



THE ROLE OF INTERNATIONAL LAW IN CYBERSECURITY MANAGEMENT

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ABSTRACT

The scope of Article 21 of the Indian Constitution, which guarantees the rights to life and personal liberty, has been expanded. The right to life is now understood to encompass more than just the physical existence; it also includes the right to a proper and healthy livelihood as well as the right to privacy and the freedom to travel. The 1948 Universal Declaration of Human Rights had a significant impact on the Indian Constitution's founders, who included provisions for each citizen's right to life and personal liberty. Since Article 21 protects fundamental human rights, it is accessible to both national citizens and non-citizens alike. This is because Article 21 does not discriminate in any way, regardless of the status of the applicant. The Article was originally interpreted narrowly, but over time, it has been interpreted more widely. This has been made possible by the application of the purposive construction approach to interpretation, which keeps the purpose of the statute in mind and takes it into account. As a result, Article 21 is now interpreted broadly. In defining the constitutional rights to life and personal liberty, the court used a purposive approach as opposed to a typical pedantic one. Since Article 21 is all-powerful, it cannot be suspended, not even while the nation is under emergency. Article 21 is not only a document; it is maintained in active circulation to enable the nation to fulfill the fundamental human rights and offer complete dignity to its citizens, as envisaged by the constitution's founders.

Keywords: Right to Life, Personal Liberty

INTRODUCTION- THE BASIC AND THE INTERPRETATIONAL APPROACH:

Chapter III of the Indian Constitution lists the Fundamental Rights that every individual is entitled to. Article 21 of the Indian Constitution guarantees the right to life and the right to personal liberty. The original interpretation of Article 21 stipulated that it could only be applied in cases where there was a complete loss of one's right to life or personal liberty. However, this interpretation was later modified to allow Article 21 to be applied in other situations as well, such as when one's right to life or personal liberty has been restricted without adhering to the "procedure established by law." Article 21 may be expanded to encompass the right to the means of subsistence, such as the right to food, clean water, a healthy environment, and so on, because of the purposive interpretation. Subsequently, in a case⁵, the Supreme Court affirmed that the right to privacy is an integral aspect of the right to life protected by Article 21 and that it encompasses private phone conversations at home or at work. When interpreting Article 21, the doctrines of Purposive interpretation and Constitutional silence are quite significant. The unwritten section of the constitution that gives rise to the ability to interpret a legislation in a certain manner is taken into consideration by the doctrine of silence. In addition, the interpretational golden rule is used. It seeks to give effect to the law's spirit in order to serve justice, anticipate the effects of decisions, and prevent unusual or irrational outcomes. It is also employed while rendering decisions in accordance with Article 21 of the Indian Constitution. Since Article 21 is a living legislation, its original context cannot be used to interpret it. It must be understood in light of the

changing requirements and circumstances of the populace as well as the state of society at large, all the while upholding the values of justice, equality, liberty, and fraternity. In a recent landmark case, Justice Chelameswar discussed the need for purposive interpretation, describing the extent and implications that can be determined from the overall structure of the statute and for delivering justice while maintaining the fundamental framework of doctrine. Article 21 forbids taking a person's life or violating their personal freedom unless done so in accordance with a legally established process, which is a process that has been approved by the government. Prior to this, as demonstrated in the *Gopalan v. State of Madras* case, the term "law" was only used to protect against executive action and not against legislative action. However, later on, the Apex court overturned *Gopalan's* case and used the term "law" in the sense of "Lex," that is, just law or the principles of natural justice, and stated that procedures established by law should be free from arbitrariness. The right under Article 21 is restricted to actions taken against the state; therefore, if a private citizen violates someone else's right to personal liberty or takes their life, it does not fall under the purview of Article 21 and instead falls under Article 226 of the Constitution or general law. However, if a private citizen violates the rights of another person by acting on behalf of the state, then Article 21 will undoubtedly be violated. For the first time in legal history, Article 21 guaranteed a person's right to sufficient food, clothes, and housing as well as the ability to read, write, and express oneself. Since a clean environment is a means of subsistence for people and if that means of subsistence is taken away or polluted, it thereby violates the protection of rights under Article 21, the right to a clean and healthy environment has been broadly interpreted to include the right to life. Reading Article 21 in conjunction with the constitutional obligations outlined in the Constitution¹⁰ shows that the state has a responsibility to ensure that the fundamental principles of the Constitution are preserved and respected when passing legislation and rendering decisions.

