

The Aspects and Provisions of Personal Liberty under Article 21 of the Constitution of India – A Detailed Study

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ABSTRACT:

The Preamble of the Constitution of India guarantees to every citizen, liberty. The idea of liberty refers to the freedom on the activities of Indian nationals. The right to personal liberty is one of the most fundamental human rights as it affects the vital elements of an individual's physical freedom. Life without liberty is unthinkable. Who wants to live at the end of another's leash, fearing at every turn? 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. Life and personal freedom are the prized jewels under Article 19 conjointly assured by Articles 20(3), 21 and 22 of the Constitution and Article 19 ensures freedom of movement. The concept of personal liberty is not a simple or isolated issue. Its protection through law inevitably conflicts with other important values.

Thus, in this paper, the author tends to throw light on the current mentioning of personal liberty in the Constitution of India. Also, the author, through various judicial precedents, will talk about how far have we come, in the light of providing justice to every citizen of India.

Keywords: Personal Liberty, Preamble, Constitution of India, Article 21 of the Constitution of India.

I. 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.

Oxford Dictionary defines liberty as the state of being free within society from oppressive restrictions imposed by authority on one's way of life, behaviour, or political views.¹ Liberty means freedom from restraints and the freedom to act as one likes.

Again, as defined by Oxford Dictionary, personal liberty is the freedom of an individual to act as he or she wishes.² Personal liberty is the freedom of the individual to do as he pleases limited only by the authority of politically organized society to regulate his action to secure the public health, safety, or morals or of other recognized social interests.

The Preamble of the Constitution of India guarantees to every citizen, *liberty*. The idea of liberty refers to the

¹<https://en.oxforddictionaries.com/definition/liberty>

²https://en.oxforddictionaries.com/definition/personal_liberty

freedom on the activities of Indian nationals. This establishes that there are no unreasonable restrictions on Indian citizens in term of what they think, their manner of expressions and the way they wish to follow up their thoughts in action.

II. PERSONAL LIBERTY – THE CONCEPT

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.”*³

Personal liberty 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. For instance, liberty of an individual which consists in the power of locomotion, of changing situation, or removing his person to whatsoever place his own inclination may direct, without imprisonment or restraint, unless by the process established by law. The right to personal liberty is one of the most fundamental human rights as it affects the vital elements of an individual's physical freedom. If the right to life is the basis of society, the right to **liberty** is the essence of human existence. Man has not simply to live, but to live well and living well means living a moral, virtuous and happy life. Man has a moral vocation to perform or do his duty in the social life. This he can do only when he has complete freedom to exercise his faculties and to determine the general conditions of his life. It also implies that the movements of the individual should not be restricted by any arbitrary exercise of authority either by other individuals or by the government.

The meaning of the term '*personal liberty*' was considered by the Supreme Court in the Kharak Singh's case,⁴ which arose out of the challenge to more than mere animal existence.

Mere life without movement would be meaningless and without the exercise of human faculties it would not rise above the levels of animals. Since the right to liberty and free movement arises from the fact that every man contributes something to the good of society, slavery, in any form, is the antithesis of liberty.

Individual liberty is an essential necessity. It protects individuals from the tyranny of the majority. It establishes a base level of intellectual, philosophical, spiritual, and economic diversity that ensures that there is enough free play of ideas in a society for the best solution to shine through. Individual liberty is extremely important to any society looking to move ahead whether economically, philosophically, spiritually, or materially.

- Free societies lead to better economies – Societies that emphasis on individual liberties, free societies, often produce economic freedom. This leads to better economies. When there are more choices in a

³ <https://thelawdictionary.org/personal-liberty/>

⁴ Kharak Singh v State of U.P AIR 1963 SC 1295

market, there is a tendency for lower prices at higher quality levels for products and services. The more choices people have, the better for the economy.

- Freedom leads to a stable society - When people feel that they can freely express their frustrations and feel that they petition the government regarding their grievances, they don't feel 'pushed' to take matters into their own hands.
- High levels of freedom lead to more contented individuals, including reasonable restrictions - When people feel that they can express themselves without being sued into silence or thrown in jail, they can take more risks artistically. They can write books or build websites on philosophy, art, religion, and theory without having to worry about the government stepping in to muzzle them. When people feel they can freely express themselves, they feel more contented. They get the opportunity to focus on things that go beyond and go higher than simple raw existence.

