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## **ARTICLE 21 : A COMPREHENSIVE JOURNEY OF RIGHT TO LIFE AND PERSONAL LIBERTY**

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### **ABSTRACT**

In every organized society, the rights as guaranteed by the established law to be measured as an individual is not guaranteed by meeting the needs of the animal alone. It is protected only if it is ensured and recognised by all the institutions to develop and does not have any barriers to its growth. All human rights, which is earlier natural right, are meant to achieve the certain ends and for this purpose is essential to ensure certain elementary rights such as food, water, clean environment, education, health care ought to be reflects as the guaranteed provision by the established provisions of the constitutions of any civilised societies. This, infact, appears to requisite element for any human life to live such a dignified life. The term 'life' as employed by Article 21 does not merely replace the concept of physical existence with all the good values of life, including the right to earn a living and the right to live. This right can be a fundamental right bound to all people living in India, citizens and non-citizens alike. The right to life including the right to live and work as guaranteed by Article 21 is not reduced to a paper plate but is maintained, strong and vibrant so that the country can successfully adhere to the set policy of public debate as proposed by the founding fathers during the making of the Indian Constitution and its introduction. 'Protection of life and personal liberty' under Article 21 is also not limitless. Hence this research paper intends to analyse constitutional perspective towards the right to life and personal liberty and judicial approach thereof.

## INTRODUCTION

The concept of Basic rightfulness, also called Natural Right or Fundamental Right field or Inalienable Right<sup>1</sup>, is based on the possibility of Natural Law.

Human organism has certain rights, which cannot be removed, originated within the meaning of natural jurisprudence. The hypothesis states that the order of nature is in the universe because all things are created by nature or God. Each has its own characteristics and is subject field to the legal philosophy of nature to achieve its full potential. In this sentiment, anything that restricts homo calibre, or hinders their success, violates the constabulary of nature.<sup>2</sup>

This view led to the belief that men and governments everywhere adhere to the law of nature, which is greater than homo law. The Roman philosopher Cicero felt that this physical law could be derived from human being reason. This principle of natural law led to the government activity of natural rights and various thinkers and philosophers began to recognize the natural rights and holy person of the divine people. The natural rights intends to create the way as it will easy for the purpose of constitution of human rights and the impact of human rights was only found in the English language Right hand Flyer (1689), the French Human Right Declaration (1789), and the American Rights Bill (United State ) in 1791 and the Universal Declaration of Human Rights (1948); and the same reflect in Part- Three of the Constitution of India which transaction with the marginal footnoting “Fundamental Rights”.

The Part III of the Constitution of India, which contains a long list of Fundamental right field , is defined as the Magna Carta of India. The inclusion of a chapter on fundamental frequency right field in the Indian organisation is consistent with the concept of modern commonwealth. The Declaration of Fundamental Rights is intended to eliminate certain fundamental rights from political disputes, to keep them on height of gaining a majority in the legislature, and to shuffling them inaccessible in all circumstances. Some fundamental rights, such as life, libertas, Si fiduciam, religiosam libertatem and more, should not be invited to vote because they do not depend with any results.<sup>3</sup>

Constitutional rights represent the basic values laid down by the people of India and are calculated to protect the dignity of the individual and thus to create such pre-requisite

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<sup>1</sup> The Fundamental Rights are also sometimes described as Inherent or Sacred Rights.

<sup>2</sup> William C. Harvard, *The World Book Encyclopaedia* 469 (1972).

<sup>3</sup> A.K. Gopalan v. State of Madras AIR 1960 SC 27. (See also Justice Jackson in *West Virginia State Board of Education v. Barnette* 319 U.S. 624.)

conditions in which every human being can fully develop his or her personality.<sup>4</sup>

The aforesaid declaration of the various fundamental rights have a negative obligation on the state, which does not interfere with individual freedom of various sizes. Therefore, the Declaration of Fundamental Rights in the Constitution provides for the purpose of enabling the authoritarian government to respect those rights and to limit public service types in the relevant areas only by means of appropriate mandate.<sup>5</sup>

The canonical text of the Charter of Human Rights<sup>6</sup> which is recognised by the United Nations Organisation reflect notion of civil, social and political rights in the same as we adopt under the Part-III of The India Constitution with the complete and transparent sense.

