

# Article 21 of the constitution of india after maneka gandhi's case



## INTRO

To a great degree, the Supreme Court of India finds its strength in Article 21 of the Constitution, for the factor that much of its judicial activism has been based upon translating the scope of this Post. Majority of the PIL cases have actually been submitted under this Article only. The Supreme Court is now called an activist court. There has actually been no change in the words used in Short article 21, but there has actually been a modification in the method it has been interpreted.

The scope of the Post has expanded considerably post the Maneka Gandhi decision. This will be seriously evaluated in the following couple of pages.

## ARTICLE 21

The Article reads- “ No individual shall be deprived of his life or individual liberty except according to procedure developed by law.” Constituent Assembly Argument Over Post 21 India’s constitutional system was rooted in the traditions of British parliamentary sovereignty and legal positivism. Therefore, the development of a strong Supreme Court challenging parliamentary legislation through substantive due process was not likely given this conventional historic context.

However aside from the historical tradition of British rule and legal positivism, 2 particular historic factors directly influenced the Constituent Assembly to clearly leave out a due procedure provision in the section on Essential Rights.

The very first was the impact of United States Supreme Court Justice Felix Frankfurter on Constitutional Adviser B. N. Rau, who traveled to Britain,  
<https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

Ireland, the United States and Canada in 1947 to meet jurists relating to the drafting and framing of the Indian Constitution. The 2nd factor was the turbulent and disorderly period of common violence that gripped Northern India as a result of the partition of Muslim Pakistan from Hindu India, which led the of the Indian Constitution to remove the due process clause from their draft constitution for the defense of individual liberty. 1 The Constituent Assembly of India initially included a due process provision in the Essential Rights provisions connected with preventive detention and specific liberty in the initial draft variation adopted and released in October of 1947.

At this point, a majority of members of the Constituent Assembly favored inclusion of a due process clause, because it would provide procedural safeguards against detention of individuals without cause by the government. However, Rau had succeeded in qualifying the phrase liberty with the word “ personal,” effectively limiting the scope of this clause as applying to individual liberties, and not property rights. After this draft version was published, Rau embarked upon a multi-nation trip to the United States, Canada, and Ireland to meet with jurists, constitutional scholars, and other statesmen.

In the United States, Rau met with American Supreme Court Justice Felix Frankfurter, a student of Harvard Law professor James Bradley Thayer, whose writings about the pitfalls of due process as weakening the democratic process had already impressed Rau prior to the visit. In his meeting with Rau, Frankfurter indicated that he believed that the power of judicial review implied in the due process clause was both undemocratic and

burdensome to the judiciary, because it empowered judges to invalidate legislation enacted by democratic majorities.

2 Frankfurter had a lasting impression on Rau, who upon his return to India, became a forceful proponent for removing the due process clause, ultimately convincing the Drafting Committee to reconsider the language of draft Article 15 (now Article 21) in January 1948. In these meetings Rau apparently was able to convince Ayyar, the crucial swing vote on the committee, of the potential pitfalls associated with substantive interpretation of due process, which Frankfurter had discussed extensively with Rau. Ayyar, in ultimately upholding the new position on the floor of the Assembly in December 1948, supported removing the due process clause on the grounds that substantive due process could “impede social legislation.”

With the switch in Ayyar’s vote, the Drafting Committee endorsed Rau’s new preferred language-replacing the due process clause with the phrase “according to the procedure established by law,” which was apparently borrowed from the Japanese Constitution. 3 Protection of Life and Personal Liberty

### Gopalan’s Case

Immediately after the Constitution became effective, the question of interpretation of the words “life and personal liberty” arose before the court in the case A. K. Gopalan v. State of Madras. 4 In this case, the Petitioner had been detained under the Preventive Detention Act, 1950. The petitioner challenged the validity of his detention on the ground that it was violative of

his Right to freedom of movement under Article 19(1)(d), which is the very essence of personal liberty guaranteed by Article 21 of the Constitution.

He argued that (i) the words 'personal liberty' include the freedom of movement also and therefore the Preventive Detention Act, 1950 must also satisfy the requirements of Article 19(5). (ii) It was further argued that Article 21 and Article 19 should be read together as Article 19 laid out the substantive rights while Article 21 provided procedural rights. (iii) It was also argued that the words "procedure established by law" actually meant "due process of law" from the American Constitution which includes principles of natural justice and the impugned law does not satisfy that requirement.

