

MEANING OF LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA

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ABSTRACT:

The Right to personal liberty has the long history from antediluvian time edicts of Ashoka shows the history of Right to life & personal liberty. There are other Fundamental Rights which have additionally relationship with the liberty of a person. In view of this categorical provision in the Constitution, the judiciary working under the influence of the pre Constitutional philosophy, additionally conceptually interpreted Article 21 to operate in a inhibited area but one dissent in Gopalan sparked the light for incipient directions. This message was taken by other Judges and conclusively when we come to 1978 a lone voice became the voice of all the Judges. The position now is that the Right to personal liberty changes with the transmuting conditions & circumstances so that many more Right, not circumstances so that many more Rights, not given the status of Fundamental Rights germinates through Article 21. It will not be hyperbole to verbalize that the Indian” personal liberty clause has become fountain source of residuary Fundamental Rights, on achievement which has yet to reach to some of the developed & least developed countries. Article 21 was coached in negative language as the Constitution Assembly wanted positive Action on the port of the State.

KEYWORDS:

Fundamental Rights, personal liberty, developed countries, positive Action, State.

INTRODUCTION:

Article 21 of the Indian Constitution, 1950 read as “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”

This fundamental right is available to both citizens as well as noncitizens.¹ Article 21 of the Indian Constitution Part III deals with the constitutional approach which highlights the theoretical treatment. Article 21 as a fundamental right was mainly ratified to safeguard and protect the rights of the citizens of India against the arbitrary nature of the state. With the outset of time, it had been given a very wide

¹ Noor mohammed v. UOI (2003) 12 SCC 218

interpretation so as to accommodate the larger interest of people. It wouldn't be wrong to compare the ambit of Article 21 with a spider's web. It kept on entrapping various aspects which are directly or indirectly connected to an individual's life and personal liberty.

The origin of the concept of Fundamental Rights, which are also known as Natural Rights or Human Rights or Basic Rights or Inalienable Rights,² is based on the Thomas Aquinas Jurisprudential theory of Natural Law. This theory of Natural Law created an awareness of Natural Rights and jurists or philosophers being insightful started discerning the Inherent and Sacred Rights of men in the Divine Law and thus led to the formulation of Human Rights and the influence of it can be found not only in the English Bill of Rights (1689), the French Declaration of Rights of Man (1789), the United States' Bill of Rights (1791), the Universal Declaration of Human Rights (1948), but also in the Part III of the Constitution of India.

The roots of Article 21 can be traced back to the time of Magna Carta (1215). "*Ne corpus Liberi hominens capiatur nec imprisonetur nec dissaisetur nec utlagetur nec exuletur nec aliquot modo destructor nec vex eat vel mittat super mum vi nisi per judicial barium quorum vel per legem terrae*" which means "No free man shall be taken or imprisoned or outlawed or banished or anyways destroyed, nor will the king passed upon him or commit him to prison, unless by the judgment of his peers or the law of land". The object of Article 21 is to prevent encroachment upon personal liberty by the executive in accordance with the law and in conformity with the provisions.³

INTERNATIONAL CHARTERS

In USA Constitution (1791) lays down that "No person shall be deprived of life, liberty without due process of law."

In various international charters, there were emphases of the provisions of article 21 in various articles. *Article 3 of UDHR* provides that everyone has the right to life, liberty, and security of person.

Article 6(1), of Covenant on civil and political rights, lays down that Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'. On December 18, 1982, the United nations General Assembly adopted a resolution in which it expressed its firm conviction that all people and all individuals have an inherent right to life a safeguarding of this foremost right is an essential condition for the enjoyment of the entire range of economic, social and cultural as well as civil and political rights. The General Assembly, therefore, requested the commission on Human rights, in its future activities, to stress the need to ensure the cardinal right of everyone to life, liberty, and security of person, and to live in peace⁴.

Article 9 of the UN Covenant on Civil and Political rights 1966 says that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of

² As sometimes Fundamental rights are also described as Inherent or Sacred Rights.

³ A.K. Gopalan v. State of Madras 1950 SCR 88

⁴ www.un.org/overview/rights

his liberty except in accordance with the procedure established by law. Article 10 says that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 2 of European Convention on Human Rights says that Right to life. It says that Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defense of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.⁵

Article 5 of the covenant says about Right to liberty and security. It says that everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in accordance with a procedure prescribed by law⁶.

The Commission on Human Rights in its resolution 1982/7 adopted on 19.2.1982, expressed its firm conviction that all people and all individuals have an inherent right to life, and that safeguarding for this foremost right is an essential condition for the enjoyment of the entire range of economic, social and cultural, as well as civil and political rights. In the later resolution, the commission stated that 'for people in the world today there is no more important question than that of preserving peace and ensuring the cardinal right of every human being, namely, the 'right to life.'