INTERPRETING ARTICLE 21:

Right to Livelihood and to Live with human dignity-

Everybody has the fundamental right to live in dignity, free from all forms of discrimination and exploitation. This right is protected by Article 21 and gets its foundation from the laws that govern state policy. According to the court's interpretation, a man's right to life should include all parts of his existence that give it significance, value, and completion. In the case of *Bandhua Mukti Morcha vs. UOI*¹², the Supreme Court expanded the definition of the "right to life," ruling that it should be interpreted to include the freedom to live in dignity and without being exploited. In *People's Union for Democratic Rights v. UOI*, the Supreme Court ruled that failure on the part of state authorities to enforce labor laws and pay minimum wages to employed workers violates the right of workers to live with human dignity as guaranteed by Article 21. The court ruling in *Neeraja Chaudhary v. State of M.P.* asserts that bonded workers have to be recognized, identified, and provided with rehabilitation upon their release. They will become destitute and defenseless after being released without receiving rehabilitation.

The meaning of "life" in Article 21 caused a shift in the understanding of the right to livelihood, and the Supreme Court ruled in a case that the right to livelihood is protected by Article 21 even if it was not originally included in that guarantee. In a different case¹⁶, the

Supreme Court ruled that the right to a means of subsistence is protected by Article 21 and that, as a result, the process by which that right is taken away must be fair, reasonable, and justifiable. The Supreme Court later clarified in *Olga Tellis v. Bombay Municipal Corporation*¹⁷ that Article 21 encompasses the right to livelihood as well; however, it may only be restricted or reduced by adhering to the reasonable and equitable process set out by law.

Right against rape and sexual harassment at workplace-

Not only does rape violate a person's right to life, but it also severely diminishes a woman's human dignity and is a crime against society as a whole. All forms of rape against women breach their rights under Article 21 and pose a danger to society. In the *Bodhisattwa Gautam v. Subhra Chakroborty*¹⁸ case, the court declared that rape is the most hated crime, a violation of basic human rights, and a crime against a woman's right to live in dignity under Article 21 of the constitution. It also destroys a woman's entire psychology and sends her into a deep emotional crisis.

The Supreme Court has ruled that sexual harassment of women violates both the right to life guaranteed by Article 21 and human dignity. The Supreme Court ruled in *Vishaka v. State of Rajasthan*¹⁹ that sexual harassment of a woman at work constitutes a violation of her right to life and liberty and constitutes gender discrimination, which is obviously against Articles 14, 15, and 21 of the Indian Constitution. The court also established guidelines, also known as the Vishakha guidelines, to put an end to this kind of behaviour. However, the Supreme Court pointed out in the *Medha Kotwal Lele v. UOI* case that the Vishakha guidelines from 1997 were not followed, and that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was put into effect to protect working women's rights and stop violations of Article 21 of the Women's Rights Act.

Right to health and medical care –

The state is obligated under Article 21 and the Directive Principles of State Policy 21 to protect human life, since it is a fundamental human right that belongs to all people equally. The supreme court has said unequivocally in a significant decision that life preservation is very essential. In addition, all doctors—public or private—have a professional duty to protect life before the police have finished all the legal processes. According to Article 21, every human being has a natural right to health and medical treatment, and neither the government nor any legal framework may interfere to prevent the provision of such care or to deny someone their right to it. In a different instance of *Paschim Banga khet Mazdoor Samity vs. State of West Bengal*, a victim of a train accident with severe brain injuries was turned down for treatment by many institutions on the grounds that they were not equipped to provide it. In this case, the Supreme Court noted and declared that failing to give appropriate medical treatment at the appropriate time may result in a person's death and that failing to do so is against Article 21. The court also declared that in order for the state to fulfill its obligation to provide emergency medical treatment, it was required to have these resources. However, in a different instance, the court noted that financial constraints will always restrict the availability of health services, and so, the provisions must only be made to the degree that funding allows.

