstitutional.

#### 3- ADM Jabalpur vs Shivkant Shukla

- Shivkant Shukla was arrested under MISA Act 1971
- Detention was challenged and MP High Court gave decision in favour of detenu.
- The supreme set aside order of high court and held during operation emergency right to move to court for enforcement of fundamental rights shall be suspended.

#### 4- Maneka Gandhi vs UOI

- Maneka Gandhi was about to travel abroad but she received a letter from regional passport officer to submit her passport within 7 days as per section 10(3)(c) of passport act 1967.
- Maneka Gandhi immediately addressed a letter to the regional passport officer requesting a copy of a statement about the reason for making the order.
- A reply was sent stating that the government decided “in the interest of general public” not to furnish her a copy of statement of reasons for the making of the order.
- The court said that section 10(3)(c) of passport act, 1967 is void because it violates article 14 of Indian constitution because it confers vague and undefined power to the passport authority.
- It is violative of article 21 of the constitution since It doesn't provide for an opportunity for the aggrieved party to be heard.
- Brought principles of natural justice within ambit of article.



## Right to Privacy

### 1- UIDAI vs CBI

- CBI was investigating a rape of minor girl in school but could not trace the criminal.
- However CBI had some fingerprints which could be traced with the help of UIDAI but the same was refused by UIDAI.
- Supreme court held data with UIDAI cannot be used without consent of person whose data is requested.

### 2- KS Puttuswamy vs UOI

- The case was brought by retired high court judge against Union of India challenging government Aadhar scheme (A uniform biometric based identity card).
- Nine bench constitutional bench was set up to determine whether Right to privacy was guaranteed as an independent fundamental right.
- The bench recognised right to privacy as an intrinsic part of right to life and liberty under article 21. Also SC held that aadhar not compulsory for availing government schemes.

## Right to Free Legal Aid

### **1- MH Haskot vs State of Maharashtra**

- The petitioner was a PHD student who was alleged to commit offence of forgery and counterfeit.
- The session court held him guilty and same was upheld by High court.
- 4 years later he filed an SLP before SC after serving almost his term of imprisonment and SC was surprised by such delay.
- SC emphasised on article 39-A and recognised free legal aid as a part of article 21.
- SC also held that providing free legal aid is state's responsibility, not government's charity.

## Right to Speedy Trial

### **1- Hussainaira Khatoon vs State of Bihar**

- PIL was filed to free under trials prisoners in bihar, some of whom had been imprisoned as under trials for terms longer than the maximum punishable imprisonment period under the law, waiting for trial procedure.
- Court emphasised on article 39A and recognised right to speedy trial as part of article 21.

- This case formed basis of Legal Services Authorities Act 1987.

## Prisoner's Rights

### 1- Sunil Batra vs Delhi Administration

- The petitioner Sunil Batra is a convict under the death sentence lodged at Tihar central jail in Delhi. He wrote a letter to Supreme court regarding a complaint of a brutal assault by a Head Warden of the Tihar Central jail on another prisoner, Prem Chand.
- This court observed that the court has the power and responsibility to intervene and protect the prisoner against mayhem crude or subtle and may use Habeas Corpus for enforcing in-prison humanism and forbiddance of harsher restraints and heavier severities than the sentence carries.
- Court, in conclusion, held that Prem Chand has been tortured illegally and the Superintendent cannot absolve himself from responsibility even though he may not directly be a party. The supreme court directed the Superintendent to ensure that no corporal punishment or personal violence on Prem Chand shall be inflicted.

## **2- Prem Shankar Shukla vs Delhi Administration**

- The facts were that the petitioner was an under-trial prisoner in Tihar Jail. He was required to be taken to the Magistrate court from jail and back periodically in relation to certain cases pending against him. The Trial court directed the concerned officer that handcuffs should not be used while taking the petitioner to the court and back unless it was so warranted. But hand-cuffing was forced on him by the escorting officers. Thereafter, he sent a telegram to the Supreme Court on the basis of which the present habeas corpus petition has been entertained by the court.
- The Hon'ble Supreme Court has opined that "handcuffs are prima facie inhuman, unreasonable, and at first blush arbitrary without fair procedure and objective monitoring".
- The minimum freedom of movement, which a prisoner is entitled to under Article 19 of the Constitution, could not be curtailed by applying handcuffs and court laid down directions for handcuffs.

## Right to Die

### **Aruna Shanbaug vs Union of India**

- Aruna Shanbaug was a nurse at KEM Hospital who was sexually assaulted in 1973 and since then she was in PVS.
- Her next friend Pinky Virani filed a writ petition before SC asking hospital management to stop feeding her and allow her to die peacefully.
- The court appointed a team of three doctors to examine medical condition of Aruna Shanbaug and allowed passive euthanasia.

### **Common cause vs Union of India**

- In 2005, Common Cause approached the Supreme Court under Article 32, praying for the declaration that the right to die with dignity is a fundamental right under Article 21.
- It also prayed the Court to issue directions to the Union Government to allow terminally ill patients to execute 'living wills' for appropriate action in the event that they are admitted to hospitals.
- Common Cause argued that terminally ill persons or those suffering from chronic diseases must not be subjected to cruel treatments. Denying them the right to die in a dignified manner extends their suffering.



- On 9th March 2018, a 5 Judge Bench comprising held that the right to die with dignity is a fundamental right.

## Right to Sleep

### Ramleela Maidan Incident vs Home Secretary

- In June 2011 Ramdev Baba went on a hunger strike demand ordinance from the government to bring back black money deposited in foreign bank accounts.
- On 4<sup>th</sup> June the permission to protest was withdrawn and imposition of section 144 was ordered.
- On 5<sup>th</sup> June at 1 am when protestors were sleeping peacefully approx 5000 CRPF personnel were deployed to evict protestors.
- Court took suo motu action against the incident and held right to sleep peacefully is part of article 21 and held police liable for misuse of section 144
- Court awarded compensation to the victims.

## Right to Medical Aid

### Parmanand Katara vs Union of India

- Parmanand Katara, filed a PIL in SC on basis of a newspaper article concerning death of a scooter rider who met an accident and died because he was refused timely medication.

- SC held right to medical aid is part of article 21 and preservation of human life is of paramount importance.
- SC relied on code of medical council and held every doctor has an obligation to extend his services to protect human life.

### Right to Sexual Autonomy-

#### Navtej Singh Johar vs UOI

Challenged Suresh Kaushal vs Naz foundation judgement

Supreme Court held Right to Sexual autonomy and Right to choose partner is part of article 21. In this case supreme court decriminalised section 377 to the extent of consensual sexual act between adults.

#### Joseph Shine vs UOI

In October 2017 a non resident keralite filed a PIL under article 32 challenging constitutional validity of adultery law ie Section 497 of

The court had observed that law is based on certain 'Societal presumption'. In four different judgments, the court has struck down the law and declared that husband cannot be the master of his wife. The judgment held the following things:

Section 497 is archaic and is constitutionally invalid

**Husband is not the master of his wife**

**Section 497 is arbitrary**

**Adultery is no longer be a criminal offence**