

PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES (Article 20)

(1) No person

- shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence,
- shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Art. 20 provides following three safeguards to persons accused of crime:-

- Ex post facto law*: Clause (1) of Article 20.
- Double jeopardy: Clause (2) of Article 20.
- Prohibition against self-incrimination : Clause (3) of Article 20

Protection against *ex post facto laws* –

An *ex post facto law* is a law which imposes penalty retrospectively, i.e., on acts already done and increases the penalty for such acts.

Pareed Lubha vs Nilambaram, AIR 1967 Kerala. - If the non-payment of the panchayat tax was not an offence on the day it fell due, the defaulter could not be convicted for the omission to pay under a law passed subsequently.

Kedar Nath vs St. of Bengal, 1953 SC – Accused committed an offence in 1947, which under the Act then in force was punishable by imprisonment or fine or both. The Act was amended in 1949 which enhanced the punishment for the same offence by an additional fine equivalent to amount of money procured by the accused through the offence. It was held that the enhanced punishment could not be applicable.

Beneficial provisions – The accused can take advantage of the beneficial provisions of the *ex post facto* law. The rule of beneficial construction requires that *ex post facto* law should be applied to mitigate the rigorous of the previous law on the same subject. Such a law is not prohibited by Art. 20(1). ***Ratan Lal vs St. of Punjab, 1965 SC.***

Protection against double jeopardy

Underlying principle - *nemo debet bis vexari* which means that no man should be put twice in a peril for same offence.

Essentials for the application of double jeopardy rule -

- (1) The person must be accused of an 'offence'. The word 'offence' is defined in General Clauses Act.
- (2) The proceeding or prosecution must have taken place before a 'court' or 'judicial tribunal'.
- (3) The person must have been '**prosecuted and punished**' in the previous proceeding.
- (4) The 'offence' must be the same for which he was prosecuted and punished in the previous proceedings.

N.B. -- proceedings before departmental and administrative authorities cannot be a proceeding of judicial nature.

Article 20(2) and Section 300(1) of CrPC – The language used in Section 300(1) CrPC is different from the language used in Article 20(2). The former is wider than the later.

Where the appellant had already been convicted under Section 138 of NI Act, 1881, he could not be tried and punished on the same facts under Section 420 or any other provision of IPC. (*Kalla Veera Raghav Rao vs Gorantla Venkateswara Rao, 2011 SC*)

Prohibition against self-incrimination

Essentials - *M.P. Sharma vs Satish Chandra, 1954 SC*

- (1) It is right pertaining to a person who is 'accused of an offence'.
- (2) It is a protection against 'compulsion to be a witness'.
- (3) It is a protection against such compulsion relating to his giving evidence 'against himself'.

1. Accused of an offence – A person is said to be an accused person against whom a formal accusation relating to the commission of an offence has been leveled which in normal course may result in his prosecution and conviction.

2. To be a witness – The expression is very wide and include oral, documentary and testimonial evidence (*M.P. Sharma vs Satish Chandra, 1954 SC*)

Self-incrimination can only mean conveying information based on personal knowledge of the person giving information and cannot include merely the mechanical process of producing documents in court which may throw light on any point in controversy. What is forbidden under Art 20(3) is to compel a person to say something from his personal knowledge relating to the charge against him. (*St. of Bombay vs Kathi Kalu, 1961 SC*, limited the scope of interpretation in *M.P. Sharma* case)

State vs M. Krishna Mohan, 2008 SC – Taking of specimen finger print and handwriting from accused is not prohibited by Art. 20(3) as being witness against himself.

Ritesh Sinha vs St. of UP, 2019 SC – Article 20(3) does not protect an accused from being compelled to give his voice sample during the course of investigation into an offence. (Relied *Kathi Kalu Case*)

Parshadi vs St. of UP, 1957 SC – the information given by an accused person after his arrest to a police officer which leads to the discovery of a fact under Section 27 of IEA is admissible in evidence and not prohibited under Article 20(3).

3. Compulsion to give evidence ‘against himself’ - the protection under Art. 20(3) is available only against the **compulsion** of accused to give evidence ‘against himself’.

Result of search or seizure – search of the premises occupied by or in possession of person accused of an offence or seizure of anything from there is not violative of Art. 20(3). (**V.S. Kuttan Pillai vs Ram Krishnan, 1980 SC**)

Amrit Singh vs St. of Punjab, 2007 SC – asking an accused of his hair for purpose of identification amounts to testimonial compulsion and violative of Art. 20(3).

Narco analysis, Polygraphy, Brain Finger Printing test of accused without consent – violates Art. 20(3) – **Selvi vs St. of Karnataka, 2010 SC**

- These tests are testimonial compulsions and are prohibited by Art. 20(3).
- These tests do not fall within the scope of expression ‘such other tests’ in Explanation of Section 53 CrPC.
- The compulsory administration of the *Narco* analysis techniques constitutes cruel, inhuman or degrading treatment.
- A forcible invasion into a person’s mental process is also an affront to human dignity and liberty often with grave and long lasting consequences.