Thus the main question was whether Article 21 envisaged any procedure laid down by a law enacted by a legislature, or whether the procedure should be just, fair and reasonable. On behalf of Gopalan, an argument was made to persuade the Supreme Court to hold that the courts could adjudicate upon the reasonableness of the Preventive Detention Act, or for that matter, any law depriving a person of his personal liberty. Majority Decision in Gopalan

The Supreme Court ruled by majority that the word 'law' in Article 21 could not be read as meaning rules of natural justice. These rules were vague and indefinite and the Constitution could not be read as laying down a vague standard. The Court further interpreted the term 'law' as 'State made law' and rejected the plea that the term 'law' in Article 21 meant jus naturale or principles of natural justice. Justice Fazl Ali's Dissenting Judgment

Justice Fazl Ali in his dissenting judgment observed that preventive

detention is a direct infringement of the right guaranteed in Art. 19 (1) (d), <https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

even if a narrow construction is placed on the said sub-clause, and a law relating to preventive detention is therefore subject to such limited judicial review as is permitted by Art. 19 (5). There is nothing revolutionary in the view that “ procedure established by law “ must include the four principles of elementary justice which inhere in and are at the root of all civilized systems of law, and which have been stated by the American Courts and jurists as consisting in (1) notice, (2) opportunity to be heard, (3) impartial tribunal and (4) orderly course of procedure.

These four principles are really different aspects of the same right, namely, the right to be heard before one is condemned. Hence the words “ procedure established by law “, whatever its exact meaning be, must necessarily include the principle that no person shall be condemned without hearing by an impartial tribunal. Relationship among Articles 21, 22 and 19

An attempt was made in Gopalan to establish a link between these three Articles. The underlying purpose was to persuade the Court to adjudge the reasonableness of the Preventive Detention Act. It was therefore argued that when a person was detained, his several rights under Article 19 were affected and thus, the reasonableness of the law, and the procedure contained therein (regarding reasonable restrictions), should be justiciable with reference to Arts. 19(2) to (6). Rejecting the argument, the Court pointed out that the word ‘ personal liberty’ under Article 21 in itself had a comprehensive content and ordinarily, if left alone, would include not only freedom from arrest or detention, but also various freedoms guaranteed by Art. 19.

However, reading Articles 19 and 21 together, Article 19 must be held to deal with a few specific freedoms mentioned therein and not with freedom from detention whether punitive or preventive. Similarly, Art. 21 should be held as excluding the freedoms dealt with in Article 19. The Court ruled that Arts. 20 and 22 constituted a comprehensive code and embodied the entire constitutional protection in relation to life and personal liberty and was not controlled by Article 19.

Thus, a law depriving personal liberty had to conform with Arts. 20 and 22 and not with Art. 19, which covered a separate and distinct ground. Article 19 could be invoked only by a freeman and not one under arrest. Further, Article 19 could be invoked only when a law directly attempted to control a right mentioned under it. Thus, a law directly controlling a citizen's right to freedom of speech and expression could be tested under the exception given under Art. 19(2); and a law that does not directly control the fundamental freedoms under Article 19, could not be tested under the clauses (2) to (6) of Article 19. This judicial approach meant that a preventive detention law would be valid, and be within the terms of Article 21, so long as it conformed to Article 22. Due Process of Law

The V Amendment of the US Constitution lays down inter alia that "no person shall be deprived of his life, liberty or property, without due process of law." The use of the word 'due' in this clause is interpreted to mean 'just', 'proper' or 'reasonable' according to judicial review. The courts can pronounce whether a law affecting a person's life, liberty or property is reasonable or not. The court may declare a law invalid if it does not accord with its notions of what is just, fair and reasonable. Thus, this clause known <https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

as the 'due process clause' has been the most significant single source of judicial review in the US.

