

# Right to Life and Personal Liberty

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# Evolution of Fundamental Rights

- Concept of Natural rights
- **Human Rights-UDHR-Article 3** -Everyone has the right to life, liberty and security of person.
- **State recognition**
- **Magna Carta,1215** (England)
- **Bill of Rights,1689** (UK)
- **US Declaration of Independence,1776**- We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.
- **French Declaration of Rights of Man and the Citizen,1789-Articles:**
- **1.** Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.
- **2.** The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.
- **American Bill of Rights,1791-Amendment XIV**-...nor shall any state deprive any person of life, liberty, or property, without due process of law...

# Need & Nature of Fundamental Rights

- Indispensable condition of free society
- Inviolable ,inherent and inalienable rights
- Immune from political controversy & reach of political majority & officials
- Limitations upon all powers of government
- Negative obligations on the State
- Not a gift from State to citizen
- Not absolute-need to strike balance between individual liberty & social need (Exceptions, restrictions & suspension u/A 358& 359)

# Need & Nature of Fundamental Rights

(contd..)

- Generally enforceable against State (Art.12)
- Enforceable against private citizens in certain cases [Art.15(2) &(5),17,23,24,29(2) etc]
- Guaranteed to citizens and persons [Articles 15,16,19 and 29 etc –only to citizens]
- Could be enumerated or entrenched
- Paramount under Indian Constitution
- Contained in Part-III, Articles 12 to 35
- Right to Enforce F.Rt.s also a F.Rt.

# Scheme of Fundamental Rights (contd..)

- Right to freedom of Religion (Art.25-28)
- Cultural and Educational Rights (Art.29-30)
- Right to Constitutional Remedies (Art.32-35)
- **Other implied and judicially recognized rights**
- Right to Property originally guaranteed under Art.19(1)(1)(f) & 31 repealed as a F.Rt. by 44<sup>th</sup> Amendment,1978 and retained as a Constitutional Right u/a 300-A

# Protection of Life and Personal Liberty under Indian Constitution

- **Article 21**: No person shall be deprived of his life or personal liberty except according to procedure established by law.
- **History and drafting of Article 21**
- **Meaning of Life, Liberty, Procedure established by Law**
- **Due Process- Substantive and Procedural**
- **Applicability**
- **Interrelationship with other rights and freedoms**

## Other related Rights

- Art.20(1) - Protection against Ex-Post Facto Law
- **Protection against Guarantee against Double Jeopardy** Art.20(2)
- Protection against Self-incrimination Art 20(3)
- Rights of arrested persons etc Art.22
- Right to Freedoms Art.19
- Right to Equality Art.14
- Right against Exploitation Art 23-24

# Protection of Life and Personal Liberty

- **Importance of Life and personal Liberty**
- **Analysis of Art.21- Person ,Life, Personal liberty, Procedure established by law, Due process**
- **Position after A.K.Gopalan, AIR 1950 SC 27 before Maneka Gandhi AIR 1978 SC 597**
- **Maneka Gandhi v.Union of India –its impact on F.Rts. in general and on Right to Life and Personal Liberty in particular**
- **Expansion of scope of Art.21 after Maneka Gandhi**
- **Expansive Interpretation of Life, personal Liberty, law and personal liberty**
- **Role of Judicial activism & doctrine of entrenchment**



# Art.21 & Criminal justice

- **Safeguards** in case of arrest, fair trial, speedy trial, bail, legal aid, long pre-trial confinement, hand-cuffing of under-trials, police torture, and prison administration etc
- **Imposing unjust or harsh conditions, while granting bail, is violative of Art.21** -Babu Singh v.State of UP,AIR 1978 SC 527See also Gurbaksh Singh v.Punjab, AIR 1980 SC 1632
- **Hand-cuffing of prisoners** - President, Citizens for Democracy V.State of Assam (AIR 1996 SC 2193)

# Right to Legal Representation

- **Right to be defended by lawyers – A.S. Mohammed Rafi Vs. State of Tamil Nadu [ (2011) 2 SCC 688 ]-** Several Bar Association all over India, whether High Court Bar Associations or District Court Bar Associations have passed resolutions that they will not defend a particular person or persons in a particular criminal case.... .. In our opinion, such resolutions are wholly illegal, against all traditions of the bar, and against professional ethics. Every person, however, wicked, depraved, vile, degenerate, perverted, loathsome, execrable, vicious or repulsive he may be regarded by society has a right to be defended in a court of law and correspondingly it is the duty of the lawyer to defend him.(Para 16)

- **Rights of Prisoners , not absolute** – See **Kalyan Chandra Sarkar v.Rajesh Ranjan (2005) 3 SCC 284** – powerful criminals/politicians resorting to illegal methods to stay away from prisons & residing in hospitals- deprecated by SC
- **State of Maharashtra v. Dr.Praful B.Desai (2003)4 SCC 149 - Recording of evidence by video conferencing** – satisfies requirements of S,273,Cr.P.C. and is in conformity with procedure U/A Art.21
- **Rights of HIV +ve People to marry-** **Mr. X v. 'Z' Hospital (AIR 1999 SC 495) & AIR 2003 SC 664**
- **Right to Noise Free Environment - In Re Noise Pollution (2005) 5 SCC 733**
- **Right to die & Discontinuing life support to people in PVS – Aruna Ramchandra Shanbaug v.Union of India [(2011) 4 SCC 454]**

# Life and Personal Liberty-other facets

- **Right to Privacy** – Kharak singh v. State of UP Sarita v. Venkatasubbaiah, R.Rajagopalv.State of TN, Selvi v.Union of India etc & Sharada v.Dharampal (2003) 4 SCC 493 – In an application for divorce, court's direction to respondent to undergo medical examination - does not violate right to privacy u/a 21.
- **Right to Information**
- **Right to education-** Mohini Jain,Unnikrishnana and TMA Pai etc
- **Right to Pollution free environment-** M.C. Mehta cases
- **Right to health** – CERC v.UoI (1995)
- **Right against sexual harassment at workplace** – Visakha v.State of Rajasthan (1997)
- **Compensatory jurisprudence-** Rudul Shah v. State of Bihar,Nilabati Behera v.State of Orissa and PUCL v.UoI(Fake Encoublers-1997)

# Conclusion

- The Constitution and the laws of India do not permit life and liberty to be at the mercy of the absolute power of the Executive . . . . –Justice Khanna in ADM Jabalpur v.Shivkanth Shukla
- **Present position**
- Right to life= Right to dignified life
- Personal Liberty-encompasses all those facets which make the life meaningful
- Procedure-must be just,fair and reasonable
- Art.21- guarantees both substantive and procedural due process

**Let us (in our personal and official capacity) respect the life and personal liberty of all the persons**