Liberty works. Over and over again, it produces a degree of interpersonal cooperation, innovation, and wealth creation that allows human beings to flourish — nothing else even comes close. Liberty is the only social, political, or economic arrangement that requires that we live to high standards of conduct and character and rewards us when we do so.

Life without liberty is unthinkable. Who wants to live at the end of another's leash, fearing at every turn what those armed with force and power might do to us, even if they have good intentions?⁵

III. THE CONSTITUTIONAL PROVISIONS

The most important among the inalienable rights of man, according to the Declaration of American Independence, are "Life, Liberty and the Pursuit of happiness". The Preamble of almost every Constitution declares the same in one form or another as its objectives. The Preamble of the Constitution of the United States, for instance, declares that one of its objects is "to secure the blessings of liberty to ourselves and to our posterity". The Preamble of the Indian Constitution too proclaims that one of its objectives is to secure Liberty "Liberty of thought, expression, belief, faith and worship".

In the case of *A.K. Gopalan v. State of Madras*,⁶ the Supreme Court took a liberal view of the expression "personal liberty". The court held that the expression "personal liberty" did not include all that was implied in the term "liberty". The court held that the expression "personal liberty" meant nothing more than the liberty of physical body i.e., freedom from arrest and detention from false imprisonment or wrongful confinement.

⁵Lawrence W. Reed, *Why is Liberty so Important?*

⁶AIR 1950 SC 27

In *Maneka Gandhi v. Union of India*,⁷ the Supreme Court expanded the horizons of the term “Personal Liberty” to give it the widest possible meaning. The Court held that “The expression “personal liberty” in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.”

In the case of *Kartar Singh v State of Punjab*⁸, Justice K. Ramaswamy, while talking about Terrorist and Disruptive Activities Act, 1987 (TADA Act) with respect to scope of life and personal liberty under Article 21, observed that The right to life with human dignity of person is a fundamental right of every citizen for pursuit of happiness and excellence. Personal freedom is a basic condition for full development of human personality.

Article 21 of the Constitution protects right to life which is the most precious right in a civilised society. 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. Life and personal freedom are the prized jewels under Article 19 conjointly assured by Arts. 20(3), 21 and 22 of the Constitution and Article 19 ensures freedom of movement. Liberty aims at freedom not only from arbitrary restraint but also to secure such conditions which are essential for the full development of human personality.⁹ Besides Art 21 individual liberty is also protected by courts by means of writ of Habeas Corpus issued under Arts 32 and 226. The object of this fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law and to make an environment where justice shall triumph. It clearly means that this fundamental right has been provided against State only. If an act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person; such violation would not fall under the parameters set for the Article 21.¹⁰

- **Right against Unlawful Arrest And Detention**

Preventive detention means detention of a person without trial and conviction by a court but merely on suspicion in the minds of the executive authority. Preventive detention is a specific law in which the executive is authorized to impose restraint upon the liberty of a man who may not have committed a crime but who it is apprehended, is about to commit acts that are prejudicial to the public safety etc. A person can be detent by the rule which is fair, just and reasonable. It must not arbitrary if it will arbitrary it will be void and the detention of that person will illegal or unconstitutional. The aim behind the preventive detention law is to prevent a person from doing something which would be to danger for pubic peace or safety or concerning public disorder.

⁷AIR 1978 SC 597

⁸AIR 1956 SC 541.

⁹ <http://lex-warrier.in/2011/01/personal-liberty-and-indian-constitution/>

¹⁰ *Bombay Dyeing & Mfg. Co. v. Dy. EA Group*, AIR 2006 SC 1489.

In the Constitution of India, the minimum procedural requirements are given under article 22, including any law enacted by legislature in accordance of which a person is deprived of his personal liberty. Under article 22 (1) and (2) are also rights for an arrested person. No one can be arrested and detained without informed him that why he is being arrested. A person who is arrested cannot be denied to be defended by a legal practitioner of his choice. It means every arrested person have the opportunity of hearing. Arrested person can consult with a legal practitioner and appointed to defend them. Every arrested person would be produced before the nearest magistrate within 24 hours. The detained person cannot put in to the custody beyond the said period by the authority of magistrate. It is mentioned under article 22(1) and (2) of our constitution.¹¹

In *Joginder Kumar v. State of Uttar Pradesh*,¹² the petitioner was detained by the police officers and his whereabouts were not told to his family members for a period of five days. Taking the serious note of the police high headedness and illegal detention of a free citizen, the Supreme Court laid down the guidelines governing arrest of a person during investigation – (i) An arrested person being held in custody is entitled, if he so requests to have a friend, relative or other person told as far as is practicable that he has been arrested and where he is being detained; (ii) the police officer shall inform the arrested person when he is brought to the police station of this right. An entry shall be required to be made in the diary as to who was informed of the arrest.