The court laid down the following guidelines for these tests:-

- (1) No Lie Detector Test should be administered except on the basis of the consent of the accused. An option should be given to the accused whether he wishes to avail such test.
- (2) If the accused volunteers for Lie Detector Test, he should be given access to a lawyer and physical, emotional and legal implications of such a test should be explained to him by the police and his lawyer.
- (3) The consent should be recorded by a Judicial Magistrate.

- (4) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
- (5) At the hearing the person in question should also be told in clear terms that the statement that if made shall not be confidential statement to the Magistrate but will have the statement made to the police.
- (6) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
- (7) The actual recording of the Lie Detector shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
- (8) A full medical and factual narration of the manner of the information received must be taken on record.

N.B. – The drug ‘*Sodium Pentothal*’ (a drug used as general anaesthesia in surgery) is introduced in Narcoanalysis.

The polygraphy and Brain Finger Printing (BEAP) Test is also known as the Wave Test in which electronic waves are introduced into the mind.

RIGHT TO LIFE AND PERSONAL LIBERTY (Article 21)

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

Personal liberty: meaning and scope

A.K. Gopalan vs UOI, 1950 SC – the petitioner, a communist leader was detained under the Preventive Detention Act, 1950. He challenged the validity of his detention on the ground that it was violative of his right to freedom of movement under Art. 19(1)(d) which is the very essence of personal liberty guaranteed by Art. 21. The Supreme Court held -

- ‘Personal liberty’ in Art. 21 means nothing more than the liberty of the physical body, that is, freedom from arrest or detention without the authority of law.
- The term ‘law’ must mean a law enacted by legislature and not the ‘law’ in the abstract or general sense embodying the principles of Natural Justice.
- Art. 19 has no application to laws depriving a person of his life and personal liberty. Articles 19 and 21 deal with different subjects. Article 19 deals only with certain (6 freedoms) important individual rights or personal liberty and the restriction that can be imposed on them. On the other hand, Art. 21 enables the State to deprive individual of his life and personal liberty in accordance with procedure established by law.

- The ‘procedure established by law’ did not mean ‘due process of law’ as understood in America. ‘Procedure established by law’ must mean procedure prescribed by the law of the State.

Kharak Singh vs St. of UP, 1963 SC – the expression ‘life’ and ‘personal liberty’ is not limited to bodily restraint or confinement to prisons only, but something more than mere animal existence and is used as a compendious term including within itself all the varieties of rights which go to make up the personal liberty of a man other than those dealt within Art 19 (1) (not followed the Gopalan’s Case).

New dimension: **Maneka Gandhi’s** case - (overruled *Gopalan’s* case)

- The expression ‘personal liberty’ in Art. 21 is of widest amplitude and it covers a variety of rights which constitute the personal liberty of man and some of them has reached to the status of distinct.
- Article 21 is controlled by Art.19, that is, it must satisfy the requirement of Art 19 also. A law depriving a person of ‘personal liberty’ has not only to stand the test of Article 21, but it must stand the test of Articles 19 and 14 of the Constitution.
- The ‘procedure prescribed by law’ has to be fair, just and reasonable. A procedure to be fair and just must embody the principles of Natural Justice. Law should be reasonable law and not enacted piece of law. The court described natural justice ‘**as distillate of due process of law**’.

Thus, following conditions to be fulfilled before a person is deprived of the personal liberty:-

1. There must be a valid law.
2. The law must provide a procedure.
3. The procedure must be just, fair and reasonable.
4. The law must satisfy the requirements of Arts. 14 and 19 i.e., it must be reasonable.

Instances of freedom of life and personal liberty

Right to live with human dignity – The right to ‘live’ is not merely confined to physical existence but it included within its ambit the right to live with human dignity. - **Maneka Gandhi case**. (followed and elaborated in **Francis Coralie vs UT of Delhi, 1981 SC**)

Again followed in **People’s Union for Democratic Rights vs UOI, 1982 SC** and held that **non-payment of minimum wages** to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violative of Art. 21.

Right to livelihood – word ‘life’ includes the right to livelihood also - *Olga Tellis vs Bombay Municipal Corporation, 1985 SC* (Pavement Dwellers case).

Followed in *D.K. Yadav vs JMA Industries, 1993 SC*.

Right to travel abroad – is part of a person’s ‘personal liberty’ within the meaning of Art. 21 – *Satwant Singh vs Asst. Passport Officer, New Delhi, 1967 SC*.

Right to shelter – *Chameli Singh vs St. of UP, 1996 SC*

Right to privacy – *R.Rajagopal vs St. of TN, 1994 SC* (Auto Shankar Case).