Interpretation of Article 21 in Environmental cases –

According to Article, it is the state's duty to provide its residents and people a clean and healthy environment so that life may continue to be sustainable. This imposes obligations on the state to maintain a clean environment, provide clean water and air, and manage noise pollution. The various UN treaties, such as the Stockholm Declaration, Kyoto Protocol, Brunt Land Commission, etc., which all seek to protect the environment for the sustainable development of human life, also support this interpretation of the article on a global scale. The court investigated the problem of tanneries damaging water resources, rivers, canals, and other waterways in the well-known case of Vellore Citizen v. UOI. The court issued many directives to address the subject. The Supreme Court ruled in another instance that a clean environment is essential to a person's right to a healthy body and mind. The Supreme Court ruled in *M.C. Mehta v. Kamalnath* that environmental pollution is a wrong against the community, but it also said that when constructive adjustments are made for the environment's benefit, they inadvertently do not infringe upon any rights guaranteed by Article 21. In a different *M.C. Mehta vs. Kamalnath*²⁹ case, the Supreme Court ruled that the party liable for pollution must provide restitution for the ecosystem's and environment's rehabilitation. The court held in *Paramanand Ktara v. UO Tamil Nadu*³⁰ that people's right to clean water from nature derives from Article 21 and that this principle only applies to natural water storage resources like rivers, lakes, etc.; artificial tanks are not covered by this principle.

Right to Privacy –

The right to privacy is the freedom from unwelcome public attention and the right to privacy. In *Kharak Singh v. State of Tamil Nadu*, privacy was brought up for the first time. It was said here that expressing one's own liberty comes with an inherent right to privacy. Later, the court defined the right to privacy as the freedom to be left alone, as stated in Article 21 of the Constitution, in the case of *Rajgopal v. State of Tamil Nadu*. The Supreme Court made it clear in the cases of *R.M. Malkani v. State of Madhya Pradesh* and *People's Union of Civil Liberties vs. UOI*³³ that the right to privacy includes the ability to talk on the phone in private at home or at work, that tapping a phone is a violation of that right, and that Article 19(1)(a) prohibits such practices. The court also directed certain procedures to be followed in order to prevent such practices. The right to privacy also protects a woman's ability to make reproductive decisions, such as whether to engage in sexual activity, get pregnant, or choose a contraceptive technique. She cannot be coerced into continuing her pregnancy or into receiving any kind of contraceptive procedure against her choice, including sterilization. A woman cannot be compelled to terminate her kid, even in circumstances of abortion, if she so chooses. Regardless of whether a woman is married or not, she is entitled to this.

Right to free legal aid, right to appeal and right to speedy and fair trial –

One of a person's basic rights under Article 21 is the availability of free legal assistance. It is the state's duty to ensure that the legal system functions properly and to guarantee every citizen's fundamental right to equal protection under the law. The Supreme Court established two crucial rules regarding the right of appeal in *M.H. Hoskot v. State of Maharashtra*. Firstly, the prisoner must receive a copy of the judgment promptly so that he can file an appeal. Secondly, free legal assistance must be provided to the prisoner if he is unable to obtain legal representation on his own.

Since it is believed that "late justice is no justice," anybody who is refused a quick trial has the right to petition the court to have their right to one enforced. This implied right to a speedy trial is included in the guarantees of life and personal liberty. The Supreme Court ruled in *Hussainara Khatoon v. Home Secretary, state of Bihar*³⁵ that a prompt trial is a basic right that is enforceable in court and is constructive under Article 21 of the Constitution. Similar criteria for a prompt trial of offenses were established by the Supreme Court in another case³⁶. These guidelines said that the accused should be allowed to defend himself and that the pre-trial detention term should be kept as short as feasible. In the *Anil Rai v. State of Bihar*³⁷ case, the Supreme Court ordered the High Court justices to provide decisions promptly and without undue delay.