MEANING OF LIFE

Right to life is the most fundamental of all human rights and any decision affecting human life or which may put an individual life at risk, must call for the most anxious scrutiny.⁷ Originally the question of livelihood is included only in the freedoms enumerated in article 19, but the word 'life' in article 21 does not include livelihood.⁸ Any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation of offending the right to life conferred by article 21.⁹ Right to life is considered to be the most rudimentary and essential fundamental right. All other rights totally depend on this right because without life there can be no other right. Our constitution framers have distinguishably placed personal liberty with the right to life under Article 21. Freedoms have been enumerated in Article 19. The conspicuous distinction between Articles 19 and 21 is that Article 19 provides an exhaustive list of six freedoms, while Article 21 does not provide but leaves to the possible widest amplitude of rights. Therefore, Supreme Court has given a possible widest interpretation to this small

⁵ DD Basu, Constitution of India, Lexis Nexis (2015)

⁶ *Ibid*

⁷ Bugdaycay v. Secretary of state (1987) 1 All ER 940

⁸ Sant ram, In re, AIR 1960 SC 932

⁹ D. K Yadav v. JMA Industries(1993) 3 SCC 259

article than any other articles of the whole constitution.¹⁰ The progression of the concept of the right to life by the Supreme Court of India becomes evidently clear when by some of the decisions. In *Kharak Singh*¹¹ case the Supreme Court relying on the observation of *Justice Field* in *Munn V. Illinois*¹² held for the first time that by the term “life” as used in Article 21 of the Constitution, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body a through which the soul communicates with the outer world. In *Francis Coralie*¹³ case the court further held that the right to life includes the right to live with human dignity and all that goes along with it, namely, the basic necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

The two rights, i.e., *Life* and *Liberty* have been given paramount importance by the courts of India.¹⁴ It was held that these twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order and consequently, the Legislature, Executive, and the Judiciary are more sensitive to them than to other attributes to daily existence. Right to life and personal liberty is a compendium rather a compilation of a variety of rights and attributes. The very notion and the existence of human rights can be impliedly traced from the provisions of Article 21. As it has already been mentioned that ‘life’ does include right to live with human dignity, it is quite evident that dignity encompasses the various branches of human rights. Right to life is one of the basic human rights, and not even the state has the authority to violate that right.¹⁵ Article 21 is a repository of all important human rights, essential for a person or a citizen and when there is a natural calamity, the state as guardian of people is obliged to provide support to the victim to save their lives.¹⁶ The ‘right to life’ at national and international level is the most fundamental and basic right which inspires all other rights. The economic, social, cultural and political rights come into existence only when an individual is capable of living. These rights under any circumstances can't come into practice by the lapse of ‘right to life’ which is the essence of mankind. Right to life does not mean simply putting body and soul together; it includes the optimum possible decent and good life for the individual both as a person and as well as a member of the human community.¹⁷ From the above observations, the earlier contention of the jurists was that right to life entails many other rights but by the enlargement of the ambit of the right to life. It has been characterized as most “*Fundamental of all Fundamental Rights.*”

¹⁰ MP Jain, Indian Constitutional Law, Lexis Nexis. 2014

¹¹ Kharak Singh v. State of UP AIR 1963 SC 1295

¹² 94 US 113(1877)

¹³ Francis Coralie Mullin v. A.D.M UT of Delhi and others AIR 1981 SC 746

¹⁴ Kehar Singh v. Union of India, AIR 1989 SC 653

¹⁵ State of Andhra Pradesh v. Challa Ramakrishna Reddy, AIR 2000 SC 2083

¹⁶ Bipin Chandra J. Diwan v State of Gujarat, AIR 2002 Guj 99

¹⁷ www.legalserviceindia.com

The right includes *Right to live with human dignity*. This right has been included under article 21 as laid down in *Danial latifi v. UOI*¹⁸ To live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.¹⁹ The right to life enshrined in [Article 21](#) cannot be restricted to mere animal existence. It means something much more than just physical survival. Every limb or faculty through which life is enjoyed is thus protected by [Article 21](#) and this would include the faculties of thinking and feeling. Now deprivation which is inhibited by Article may be total or partially neither any limb or faculty can be totally destroyed nor can it be partially damaged. Moreover it is every kind of deprivation that is hit by [Article 21](#), whether such deprivation be permanent or temporary and, furthermore, deprivation is not an act which is complete once and for all: it is a continuing act and so long as it lasts, it must be in accordance with procedure established by law. Therefore any act which damages or injures or interferes with the use of any limb or faculty of a person either permanently or even temporarily, would be within the inhibition of [Article 21](#). The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.²⁰ **The CERC v. UOI**²¹ the right to life with human dignity includes that human civilization which makes life worth. It includes the tradition and cultural heritage of the persons concerned.