Another purpose of the introduction of the Constitutional Rights section of the Constitution is to establish a "legal and not a public government", that is, a government system in which the ruler cannot impose a limited rule on the rights and fundamental freedoms of citizens.

The inclusion of a fundamental right in the Constitution causes them to be deprived of the holiness of the authorities who do not want to violate it. In the parliamentary system of government those who form a government are party leaders and majority in the legislature and can get the rules made easily.

Therefore, in order to prevent the risk of interference with the freedom of the citizen state authority by formulating their post as the constitutional post and recognised him as the protector of the citizens; and hence it will be difficult for the proletariat to put certain restriction onto them, unless it done by the amendment in the fundamental rights of the constitution. Therefore , the in order to keep maintain and protect the interest (the Fundamental Rights) of the civilian has become essential parts of the democratic nations.

The Fundamental Rights as incorporated in the Constitution of India can be classified under

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<sup>4</sup> Maneka Gandhi v. Union of India, 1978 SCR (2) 621.

<sup>5</sup> Mahadeo Prasad Sharma, *Government of the Indian Republic* 41 (Kitab Mahal,1965).

<sup>6</sup> The Universal Declaration of Human Rights (UDHR consist atleast 30 Article) is a landmark document in the history of human rights. Prepared by representatives from all over the world with diverse legal and cultural backgrounds, the Declaration was adopted by the United Nations General Assembly on 10 December 1948 (General Assembly Resolution 217A) as a general standard for all people of the Nation. For the first time, it is determined to universally defend basic human rights.

six groups<sup>7</sup>. They are

- (i) Right to Equality (Articles 14-18),
- (ii) Right to Freedom (Articles 19-22),
- (iii) Right against exploitation (Articles 23-24),
- (iv) Right to Freedom of Religion (Articles 25-28),
- (v) Cultural and Educational Right (Articles 29-30) and
- (vi) Right to Constitutional Remedy (Articles 32-35).

The Article 21 of the Constitution of India, which stated that no person shall to forfeit his life or personal liberty unless it supposed to happen according to procedure established by Law reflect the level of the notion of liberty. But the constituent maker fails to explain what is meant by “life” or “personal liberty” or maybe left with the intent of due to dynamic nature of Indian society to be interpreted by the situation accordingly.

## MEANING OF LIFE

In ordinary parlance life links images or time from birth to the death of each object. But within a broader sense, life means fitness, flexibility, fatigue, health, strength and vitality etc. <sup>8</sup>

The term “Life” as states in the New Encyclopaedia Britannica refer to the system that is capable of performing a variety of functions such as diet, exercise, hugging, breathing, movement, growth, growth, reproduction, commitment and being responsible to external stimuli.<sup>9</sup>

According to section 45 of the Indian Penal Code, 1860 which defines life in the sense as the life span of a human being.<sup>10</sup> Therefore, the concept of life should be understood as lifeless retribution.

Thus, human life can also be observed and understood , in the biological sense, as the result of the reuniting of body and soul. When the soul desires the body, life entails an end. Physically speaking the cell is the basic unit of human life. Different cells combine to form multiple tissues and tissues to form an organ. a mixture of those organs that make up i.e. the human being.

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<sup>7</sup> Right to Property as guaranteed under Articles 19(i)(f) and 31 omitted by 44th Amendment; and thus with the said Amendment it abolished and become only Constitutional Rights.

<sup>8</sup> William C. Burton, *Legal Thesaurus* 316 (McGraw-Hill Education, 5<sup>th</sup> edn.,1991).

<sup>9</sup> The New Encyclopaedia Britannica 985 (Encyclopaedia Britannica Inc., 15<sup>th</sup> edn., 2010).

<sup>10</sup> Section 45 of the Indian Penal Code, 1860.

Every human student of his own body will bear witness to the very fact that relatives are carefully designed creatures on earth. Even Darwinism supports the fact that humanity is at its highest, evolutionary level. Anthropology tends to prove it more.

## **RIGHT TO LIFE**

The term “Right” hereby refers with the ‘Birth-right’ claim, and thus right to life implies by having birthright can be live one own life. The right to life is determined by every other right of the person, which makes it the core of fundamental rights. The other rights as mentioned in Part- III of the Indian Constitution, while fundamental, mean many things in nothing without the right to life. Every person's claim to life is implicit based on the law of nature.