Right to privacy available to a woman of easy virtues - *St of Maharastra vs Madhulkar Narayan, 1991 SC*.

N.B. Right to privacy is not an absolute right – *Mr X vs Hospital Z, 1995 SC* (HIV patient case)

Justice K.S. Puttaswamy (Retd.) vs Union of India, 2017 SC (9 judges bench) –

- The right to privacy is protected as an intrinsic part of the right to life and personal liberty under A. 21.
- It is essentially a right which is inherent in every human being by birth.
- *MP Sharma vs Satish Chandra, 1954 SC* and *Kharak Singh vs St. of UP, 1962 SC* were overruled to the extent that the right to privacy is not protected by the Constitution.

Telephone Tapping – invasion on right to privacy, *PUCL vs UOI, 1997 SC*. (also known as phone tapping case)

Husband tapping conversation of his wife with others seeking to produce in court, violates her right of privacy under Art. 21. - *Rayala M Bhuvaneswari vs Nagaphamender Rayala, 2008 SC*.

Right to health and medical assistance – It is the professional obligation of all doctors whether **government or private**, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under CrPC. Art. 21 casts the obligation on the State to preserve life. - *Parmanand Katara vs UOI, 1989 SC*.

Right to sleep – *Ram Lila Maidan vs Home Secretary, UOI, 2012 SC*

Right to die

St. of Maharastra vs Maruty Sripati Dubal (Bom. HC 1987) – Right to life includes right to die.

P. Rathinam vs UOI, 1994 SC – Upheld above case and declared Sec. 309 IPC unconstitutional.

Gian Kaur vs St. of Punjab, 1996 SC – Overruled *P. Rathinam* case.

‘Right to life’ is a natural right embodied in Art. 21 but suicide is an unnatural termination or extinction of life and, incompatible and inconsistent with the concept of ‘Right to life’. Section 309 IPC is not violative of Art. 21.

Euthanasia

Euthanasia, also called **mercy killing**, act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures. Because there is no specific provision for it in most legal systems, it is usually regarded as either suicide (if performed by the patient himself) or murder (if performed by another)

Active Euthanasia - In active euthanasia a person directly and deliberately causes the patient's death. Active euthanasia is when death is brought about by an *act* - for example when a person is killed by being given an overdose of pain-killers.

Passive Euthanasia - In passive euthanasia they don't directly take the patient's life, they just allow them to die. Passive euthanasia is when death is brought about by an *omission* - i.e. when someone lets the person die. This can be by withdrawing or withholding treatment.

Aruna Ramachandra Shanbaugh vs UOI, 2011 SC – Recognised passive euthanasia and laid down the following guidelines -

1. Decision has to be taken by parents or spouse or other close relatives, or in absence next friend or doctors. However, decision should be bona fide.
2. Decision taken by near relatives or next friends or doctors require approval of High Court to prevent its misuse.
3. Petition can be made to High Court under Art. 226 COI.

Living Will or Advanced Medical Directive

A written statement detailing a person's desires regarding future medical treatment in circumstances in which they are no longer able to express informed consent, especially an advance directive.

Common Cause (a regd. Society) vs UOI, 2018 SC – Recognised living will.

For advance directive, the Court issued directions enumerating safeguards in execution of advance directive, the contents of advance directive of recording and preservation of it, its effect, refusal of permission to withdraw medical treatment by the Medical Board, revocation or inapplicability of advance directive and when there is no advance directive etc.

Protection of Ecology And Environmental Pollution

Rural Litigation and Entitlement Kendra vs St. of UP, 1985 SC – closer of lime stone quarries on the ground that they adversely affecting the safety and health of the people living in the area.

Shriram Food and Fertilizer case (MC Mehta vs UOI, 1986 SC) – directed the company manufacturing hazardous and lethal chemical and gases causing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before reopening the plant.

MC Mehta vs UOI, 1987 SC – Tanneries near Kanpur polluting Ganga

MC Mehta (2) vs UOI, 1988 SC – Ganga water pollution

In both these cases issued appropriate directions to control pollution of Ganga.

Vellore Citizen's Welfare Forum vs UOI, 1996 SC – adapted the principle of 'sustainable development' as a balancing concept between ecology and development saying that the 'Precautionary principle' and 'polluter pays' principle are essential feature of sustainable development.

Noise Pollution – Article includes freedom from noise.

In Re Noise Pollution, 2005 SC – issued guidelines in exercise of powers conferred under Arts. 141 and 142 to be binding on Governments and Municipal authorities in every city.

Self -determination of gender by transgender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty under Art. 21. - **National Legal Service Authority vs UOI, 2014 SC**.