It was contended in Gopalan that the expression procedure established by law in Art. 21 was synonymous with the American concept of 'procedural due process', and therefore, the reasonableness of the Preventive Detention Act, or for that matter, of any law affecting a person's life or personal liberty, should comply with the principles of natural justice. The Supreme Court rejected this contention giving several reasons: i) The word 'due' was absent from Article 21.

ii) The fact that the words 'due process' were dropped from draft Article 15 (present Article 21), signified the intention of the Constituent Assembly, that was to avoid the uncertainty surrounding the due process concept in the USA. iii) The American doctrine generated the countervailing but complicated doctrine of police power to restrict the ambit of due process, i. e., the doctrine of governmental power to regulate private rights in public interest. If the doctrine of due process was imported into India, then the doctrine of police power might also have to be imported, and which would make things very complicated. The ruling thus meant that to deprive a person of his life or personal liberty-

i) There must be a law

ii) It should lay down a procedure

iii) The executive should follow this procedure while depriving a person of his life or personal liberty. Criticism

Gopalan was characterized as the 'high-water mark of legal positivism.'

Court's approach was very static, mechanical, purely literal and was coloured

<https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>



by the positivist or imperative theory of law, which studies the law as it is. Article 21 was interpreted by the majority to mean that Art. 21 constituted a restriction only on the executive which could not act without law and that it was not applicable against legislative power, which could make any law to impose restraints on personal liberty, however arbitrary they may be.

#### GOPALAN TO MANEKA: 1950-1977

Gopalan held the field for almost three decades. It can be observed during this period from the court decisions that the two major points settled in the case [that is, firstly that Articles 19, 21 and 22 are mutually exclusive and independent of each other, and secondly that Article 19 was not to apply to a law affecting personal liberty to which Article 21 would apply] got diluted to a great extent until finally in Maneka Gandhi's case this position was reversed. The decisions immediately proceeding Gopalan's case were decided on the same basis.

For example, in *Ram Singh v. Delhi*<sup>5</sup>, where a person was detained under the Preventive Detention Act for making speeches prejudicial to the maintenance of public order, at a time when public order was not contained under Article 19(2), the Supreme Court refused to assess the validity of preventive detention under Article 22 with reference to Article 19(1)(a) read with Article 19(2) stating that even if a right under Art. 19(1)(a) was abridged, the validity of the preventive detention order could not be considered with reference to Art. 19(2) because of the Gopalan decision that legislation authorizing deprivation of personal liberty did not fall under Art. 19 and its validity was not to be judged by the criteria in Art. 19.

The beginning of the new trend can be found in *RC Cooper v. Union of India*<sup>6</sup>, where Article 31(2) which had been amended to dilute the protection to property, the Court established a link between Article 19(1)(f) (right to property) and Article 31(2). But the draconian *Gopalan* ruling found its way back and reached the lowest point in *ADM Jabalpur v. Shivkant Shukla*<sup>7</sup>, remembered as the black day in Indian Constitutional history.

In this case the political dissenters of the Indira Gandhi government were arrested and Shivkant Shukla contended that this was in violation of their right to life and personal liberty and so the writ of habeas corpus should be issued. Court held that during the period of emergency, a person could be detained and his right to life and personal liberty under Article 21 could be suspended, and such suspension could not be challenged and the writ of habeas corpus could not be issued during the emergency. This case showed that Article 21 could not play any role in providing any protection against any harsh law seeking to deprive a person of his life or liberty. It is the dissenting judgment of Fazl Ali J that was subsequently applied in the decision in *Maneka Gandhi's case* and the cases after that, regarding the right to life and personal liberty. **MANEKA GANDHI'S CASE**

In *Maneka Gandhi v. Union of India*<sup>8</sup> and ever since, the Supreme Court has shown greater sensitivity to the protection of personal liberty. The court has reinterpreted Article 21 and overruled its *Gopalan* decision and which, in the words of MP Jain, can be regarded as a highly creative judicial

pronouncement on the part of the Supreme Court. In this case, Maneka Gandhi's passport was impounded by the Central Government under the

Passport Act in the interest of the general public, as was provided under S.  
<https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

103(c) of the Passport Act. This was challenged on the ground of being arbitrary to Article 21 and also because this was done without affording her a chance to be heard.

The Court observed that as the right to travel abroad falls under Article 21, principles of natural justice must be observed and the right of hearing should be given, even though not expressly provided for under the statute. Some of the main propositions laid down by the court in this case are as follows: 1. The court reiterated the proposition that Articles 14, 19 and 21 are inter-related and not mutually exclusive.

This means that a law prescribing a procedure to deprive a person of their personal liberty, should conform to the provisions under Article 19.