Additionally, under Article 21 of the Indian Constitution, everyone has the right to a free and fair trial devoid of any kind of discrimination based on caste, culture, sex, or religion.

Rights of Prisoners-

Under Article 21 of the Constitution, prisoners are accorded the same rights as other human beings. All of a prisoner's basic rights are guaranteed, unless they have been restricted by the constitution. A prisoner must always receive humane treatment while incarcerated, regardless of their circumstances. The Bombay district prison forbade the prisoner in the historic *Prabhakar Pandurang*³⁸ ruling from publishing the book he had written while incarcerated. However, the Supreme Court ruled that the prisoner's civil rights and right to liberty were unaffected and that the book he wished to publish did not in any way pose a threat to public safety, so denying him this opportunity would have violated his right under Article 21. As per the rules, a prisoner can be placed in solitary confinement if they violate prison rules or pose a threat to other inmates. This means that the prisoner in *Sunil Batra v. Delhi Administration*³⁹ was not sentenced to solitary confinement because of his crime, but rather because he was intended to be executed. The court ruled that this was unlawful and incorrect. Additionally, a letter on the cruel treatment and torture of his prisoner by a jail warden was written by Sunil Batra to a Supreme Court judge, which was considered a Public Interest Litigation (PIL) under Article 32 of the Constitution. The Supreme Court declared this conduct to be unlawful and inhumane, noting that a prisoner has a right to life safety even when incarcerated and that Article 21 prohibits the violation of that right.

Capital punishment- Not violating Article 21 –

The Supreme Court has repeatedly ruled under Article 21 of the Constitution that the death penalty and hanging are not deemed violations of the Article. The death penalty will not restrict someone's rights under Article 21 in situations when the offense is so severe that it violates another person's basic human rights and poses a serious danger to society. In the case of *State of UP v. Jagmohan Singh*. The Supreme Court ruled that since a death sentence takes away a person's right to life, it must be fair, just, and thoroughly considered. Additionally, the court determined that the death sentence is not irrational and may be regarded as an alternative punishment to murder under section 302 of the IPC in the significant case of *Bachan Singh v. State of Punjab*⁴¹.

No right to die or suicide under Article 21-

In *Maruti Dubal v. State of Maharashtra* (1985), a police constable attempted suicide and faced criminal charges. He challenged section 309 of the IPC in the Bombay High Court,

arguing that it violated Article 21 of the Constitution. The court accepted the challenge and determined that the desire to die was not abnormal, thus striking down section 309. In a related ruling, the Supreme Court invalidated section 309 of the IPC and said that suicide attempts are more often psychiatric issues than criminal impulses. This ruling was rendered in the matter of P. Rathinam v. UOI. The Supreme Court later overturned the decisions in the aforementioned two cases in Gian Kaur v. State of Punjab⁴³, resolving the dispute over Section 309 of the IPC and Article 21 of the Constitution. The court stated that Article 21 only protects a person's life and liberty and does not support the idea of a right to die or abetment to commit suicide. It further stated that the right to live under Article 21 is a natural right and that the right to death is unnatural and will not be covered by Article 21. In this case, the court also made a distinction between committing suicide and euthanasia. While authorization to practice passive euthanasia was granted in Aruna Ramchandra Shanbaug's case, she was not granted the authority to end her own life.