The right to life includes the right to live with human dignity. This includes the right to dignified life up to the point of death. This may include a dignified procedure of death. The right of a dying man also include die with dignity. But the right o die should not be equated with right to die an unnatural death curtailing the natural span of life. As it does not include right o life under article 21 for the same reason right olive with

¹⁸(2001) 7 SCC 740: AIR 2001 SC 3958

¹⁹ Infra note 29

²⁰ Supra note 15

²¹ AIR 1995 SC 922: (1995) 3 SCC 42

human dignity cannot be construed to include within its ambit the right to terminate natural life.²² Women have the same right to life. Their honor and dignity cannot be violated. The decision of the court recognizes the right of the victim for compensation by providing that it shall be awarded by the Court. The complainants of sexual assault cases should be provided with legal representation. Legal assistance will have to be provided at the police station since the victim of sexual assault upon arrival at the police station, the guidance and support of a lawyer should be provided to her.²³ In *Vishakha v. State of Rajasthan*,²⁴ the SC has held that that sexual harassment of women at workplace amounts to violation of gender equality and right to life and liberty under article 21. The court has issued exhaustive guidelines which have to be followed in workplace for the women for their preservation of right under article 21 until a specific legislation has been framed. These guidelines include that it is the duty of the employer in workplace whether private or public to prevent sexual harassment of women. It includes express prohibition of harassment should be notified, appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment. The guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women.²⁵ The procedure under which a person may be deprived of his life or liberty should be 'reasonable fair and just.' Free legal services to the poor and the needy are an essential element of any 'reasonable fair and just' procedure. The right to free legal service is, therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of, an offense and it must be held implicit in the guarantee of Art 21.²⁶ The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty".

Judge, Blackmun said, "*Humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerations.*"²⁷

The Supreme Court of India by interpreting Article 21, i.e., right to life in the light of the Preamble of the Constitution and various provisions of Directive Principles of State Policy is unearthing the components of the right to life. The various other rights include under this are right to livelihood, right to education, right to work, right to minimum wages, right against economic exploitation, right to environmental protection and many other that is why termed as *Mini Constitution of India* as will be discussed in the further chapters of this work. The article includes both life and liberty as they are inter-related concepts. They are so closely inter-related that they cannot be completely set apart from each other as like body without a soul cannot exist similar life without liberty cannot exist. Where there is life, there must also be personal liberty. If a

²² Gian Kuar v State of Punjab (1996) 2 SCC 454

²³ Bodhisatwa Gautham v. Subhir Chakroborthy, AIR 1996 SC 922 : (1996) 1 SCC 490

²⁴ AIR 1997 SC 3011 : (1997) 6 SCC 241

²⁵ *Ibid*

²⁶ Hussainara Khatoon v. State of Bihar AIR 1979 SC 1360

²⁷ Bandhua Mukti Morcha v. UOI AIR 1984 SC 802 : (1984) 3 SCC 161

person is deprived of personal liberty, consecutively his right to life is also deprived. Life bereft of personal liberty would be without honor and dignity, and it would lose all significance and meaning. That is why life and personal liberty have been put together as integral parts of Article 21 of the Constitution of India.

MEANING OF LIBERTY

In *Mullin v Illinois*,²⁸ it was said that by the term liberty means something more is meant than mere freedom from physical bonds of prison.

It denotes that not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupation of life, to marry, to acquire knowledge, to establish home, to worship, and enjoy privileges long recognized as essential to the orderly pursuit of happiness by free man.²⁹

The interpretation of the term “Liberty” has been done by various jurists. According to *Dicey* the right to personal liberty means in substance a person right not to be subjected to imprisonment, arrest or coercion in any matter that does not admit of legal justification.³⁰ According to *Blackstone*³¹ the right of personal liberty includes the power of locomotion, of changing the situation or removing ones person to whatsoever place one inclination may direct, without imprisonment unless by due course of law. There are various jurists who have their different idea behind the concept of Liberty. Some of them are-

PLATO

Plato believed in universal truth and virtue.

This idea has continued on to become universalism that human rights are universal, and as such are above the laws of individual states.

ARISTOTLE

Aristotle’s view of the world included the existence of different social classes, accepting that there will always be an underclass, and even a slave class and that this is perfectly normal.

JOHN LOCKE

John Locke The positive law view was changed to include the idea that the state’s law stemmed from a constitution, the legal framework of the society. The constitution however, was itself based on natural law, which includes a natural right to self preservation. Therefore the power of the state was still subject to inalienable human rights. The state should protect individuals from the actions of other that would impinge

²⁸ 94 US 113

²⁹ Meyer v Nebraska 262 USA 390

³⁰ Dicey, Law of Constitution, 10th edition, pp 207-08

³¹ Blackstone, commentaries of laws of England, Book I, page 134

on their freedoms. Citizens should be empowered to revolt if they felt that the state was abusing its power. This became the underlying idea behind the French and American revolutions and their subsequent development of new nations.