Moreover, the procedure established by law under Article 21 must meet the requirements of Article 14. According to K. Iyer, J, no Article in the Constitution pertaining to a Fundamental Right is an island in itself. Just as a man is not dissectible into separate limbs, cardinal rights in an organic constitution have a synthesis. Here, the dissenting judgment of Justice Fazl Ali in Gopalan's case was followed.

2. The court emphasized that the expression ' personal liberty' was of the widest amplitude covering a variety of rights which go to constitute the personal liberty of man. Some of these attributes have been raised to the status of distinct fundamental rights and given additional protection under Article 19.

3. The most significant aspect of Maneka's decision is the reinterpretation by the court of the expression ' procedure established by law' used in Article 21. <https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

It now means that the procedure must satisfy certain requisites in the sense of being fair and reasonable. The procedure cannot be arbitrary, unfair or unreasonable. The reasonableness must be projected in the procedure contemplated by Article 21.

#### IMPACT OF MANEKA GANDHI'S DECISION

Article 21 which had lain dormant for nearly three decades was brought to life by the Maneka Gandhi decision. Since then Article 21 has been on its way to emerge as the Indian version of the American concept of due process. It has become the source of many substantive rights and procedural safeguards to the people. Some of the broad fields of this impact will be discussed as below: 1. Interpretation of the Word Life

In Francis Coralie<sup>9</sup> the Supreme Court, following the principle laid down in Maneka Gandhi's case, has interpreted the meaning of life as has been interpreted by the US Supreme Court in *Munn v. Illinois*<sup>10</sup>, and held that the expression 'life' under Article 21 does not connote merely physical or animal existence but embraces something more.

As recently as 2006, the Supreme Court has observed that Article 21 embraces within its sweep not only physical existence but also the quality of life. These cases only reflect a part of the scope and ambit of the word 'life' under Article 21, which has been extended widely by the Supreme Court over the years proceeding Maneka. There have been a number of areas in which the Supreme Court has related some of the Directive Principles of State Policies to the word 'life' under Article 21 and made it enforceable as a

fundamental right. A classic example of this is the large number of environment related cases filed by MC Mehta.

## 2. Personal Liberty

It does not mean merely the liberty of body, i. e., freedom from physical restraint or freedom from confinement within the bounds of a prison. The expression ' personal liberty' is not used in a narrow sense but as a compendious term to include within it all those variety of rights of a person which go to make personal liberty of a man.

To begin with, the expression ' personal liberty' in Art. 21 was interpreted so as to exclude the rights mentioned under Article 19. The view was expressed in *Kharak Singh v. State of Uttar Pradesh*<sup>11</sup> that while Art. 19(1) dealt with particular species of that freedom, ' personal liberty' in Art. 21 would take in the residue. This view was followed in *Gopalan's case* as well. But the minority view expressed by Justice Subba Rao adopted a much wider concept of ' personal liberty'. He differed from the majority view that Art. 21 excluded what was guaranteed by Art. 19. He pleaded for an overlapping approach of Arts. 21 and 19. In a recent judgment of 2009, *Suchita Srivastava v. Chandigarh Administration*<sup>12</sup>, the Supreme Court asserted the strict boundaries of ' personal liberty' but that such liberty must also accommodate public interest. A woman's right to make reproductive choice has been held to be a dimension of ' personal liberty' within the meaning of Art. 21.

## 3. Law

Ordinarily, the word law in Article 21 denotes an enacted law, i. e., a law

made by the Legislature. But in *AK Roy v. Union of India*<sup>13</sup>, the question was whether an ordinance in the context of National Security Ordinance, 1980, promulgated by the President to provide for preventive detention in certain cases and connected matters, a law? The petitioner argued that since this was made by an executive it was not law and could not, thus, deprive a person of their 'personal liberty'. The Supreme Court held that an ordinance passed by an executive is well within the meaning of 'law' and must therefore, also be subject to Fundamental Rights, just like an Act of the Legislature.

#### 4. Procedure

After *Maneka Gandhi*, it is now established that the procedure for purposes of Art. 21 has to be reasonable, fair and just. The Supreme Court has reasserted in *Kartar Singh v. State of Punjab*<sup>14</sup> that the procedure contemplated by Art. 21 is that it must be 'right, just and fair' and not arbitrary, fanciful or oppressive. In *re The Special Courts Bill, 1978*, the Special Courts Bill proposed that a special court would be constituted to try certain persons holding high political offices during the emergency of 1975-1977. The special Court was to be presided over by a sitting or retired Judge of a High Court, to be appointed by the Central Government in consultation with the Chief Justice of India.