The Landmark Case of Maneka Gandhi Vs. Uoi (1978), and the Interpretation of Article 21 Post the case Of Maneka Gandhi

The Maneka Gandhi v. Union of India⁴⁴ ruling by the Supreme Court marked a sea change in the court's stance in favor of a more expansive interpretation of the fundamental rights protected by the constitution. The Maneka Gandhi case happened in the days just after India's National Emergency ended. Maneka Gandhi (45). In accordance with the Passport Act, she received a passport in 1976. Maneka Gandhi got notice in 1977 that her passport will be impounded in the public interest under Section 10(3)(c) of the Passport Act⁴⁶, just as she was about to leave the country to attend a gathering and give a speech. Her plea for an explanation of the order's enactment was denied by the government, which said the decision was not in the public interest. Maneka Gandhi challenged the Government of India's impounding decision on the passport and its subsequent reluctance to furnish explanations for the same in a Writ suit filed before the Supreme Court. The Supreme Court ruled in Maneka Gandhi that the Constitution's fundamental rights constitute an integral scheme and that the articles pertaining to the various fundamental rights found in Part III of the document do not constitute individual rights but rather are a part of this integrated scheme. The are required to be combined and to be read collectively in order to enforce the Fundamental Rights without the need for arbitration. It is neither practical nor advantageous to isolate certain facets of human freedom in order to defend another right for its own sake. The Supreme Court ruled that the fulfillment of one Fundamental Right by a statute did not absolve it from its impact on the operation of other Fundamental Rights, and that Part III of the Constitution should be interpreted in its whole. It implies that a legislation would also need to meet the standards of other fundamental rights, even if it were purportedly related to one specific fundamental right and fulfilled with its requirements. The court declared that "fair, just, and reasonable" would be the requirements for any legal process formed under Article 21. Furthermore, the order that was issued violated both the right to liberty in Article 21 and the right to equality under Article 14 since it was arbitrary and did not meet the requirements of Article 21. The founding editorial of the political journal "Surya" ⁴⁶ and daughter-in-law of former prime minister Indira Gandhi According to the section: "The passport authority may revoke, impounded, or cause to be impounded a passport or public document...(c) if the passport authority deems it

necessary to do so in the interests of the general public, the security of India, friendly relations of India with any foreign country, or the sovereignty and integrity of India."

Later on, it was found that the main reason the passport authority had the right to confiscate Maneka Gandhi's passport was because they were afraid she would leave the country in order to avoid testifying before a Commission of Enquiry that had been established to look into crimes committed during the emergency period. Manoj Mate, *The Origins of Due Process in India*, Berkeley journal of International Law, asked the Supreme Court whether a law that complies with all procedural requirements at the time of its enactment, no matter how arbitrary or unreasonable, passes the Article 21 test. In the Maneka Gandhi case, the court changed from being just a supervisor to a watchdog of the constitution by granting itself the authority of substantive review under Article 21. The Maneka Gandhi ruling of the Court is predicated on the elementary tenet that an arbitrary legislation is inherently unconstitutional. The 5th Amendment of the United States Constitution, which states that "procedure established by law" "would have the same effect as the expression "due process of law," was similar to the Supreme Court's ruling in the Maneka Gandhi case. It reads as follows: "No person shall be deprived of life or personal liberty except according to fair, just, and reasonable procedure established by law." The case of Maneka Gandhi is an example of how the Constitution is being interpreted dynamically. It was significant because it showed how the Court was now interpreting the constitution differently. It was seen in the next decades as an organic text, the meaning of which must change with time in response to changes in society.

CONCLUSION- HUMAN RIGHTS AND ARTICLE 21:

The idea of human rights was first proposed in 539 BC, and it has since spread to different nations and states, but its fundamental purpose—that is, every person born on Earth has the right to certain protections against infringement—remains unaltered. These rights are inherent to being a human and cannot be taken away. The international legal community has made significant contributions to the integration of human rights, disseminating information about these rights to other countries, and inspiring them to enact laws protecting them. One of the founding members of the International Covenant on Civil and Political Rights was India. The Indian Constitution's Preamble affirms that every person is deserving of dignity. Part III of the document thus successfully protects human rights, and Article 21 guarantees an individual's right to life and liberty. The Constitution's Article 21 has been interpreted to protect all facets of human life and to protect all means of subsistence. This interpretation goes beyond a literal reading of the Article to include a purposeful method of interpretation that upholds the fundamental human rights that all people, not just citizens of the nation, are entitled to.

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