

# Right to Life and Personal Liberty and Indian Constitution: New Changing Dimensions

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## ABSTRACT

Right to life and personal liberty is the most cherished and pivotal fundamental human rights around which other rights of the individual revolve. Due to constitutional jurisprudential approach article 21 is become the celebrity provision of the Indian Constitution and "right to life and personal liberty" provides a liberty to everyone in their respective sphere. The trinity i.e. liberty, equality and fraternity always blossoms and enlivens the flower of human dignity. One of the gifts of democracy to mankind is the right to personal liberty. The evolution of basic concept makes it imperative that the concept of right to life and personal liberty should be examined a new with reference to development, meaning, width and depth, along with judicial interpretation, justification for such liberal. Henceforth, this paper deal with the meaning of the concept, to summarize the constituent assembly debates over this article and analysis its evolution through judicial interpretation in present scenario.

**Keywords:** Personal Liberty; Right to Life; Personal Liberty; Constitutional Debates; Democracy; Due Process of law

## INTRODUCTION

***"No freeman shall be taken or imprisoned or deceased or outlawed or banished or any ways destroyed, nor will the King pass upon him or commit him to prison unless by the judgment of his peers or the law of the land."***

-- English Magna Carta, 1215

In the advent of judicial delving into what has unfurled into one of the most controversial issues that sanctity of life and liberty could have tremendous ramifications on basic ethical concepts of the life and liberty? 'Right to life' and 'personal liberty' is the modern nomenclature or which have been being traditionally known as 'natural right.' It is the primordial rights necessary for the development of human personality. A right to life is a right to have or strive for whatever one needs to live, provided that having it does not violate rights of other beings. The very object of the article 21 is the protection of life and personal liberties of the Indian citizens against the actions of State actions. Thus, Article 21 of the Constitution reads as ***"No person shall be deprived of his life or personal liberty except according to procedure established by law"***. Thus, this article protects two rights of the person, firstly, right to live and secondly, right to personal liberty.

Article 21 is based upon and inspired by the Indian values and has most commonly expressed in one of our mantras:

***"Sarve bhavantu sukhinah, Sarve santu niraamayaah,***

***Sarve bhadraani pashyantu Maakaschit duhkha bhaag bhavet",***

Which means May all be happy, be free from disabilities! May all look to the welfare of others, and none flag from sorrow.

After the Maneka Gandhi's case, the Supreme Court has proved to be multi-dimensional approach to the article 21. Through its jurisprudential interpretation, the judiciary has been extending dimensions to phrase 'right to life' 'and maintained and construed its organic nature in a meaningfully way. Despite its deliberate omission by the makers of the Indian Constitution, the Supreme Court of India by a process of interpretation of article 21 of the Constitution, tries to read the due process and process established by law in the Constitution of India. Right to life and personal liberty is one of the rights of the people of India preserved by the Constitution of India, 1950 and enforced by the

High Courts and Supreme Court under article 226 and 32 respectively. Thereby Indian judiciary acquired vast power to supervise and invalidate any union or state action, whether legislative or executive or of any public authority perceived by the court to be 'arbitrary' or 'unreasonable'.<sup>1</sup>

### Meaning and Concept of Right to Life

The most essential ingredient of Article 21 is the expression 'Life'. Right to life is something more than mere survival or animal existence and it is vital to our survival without which we cannot exist as a human being and encompasses all those perspectives of life, as said by Justice Field in the glorified case "Munn v. Illinois"<sup>2</sup> the word "life" is more than mere animal existence and it embraces within itself not only the physical presence but also the quality of life.

Further Bhagwati, J., has said that "Article 21 comprises a constitutional value of paramount significance in a democratic society." And Iyer, J., has also characterized Article 21 as "the procedural Magna Carta, protective of life and liberty."

Article 21 of the constitution epitomizes to the Magna Carta (1215), the Fifth Amendment to the American Constitution, Article XXXI of the Constitution of Japan, 1946 and Article 40(4) of the Constitution of Eire, 1937.

### Right to Personal Liberty

Personal liberty is one of the most traditional notions in any civilized country and it is the liberty of an individual to behave as one pleases except for those restraints imposed by laws and codes of conduct of the society in which one lives to safeguard the physical, moral, political, and economic welfare of others. Under the **English Magna Carta, 1215**, personal liberty means "no free man shall be taken or imprisoned, but... by the law of the land."<sup>3</sup>

**Black's law dictionary** defines personal liberty as: "The right of freedom of a person to behave as they would like. Though following the conduct code of the society in which a person resides is important."<sup>4</sup>

Dicey says Personal liberty means an individual right not to be constrained to custody, arrest or other bodily oppression in any manner without the acceptance of legal justification.

In *A.K. Gopalan v. the State of Madras*,<sup>5</sup> (Preventive Detention Act, 1950) the apex court has developed new interpretation with a narrow meaning and scope of personal liberty" and held that the term "personal liberty" means the "liberty of the body" which is freedom from arrest and detention from false detention. Further the Court added and limited the meaning of the word 'law' means state made law, but in later cases, *R.C. Cooper v. Union of India* (1970) the court held that the word personal liberty would not only include Article 21 but also includes the 6 Fundamental Freedoms given under Article 19 (1).

Due to this expanded interpretation, various new dimensions like the right to pollution free water and air, right to food, clothing, environment, protection of Cultural Heritage, Right to every child to a full development, Right to reside anywhere in country, to have access to roads and Right to education have all found their way into Article 21.

### The Procedure established by Law

Article 21 envisage of the phrase "procedure established by law" means that a person may be deprived of his life or personal liberty in accordance with the procedure established by law and includes law and procedure both and which means that both should be reasonable. Therefore, the expression 'Procedure established by law' means prescribed by law of the State. The parliament has power to change the procedure by enacting a law by amending it and when the procedure is so changed it becomes the procedure established by law. Article 21 does not include the phrase "Due Process of Law" because its primarily meaning is a substantive due process.