The accused could appeal to the Supreme Court against the verdict of the special Court. For the procedure to be just, fair and reasonable, the Court suggested certain modifications: There should be a provision for transferring a case from one special court to another so as to avoid the possibility of a trial where a judge may be biased against the accused Only a sitting High

<https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

Court Judge ought to be appointed, for the retired Judge would hold the office as a Judge of the special court during the pleasure of the government, and the “pleasure doctrine was subversive of judicial independence.” Instead of mere consultation, the Chief Justice’s concurrence should be there, which would inspire confidence not only of the accused but also of the entire community in the special Court. CRIMINAL JUSTICE AFTER MANEKA

### Arrest

In *Joginder Kumar v. State of Uttar Pradesh*<sup>15</sup>, the Supreme Court has observed that an arrest can cause incalculable harm to a person’s reputation and self-esteem. Arrest should be made not merely on suspicion but only after a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of the complaint and a reasonable belief to the person’s complicity and even as to the need to effect arrest. Speedy Trial

Speedy trial has not been mentioned as a fundamental right in the Constitution. Yet the Court has declared this as a fundamental right in *Hussainara Khatoon v. Home Secretary, State of Bihar (I)*.<sup>16</sup> In this case, the undertrials were in prison for a long period of time, awaiting their trials. Bhagwati, J. held that although, unlike the American Constitution speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi’s case.

This position was reiterated in *Hussainara Khatoon(No. 2)* and *Hussainara Khatoon(No. 3)*. In a significant judgment in *Abdul Rehman Antulay v. RS Nayak*<sup>17</sup>, the Supreme Court has laid down guidelines for the speedy trial of

an accused: i) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. ii) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view. iii)

The concerns underlying the Right to speedy trial from the point of view of the accused are: (a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction; (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise. In *Sunil Batra (II) v. Delhi Administration*<sup>18</sup>, it was held that the practice of keeping undertrials with convicts in jails offended the test of reasonableness in Art. 19 and fairness in Art. 21. *Prison Administration*

In *Sunil Batra (I) v. Delhi Administration*<sup>19</sup>, the important question before the court was whether solitary confinement imposed upon prisoners who were under sentence of death, was violative of Articles 14, 19, 20 and 21. It was held that under Sections 73 and 74 of the IPC, solitary confinement is a substantive punishment, which can be imposed by a court of law, and it <https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>



cannot be left within the caprice of prison authorities. It further observed that if by imposing solitary confinement there is total deprivation of camaraderie amongst co-prisoners, comingling and talking and being talked to, it would offend Article 21 of the Constitution.

The liberty to move, mix mingle, talk, share company with co-prisoners if substantially curtailed, would be violative of Article 21 unless curtailment has the backing of law. Here we see the high regard that the Supreme Court gives to human life and personal liberty, notwithstanding a person's jail sentence. In *Prem Shankar*

*v. Delhi Administration*<sup>20</sup>, the Supreme Court has held that handcuffing should be resorted to only when there is clear and present danger of escape. Even when in extreme cases, handcuffing is to be put on the prisoner, the escorting authority must record simultaneously the reasons for doing so, otherwise the procedure would be unfair and bad in law. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the procedure for deprivation of life and liberty. Legal Aid

In *Hussainara*<sup>21</sup>, the Supreme Court has observed that it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him. Providing free legal service to the poor and the needy is an essential element of any reasonable, fair and just procedure. In *Suk Das*<sup>22</sup>, the Court quashed the conviction of the appellant because the accused remained unrepresented by a lawyer and so the trial became vitiated on account of a fatal constitutional infirmity. The court held that free legal assistance at the cost of the State is a Fundamental Right of a person  
<https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

accused of an offence and this requirement is implicit in the requirement of a fair, just and reasonable procedure prescribed by Article 21. Public Interest Litigation

One of the most effective instruments evolved by the Supreme Court for attaining social justice is Public Interest Litigation (PIL). Any person with a sufficient interest and acting bona fide can file a PIL in the Supreme Court under Art. 32 or Art. 226. If there is a violation of any fundamental right or legal duties and there is legal injury to a person or a class of persons who are unable to approach the court by ignorance, poverty or by any disability, social or economic, any member of the public can make an application for an appropriate direction or order or writ before the High Court under Article 226 and before the Supreme Court under Article 32 for redressal. This was the gist of the principle laid down in *SP Gupta v.*