Further in *D.K. Basu v. State of West Bengal*,¹³ the Supreme Court laid down detailed guidelines to be followed by the central and state investigating agencies in all cases of arrest and detention till legal provisions are made in that behalf as preventive measures. The court also held that any form of torture, cruel, inhuman or degrading treatment, whether it occurs during interrogation, investigation or otherwise, falls within the ambit of Article 21.

- **Right to Go Abroad**

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948. According to Article 13(2) of the Universal Declaration of Human Rights, “*Everyone has the right to leave any country, including his own, and to return to his country.*”¹⁴

The Constitution of India does not guarantee this right in such detailed form. In the year 1967, the court for the first time in the case of *Satwant Singh v. Assistant Passport Officer, New Delhi*¹⁵ held that right to travel abroad

¹¹ <http://ijsard.org/wp-content/uploads/2017/02/By-Rajesh-Kumar-compilation-volume-3.pdf>

¹² AIR 1994 SC 1349

¹³ AIR 1997 SC 610

¹⁴ <http://www.un.org/en/universal-declaration-human-rights/>

¹⁵ AIR 1967 SC 1836

is contained in by the expression “personal liberty” within the meaning of Article 21. Later in *Maneka Gandhi v. Union of India*¹⁶, it was held that if a procedure established by law was required in depriving a person of his personal liberty which included the right to travel abroad, then that procedure mentioned herein should not be arbitrary, unfair or unreasonable. In this very case, it was held that Right to travel abroad is part of personal liberty under Article 21. However, it was held that it is covered neither in the right under 19(1)(a) (freedom of speech and expression) nor under 19(1)(g) (right to carry on trade, business, profession or calling).

Even in the United States of America, the right to travel abroad does not find a detailed mentioning in the Constitution but it has been held to be included in the amendment which says that no person shall be deprived of life, personal liberty, or property, without due process of law. It is but obvious that it cannot be an objection to such a right that foreign countries could not be forced to admit a foreigner who wants to visit that country. In the *Maneka Gandhi*¹⁷ case, Justice Krishna Iyer answered such an objection with finality when he said that the right to travel abroad meant that the Indian State would not hinder the movement if the foreign State is willing to admit.

- **Right to Privacy**

As per Black’s Law Dictionary, privacy means right to be let alone; the right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned.¹⁸

There has been much difference of opinion over what the concept of privacy embraces. Some define it as sum of all “private rights”. Many, however, contemplate of discrete private right to privacy, though they may differ widely in its character and content. So we find innumerable references to it as the right to be let alone. Some contemplate it as to be free from unwanted intrusion, to be secreted and secretive, a right to be unknown (incognito), free from unwanted information about oneself in the hands of others. Some consider it as a right to be free from physical or spiritual violation, a right to integrity of one's personality.¹⁹

For the first time in *Kharak Singh v. State of U.P.*²⁰, question whether the right to privacy could be implied from the existing fundamental rights such as Art. 19(1)(d), 19(1)(e) and 21, came before the court. In a minority judgment in this case, Justice Subba Rao held that, “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

¹⁶AIR 1978 SC 597

¹⁷*Supra* 11

¹⁸ <https://thelawdictionary.org/privacy/>

¹⁹ Louis Henkin, "Privacy and Autonomy," Columbia Law Review, Vol.74, 1974, p.8.

²⁰AIR 1963 SC 1295.

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.

In the case of *Govind v. State of Madhya Pradesh*,²¹ the petitioner challenged the constitutional validity of a Regulation from the MP Police Regulations which provided for the police surveillance of habitual offenders. Justice Mathew, speaking for a three – judge bench, noted the importance of privacy in modern times when individuals need a sanctuary where they “can drop the mask, desist for a while from projecting on the world, the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures. He also noted the difficulties pointed out that as an interest in individual autonomy it was already protected as a part of individual liberty and any right to privacy must encompass and protect the personal intimacies of home, the family, marriage, motherhood, procreation and child rearing.

In *R. Rajagopal v. State of Tamil Nadu*,²² the Supreme Court has asserted that in recent times, the right to privacy has acquired constitutional Status. It is “implicit in the right to life and liberty guaranteed to the citizens” by Article 21. It is a ‘right to be let alone’. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.