The most important aspect of Maneka Gandhi case<sup>6</sup> is the reinterpretation of the term "procedure established by law" which means the procedure must be reasonable, rational and non-arbitrary. Justice Krishna Iyer has also re-affirmed same ideology and said, "Procedure in article 21 means fair and not formal procedure and the law is a reasonable law and not any enacted piece."<sup>7</sup>

### Article 21 and Constituent Assembly Debates

After independence, a constituent assembly constituted for drafting and got the privilege and responsibility to draft the constitution which guarantees freedoms or liberties to all human beings. The constituent assembly drew inspiration from various international instruments, including the Universal Declaration of Human Rights (UDHR) to inculcate the liberties as a fundamental right. The call for equality of status and civil rights with Englishmen was reiterated in a number of congressional resolutions passed between 1917 and 1919. Another significant step in this direction was the creation of Mrs. Beasant's Commonwealth of India Bill of 1925, which listed seven fundamental rights, including equality before the law, freedom of conscience, freedom of expression, freedom of assembly, and individual liberty. It further provided that there would be no disqualification only on the basis of sex.<sup>8</sup> The inclusion of a set of Fundamental Rights in India's Constitution had its genesis in the forces that operated in the national struggle during British rule.<sup>9</sup>

The debates in the Constituent Assembly surrounding fundamental rights were extensive and reflected diverse perspectives on the role of the state in safeguarding individual liberties. The first explicit demand for Fundamental Rights appeared in the Constitution of India Bill of 1895<sup>10</sup> and bill envisaged for India a constitution guaranteeing to every one of her citizen freedoms of expression, inviolability of one's house, right to property, equality before law and right to personal liberty.

In May 1928, after the resolution of the Madras Congress, the Committee under the chairmanship of Pt. Moti Lai Nehru was constituted and the report of the committees on fundamental rights (known as the Nehru Report), were reminiscent of American and Post-American Constitutions and were reproduced verbatim from the Commonwealth of India Bill.

For this purpose, the Constituent Assembly elected an Advisory Committee on fundamental rights, which constituted several sub-committees. On April 16, 1947, the Advisory Committee received the completed report on fundamental rights from the Fundamental Rights Sub-Committee. After that, the Advisory Committee delivered it to the Constituent Assembly on April 29, 1947, as the Interim Report of the Advisory Committee on Fundamental Rights. Before the rights were ultimately approved by the Constituent Assembly by December 1948, the Report was the subject of extensive debate.

On the point of personal liberty, Mr. B.N. Rau, Constitution Advisor, suggested that provision relating to personal liberty should neither be vague nor a meaningless guarantee against the oppressive Laws. Further, a member of constitute assembly K.T. Shah pleaded for empowering the courts to protect the personal liberty of all persons, citizens as well as non-citizens.

After a careful scrutiny of the draft, the Drafting Committee submitted it to the constituent Assembly. The right to personal liberty was included in Article 15, of the revised draft constitution, which provided:

***"No person shall be deprived of his life or personal liberty except according to procedure established by law nor shall any person be denied equality before the law or the equal protection of the law within the territory of India".***

Thus, in the revised draft, the phrase, “without due process of law” was replaced by the phrase “except according to procedure established by law”.<sup>11</sup>

### Contemporary Issues and Article 21

As it changes to meet new issues, Article 21 is a living and changing right. In order to provide justice in a vibrant democracy, the judiciary is essential in striking a balance between society interests and individual liberties. Article 21's adaptability and relevance face fresh problems as society evolve now days. Article 21 addresses modern concerns such as how technology affects individual freedoms, how to handle public health crises, and how to combine environmental preservation with climate change mitigation.

**A. Right to Privacy-** In Puttaswamy Judgment (2017)<sup>12</sup> declared the right to privacy as a fundamental right under Article 21 but due to government policies relating to Aadhaar, data protection, and government surveillance raise concerns about privacy violations.

**B. Right to Health and Medical Care-** The right to health is an essential right, without which one cannot exercise its basic human rights. In case of Consumer Education and Research Centre V. Union of India<sup>13</sup>, held that right to health and medical aid to protect the health and vigor of a worker, both while in service and post-retirement, is a fundamental right under Article 21.

Despite these rulings, there are still significant challenges in ensuring that all citizens have access to basic healthcare facilities and a safe living environment. The COVID-19 pandemic has highlighted the gaps in India's healthcare infrastructure and the need for urgent reforms to improve the standard of living and raise the level of public health.

**C. Right to Internet Access-** Internet is an inescapable tool for business and commerce and represents an essential role in conducting e-commerce business as it provides a virtual stage to a businessman which is more affordable. The Hon'ble High Court confirmed in the case of Faheema Shirin R.K. vs. State of Kerala and others that the right to internet access is a part of the right to privacy and the right to education under Article 21. The Supreme Court held in Anuradha Bhasin v. Union of India (2020) that internet connection is necessary for both livelihood and freedom of speech.

But internet shutdowns and stops tele-communication activities by the government in some disputed states or localities are encroachment against to the right to life and personal liberty.

### CONCLUSION

The Supreme Court has worked to ensure that the citizens of our nation have greater freedom and a better quality of life by imaginatively interpreting the scope of Article 21. The Apex Court has referred to this right as the "heart and soul" of our Constitution, and it certainly is, as it serves the basic needs of human life. However, because they are specifically not guaranteed by the Constitution, these planned rights that are growing under the scope and ambit of Article 21 are frequently brought before the court for decision-making.

The Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint; and has held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men.

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