*Union of India*<sup>23</sup>, in which the Court has given considerable relaxation to the doctrine of locus standi. PILs have played an important role in the fields of prison reforms, gender justice, environment protection, child rights, education, wherein the court has constantly made an attempt to uphold the value of a dignified human life, which is not merely confined to access to food, shelter and clothing, but goes much beyond. For instance, in *Vishakha v. State of Rajasthan*<sup>24</sup>, an incident of rape was held to be violative of not only the right to gender equality under Art. 14, but also of the right to life under Article 21.

The Supreme Court has laid down specific guidelines as to what constitutes sexual harassment at workplace, placing the responsibility on the employer

to ensure the safety of their employees, also making it mandatory for all public offices to have a Women's Cell, where the women employees could take their grievances. These guidelines can also be found in the Criminal Law Amendment Act 2013. In *MC Mehta v. Union of India*<sup>25</sup>, the Supreme Court has developed the concept of absolute liability regarding the payment of compensation by an enterprise engaged in dangerous and hazardous activities. The Supreme Court has also exercised epistolary jurisdiction, wherein a letter has been treated as a petition before the court.

In *Labourers Working on Salal Hydroelectric Project v. State of Jammu and Kashmir*<sup>26</sup>, litigation was started on the basis of a letter addressed by the People's Union for Democratic Rights to Mr. Justice D. A. Desai enclosing a copy of the news item which appeared in the issue of Indian Express pointing out that a large number of workmen working on the Salal Hydro Electric Project were denied the benefit of various labour laws and were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. In all of these cases, and a number of others, a reflection of Maneka's decision can be found, wherein the Court has tried to uphold the sanctity of a dignified human life.

#### CRITICAL APPRAISAL OF MANEKA'S DECISION

The kind of wide interpretation that has been given to Article 21 post Maneka, has not been given to any other provision. Article 21 read with Articles 32 and 226, has become the most important weapon of judicial activism. By relating Directive Principles of State Policy with Fundamental Rights, court is granting remedies on an ever increasing scale. But it must be remembered that Directive Principles are non-justiciable in nature and <https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

cannot be enforced. Yet, the Supreme Court has gone to great lengths to enforce these by relating them to right to life. But balancing of conflicting interests is an important function of law. Function of law is social engineering. This has to be performed by both, the Legislator as well as the Judiciary.

Justice Cardozo also says that the court can evolve a process for dealing with the social ills. Thus, where legislators fail to balance the interests, it is the Court which must do it. The court will be criticized for judicial over-reach, that is, for undertaking the power of the legislator and laying down a law, as it happened in *Vishakha v. State of Rajasthan*. But it must be realized that where the Legislators fail, the court has to step in. The gaps need to be filled. Thus, from the perspective of Roscoe Pound's social engineering theory, which is very relevant in the present scenario, court's actions cannot be termed as judicial overreach. **CONCLUSION**

Thus, the decision of the Supreme Court in *Maneka Gandhi's* case became the basis of the court's decisions in subsequent cases pertaining to not only Article 21 expressly, but wherever the court found a relation between life and another aspect of it. The Court developed a theory of 'inter-relationship of rights' to hold that governmental action which curtailed either of these rights should meet the designated threshold for restraints on all of them. In this manner, the Courts incorporated the guarantee of 'substantive due process' into the language of Article

21. This was followed by a series of decisions, where the conceptions of 'life' and 'personal liberty' were interpreted liberally to include rights which had

<https://assignbuster.com/article-21-of-the-constitution-of-india-after-maneka-gandhis-case/>

not been expressly enumerated in Part III. 27 The width of Article 21 will keep expanding as long as our Supreme Court upholds its title of the activist court, and intervenes dutifully to preserve the fundamental rights of the people. The Court has, thus, played the role of a social engineer, constantly making an effort to balance the conflicting interests of the state with those of the society and the individuals.

#### REFERENCES

1. Indian Constitutional Law, M. P. Jain, Sixth Edition (2013).
2. Constitutional Law of India, J. N. Pandey, Forty Third Edition (2006).