Another landmark judgment by the Supreme Court came in the case of *PUCL v. Union of India*,²³ where the apex Court observed that, “We have therefore, no hesitation in holding that right to privacy is a part of the right to “life ” and “ personal liberty ” enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy; Article 21 is attracted. The said right cannot be curtailed “ except according to procedure established by law”.

In *Mr. X v. Hospital Z*,²⁴ Mr. X was HIV(+) and this information was passed on by the concerned doctor to the lady who was going to be married to him. Naturally, this led to the cancellation of the engagement. One of the pleas taken in the Court was that it instituted an infringement of his privacy right. A two – judge bench of the Supreme Court held that if he had the right to privacy as a part of the right of personal liberty, then the girl also had the right to life which entitled her to live a healthy life. Here, the substance of the decision is that the privacy right is not absolute and it may have to be given away to other interests which have a higher social value.

²¹ AIR 1975 SC 1378

²² AIR 1995 SC 264

²³ AIR 1997 SC 568

²⁴ AIR 1999 SC 495

- **Restitution of Conjugal Rights & Interference With Procreative Liberty**

Privacy became an important issue when constitutionality of section 9 of the Hindu Marriage Act, 1955, providing for restitution of conjugal rights, was challenged. In the case of *T. Sareetha v. T. Venkata Subhaiah*,²⁵ Justice P.A. Chaudhary held the aforesaid section to be void for violation of Articles 14 and 21 of the Constitution of India. He referred to the decision of Justice Mathew in *Govind* case²⁶ and read it to have laid down the principle that privacy was a constitutionally protected right as a part of personal liberty under Article 21 and that the same could not be interfered with, except to serve some compelling social or State interests. He said that the sanctity of the person of a woman and her right not to be sexually molested against her will and not to have sex with someone she does not like to have with, are one of the most essential aspects of the right to privacy. The restitution of conjugal rights under the orders of Court of law backed by financial sanctions amounted to being coerced to have sex with someone against one's will. It was so because conjugal relationship did not mean mere living together of man and woman; sex was an inseparable part of married life.

He found that under the Hindu Marriage Act, 1955 it served no purpose except that non-compliance with the decree afforded the aggrieved party a ground to bring a petition for divorce. Thus, he found section 9 of the Hindu Marriage Act, 1955 violative of Article 21 of the Constitution of India.

Forced sterilization or restrictions on use of contraceptives or abortion would definitely amount to interference with privacy right and may raise difficult questions of constitutional law. In the United States, restrictions on the use of contraceptives and also on abortion, to some extent, have been declared unconstitutional.²⁷ The Government of India is actively pursuing a policy of population control, the use of contraceptives is now encouraged and the Medical Termination of Pregnancy Act, 1971, has liberalized abortion considerably. In effect, it embodies the proposition that it is the prerogative of the woman to decide whether she is ready to let her body to be used for creating another human being or not. This is a part of her individual autonomy. Forced sterilization, on the other hand, if attempted, may raise serious constitutional questions. It is submitted that it would be violative of the Article 21 of the Constitution of India.

IV. CONCLUSION

In India the concept of 'liberty' has received a far more expansive interpretation. 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. The meaning of the term 'personal liberty' was considered by the Supreme Court in

²⁵ AIR 1983 AP 356.

²⁶ *Supra* note 21.

²⁷ *Roe v. Wade* 410 U.S 113 (1973)

the Kharak Singh's case,²⁸ which arose out of the challenge to Constitutional validity of the U. P. Police Regulations that provided for surveillance by way of domiciliary visits and secret picketing.

The concept of personal liberty is not a simple or isolated issue. Its protection through law inevitably conflicts with other important values. Personal liberty is an unusually broad term, encompassing both fundamental Constitutional rights such as freedom from government intrusions into homes and the right of citizens to make decisions about marriage, contraception and abortion and less well defined and arguable less critical issues.

Thus the principles of natural justice are firmly grounded in Article 21 of the Constitution of India. With the introduction of concept of substantive and procedural due process in Article 21, all that fairness which is included in the principles of natural justice can be read into Article 21.²⁹ The sun of Article 21 would never set completely in a democratic set up like India and this article would live in all its sub-limit for eternity to serve the people of India whenever they are in any distress over any issue pertaining to their lives and personal liberties.

²⁸ *Supra* note 4.

²⁹ <https://blog.ipleaders.in/substantive-rights-flow-article-21/>