Prisoner's Rights

Refusal to grant bail – without reasonable ground would amount to deprivation of personal liberty. - **Babu Singh vs St. of UP, 1978 SC**

Sanjay Chandra vs CBI (2G Scam case), 2012 SC – Bail is not to be denied merely because of the sentiments of the community against the accused. The detention of under trial prisoners in jail custody to an indefinite period violates Art. 21.

Right to free legal aid – Krishna Iyer, J declared, 'this is the State's duty and not Government's Charity' - **MH Hoskot vs St. of Maharashtra, 1978 SC**

St. of Maharashtra vs Mannubhai Pragaji Vashi. 1995 SC – widened the scope of right to free legal aid.

Suk Das vs UT of Arunachal Pradesh, 1986 SC – Failure to provide free legal aid to an accused at the State cost, unless refused by the accused, would vitiate the trial.

Right against Solitary Confinement – If by imposing solitary confinement there is total deprivation of comradeship (friendship) amongst co-prisoners, it would offend Art. 21. - *Sunil Batra (No. 1) vs Delhi Administration, 1978 SC*

Sunil Batra (No. 2) vs Delhi Administration, 1980 SC – Practice of keeping under-trials with convicts in jails offend the test of reasonableness in Art. 19 and fairness in Art. 21. The under-trials are presumably innocent until convicted.

Right against Hand-cuffing – Hand-cuffing is violative of Arts. 14, 19 and 21. It should be resorted only when there is a ‘clear and present danger of escape’. The reasons of doing so must be recorded. *Prem Shankar vs Delhi Administration, 1980 SC*

Right against inhuman treatment by police - ‘Third degree’ method by police is violative of Art. 21. - *Kishore Singh vs St. of Rajasthan, 1981 SC.*

Right to speedy Trial - *Hussainara Khatoon (1), (2), (3) vs Home Secretary of St. of Bihar 1979 SC* – Right to a speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Art. 21. Speedy trial is the essence of criminal justice. No procedure which does not ensure a reasonable quick trial can be regarded as ‘reasonable, fair or just’.

Abdul Rehman Antulay vs RS Nayak, 1992 SC – Issued detailed guidelines for speedy trial of an accused but declined to fix any time limit for trial of offences.

Sentence of death – Constitutionality of Section 302 IPC

Jagmohan Singh vs St.. of UP, 1973 SC – Capital Punishment is not violative of Arts. 14, 19 and 21.

Bachan Singh vs St. of Punjab, 1980 SC – Provision of death sentence under Sec. 302 of IPC is not violative of Art. 21.

Channu Verma vs St. of Chhatisgarh, 2018 SC – upheld the validity of death sentence for murder.

Deena vs UOI, 1983 SC – the method prescribed by Section 354(5) CrPC, for executing the death sentence by hanging by rope does not violate Art. 21.

Right against delayed execution – Undue long delay in execution of the death sentence will entitle the condemned person to approach the court for conversion of death sentence into life imprisonment, but before doing so the Court will examine the nature of delay and the circumstances of the case. No fix period of delay could be held to make the sentence of death inexecutable. - *Triveni Ben vs St. of Gujrat, 1989 SC*

Protection against illegal arrest, detention and custodial death

Joginder Kumar vs St. of UP, 1994 SC – Laid down guidelines governing arrest of a person during investigation.

D.K. Basu vs St. of W.B., 1997 SC – Issued guidelines for arrest and detention, some of which are as follows –

1. Police personal must bear accurate, visible and clear identification, name tags with designation while carrying out arrest and interrogation.
2. The police officer must prepare a memo of arrest at the time of arrest and get it attested by at least one witness who can be either a family member of arrestee or respectable person of locality.
3. The arrestee should be entitled to have a friend or relative informed of his arrest as soon as possible and where the friend or relative lives outside the district, the time, place of arrest and venue of custody be informed to him within a period of 8 to 12 hours after arrest.
4. The arrestee must be aware of his right to be informed to some friend or relative of his arrest, as soon as he is detained or arrested.
5. An entry regarding the arrest and the disclosure of the name of the friend and relative be made in the diary with the particulars of the police official in whose custody the arrestee is.
6. Medical examination should be done of the arrestee within 48 hours of his arrest, and memo must be signed by the arrestee and the police officer and copy be given to the arrestee.
7. The arrested person should be permitted to meet his lawyer during interrogation but not throughout interrogation.

Compensation for Violation Of Art. 21

Court has power to award monetary compensation in appropriate cases of violations of Rights of Art. 21.

Homosexuality

Navtej Singh Johar and ors. Vs UOI and ors.,2018 - Section 377 is unconstitutional to the extent it criminalizes consensual sexual acts between adults, whether homosexual or heterosexual. Bestiality will continue as an offence.

Others

Right to Electricity is right to life – ***MK Acharaya vs CMD, WBSE Distribution Co. Ltd. 2008, Cal*** – right to electricity is right to life and liberty under Art. 21. In modern days no one can survive without electricity.