ROUSSEAU

Rousseau came up with the social contract theory, that stated that all individuals in a society had entered into a contract to form a civilized society in exchange for the government giving them equality

According to *Earnest Baker*, there are three components of the personal liberty. They are:

- (i) Physical freedom from injury or threat to life and health, and movement of the body;
- (ii) Intellectual freedom for the expression of thought and belief; and
- (iii) Practical freedom for the play of will and exercise of choice in general field of contractual 2 4-actions and relations with other persons.

According to *Lord Denning*, personal liberty means freedom of every law-abiding citizen to think what he will, to say what he will, and to go where he will on his lawful occasions without let or hindrance from any other person. This freedom must be matched with social security, that is, the peace and good order of the community in which he lives.

In UDHR it is laid down that right to life and personal liberty and security of persons.³²

The expression personal liberty is used in article 21 as a compendious term to include within itself all the varieties of rights which to go to make up the personal liberties of man other than those dealt within the clause of Article 19. In other words, it deals with particular species or attributives of that freedom personal liberty in article 21 takes in and comprises the residue.³³ In *Maneka Gandhi v. UOI* it was observed that the expression personal liberty in article 21 is the widest amplitude, and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and were given additional protection under article 19 of the constitution. Both the rights of personal liberty and personal liberty recognized by natural law are embodied in article 21 of the constitution.³⁴ Life and personal liberty are the most prized possession of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty, and property is not merely a norm or policy of the state but an essential requirement of a civilized society. The phrase personal liberty is very wide and includes all possible rights which go to constitute personal liberty, including those which

³² Article 3

³³ *Kharak Singh v. State* AIR 1963 SC 1295

³⁴ AIR 1978 SC 597:(1978) 1 SCC 248

are mentioned in article 19.³⁵ Where individual liberty comes into conflict with an interest in the security of the security of the state, the liberty of the individual must give way to the larger interest of the nation.

In *A.K Gopalan v State of Madras*,³⁶ the SC give the narrow interpretation that the personal liberty as the liberty relating to concerning the person or body of the individual and personal liberty within sense in the antithesis of physical restraint.

In *Kharak Singh v. the State of UP*³⁷ the majority of this Court held that 'personal liberty' is used in the Article as a compendious term to include within itself all varieties of Rights which go to make up the personal liberties of man other than those dealt with in several clauses of [Article 19\(1\)](#). The minority, however, took the view that the expression personal liberty is a comprehensive one and the right to move freely is an attribute of personal liberty. The minority observed that it was not right to exclude any attribute of personal liberty from the scope and ambit of [Art. 21](#) on the ground that it was covered by [Art.19\(1\)](#) It was pointed out by the minority that both Articles 19(1) and 21 are independent fundamental rights though there is a certain amount of overlapping, and there is no question of one being carved out of another. The minority view was upheld as correct, and it was pointed out that it would not be tight to read the expression 'personal liberty' in [Art. 21](#) in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in [Art.19\(1\)](#). The attempt of the Court should be to expand, the reach and ambit of the fundamental rights rather than attenuate their meaning and content by process of judicial construction. The wavelength for comprehending the scope and ambit of the fundamental rights has been set by the Court in R.C. Cooper's case, and the approach of the Court in, the interpretation of the fundamental rights must now be in tune with this wavelength. The expression 'personal liberty' in [Art.21](#) is of the widest amplitude and covers a variety of rights which go to constitute the personal liberty of man, and some of them have been raised to the status of distinct fundamental, rights and given additional protection under [Art.19\(1\)](#). Thus Articles 19(1) and 21 are not mutually exclusive.

The majority, in this case, rejected the interpretation of *Gopalan case*³⁸. *J. Subba Rao* reiterated the interpretation of term personal liberty-

The right to personal liberty takes in not only a right to be free from restrictions placed on his movements but also free from encroachments on his private life. It is true our constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty.

The expression "personal liberty" in the Article 21 of the Constitution thus means liberty or the rights attached to the person under a government. The Indian judiciary has developed a new trend to give a widest possible interpretation to the provision of the right to "life and personal liberty" in the Article 21 of the

³⁵ *Ibid*

³⁶ AIR 1950 SC 27

³⁷ Supra note 35

³⁸ Supra note 38

Indian Constitution. The judiciary is trying to inflate the ambit of the Fundamental Rights rather than to impair the meaning and content. The Supreme Court has come out with the view that to be a Fundamental Right it is not necessary that a right must be specifically mentioned in a particular Article. Even if it is not mentioned in any of the Articles specifically, it may be a Fundamental Right if it is an integral part of a named Fundamental Right or part takes the same basic nature and character as that Fundamental Right.³⁹



³⁹ A.I.R.1978, S.C. 597 at 606