Every person has some basic requirements of a machine to maintain physical integrity, which requires fuel to work. An individual, in order to maintain his or her physical existence, requires food, clothes, shelter, etc. It suggests the right to life, which is a fundamental right, determines many other rights. The development of the concept of right to life by the Supreme Court of India becomes clear when we look at its many options.

In **Kharak Singh case**<sup>11</sup> the Supreme Court adopted and followed the findings of **Munn v. Illinois** wished upon the observation of the field of justice in Illinois, stating that the term "life" is regarded as something more than animal existence, being employed in Article 21 of the Constitution. The prohibition against its absence extends to all or any of the organs and faculties by which life is enjoyed; and also the availability of equally prevents the mutation of the body by amputation of the arms or legs or the retraction of one eye or the destruction of another's body through whom the spirit communicates with the outside world.<sup>12</sup>

The Supreme Court could not be satisfied with the above extension of the concept of right to life. In Francis Coralie case<sup>13</sup> the court failed to uphold the right to life until the safety of the organ or faculty only, but it was further held that the human dignity and every measurement in order to protect the human dignity shall be considered and must be include under the right to life which lies with person till the whole life; As a result the adequate nutrition, clothing and shelter, and the facility to read, write and express oneself in diverse forms, moves freely, and interacting and living with fellow people on a large scale is the basic is the basic necessities of

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<sup>11</sup> Kharak Singh v. State of U.P. 1964 SCR (1) 332 at p. 1295.

<sup>12</sup> *Id.* at 1301.

<sup>13</sup> Francis Coralie Mullin v. A.D.M. Union Territory of Delhi and others 1981 SCR (2) 516.

fellow human beings.<sup>14</sup>

The above observations can be speak in a range number of volumes about rendering, and reinforcing the 'Birth-right' that the right to life itself capable of suppressing the other rights. For this reason, Thus the Right to Life is the "Fundamental of all Fundamental Rights".<sup>15</sup>

### **MEANING OF PERSONAL LIBERTY**

The dispute in regard of term 'personal liberty' can be observed among the opinions of scholar. Some scholars have given the concept of personal liberty in a very narrow and restrictive sense.

According to Dicey "the right to personal liberty means that one should not be subject to imprisonment, arrest, or other physical rebellion in any manner that does not accept legal justification."<sup>16</sup>

Blackstone asserted freedom of movement to be the essence of individual liberty, stating that "personal liberty lies within the power of control, to fix the situation or to move a person to any place that is Can be direct without any imprisonment or restraint" unless by due course of law."<sup>17</sup>

But if we analyze the meaning of private liberty in the narrow sense, then Earnest Berker defines personal liberty as "the freedom of a person, which he enjoys within the capacity of an individual person". Non-public freedom is accompanied by three components. They are – firstly, physical freedom for injury or life and health, secondly the motion of the body and Intellectual freedom for expression of thought and belief, And thirdly also Practical freedom for the game of will and the field of contract in general - action and relations with other persons.<sup>18</sup>

According to Lord Denning personal freedom means the freedom of all law-abiding citizens to decide what to do, to say what they will do, and to go where they can in their official times without allowing or hindering anyone else. This freedom must be accompanied by the safety of the public, that is, the peace and order in the society in which he lives.<sup>19</sup>

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<sup>14</sup> *Id.* at 753.

<sup>15</sup> B. Erabbi, "The Right to Life and New Strategy of Enforcement", a paper presented at U.G.C. Seminar on "Judicial Activism and Social Change", at Faculty of Law, University of Jammu, Jammu (1987).

<sup>16</sup> A.V. Dicey, *Law of the Constitution* 207 (Oxford University Press, 1<sup>st</sup> edn., 1961).

<sup>17</sup> Blackstone, *Commentaries on the Laws of England* 134 (Clarendon Press, Oxford, 1844).

<sup>18</sup> *id.* at 146-147.

<sup>19</sup> Sir Alfred Denning, *Freedom Under the Law* 5 (Stevens and Sons, 1<sup>st</sup> edn., 1949).

When we critique a different constitution of the country there is no similarity in regards of the term “Personal Liberty” clause, for example, the Constitution of the United States of America, Cambodia, Japan and Belgium uses the word “Liberty” and in Germany, Ireland, Italy and Portugal uses the word “Personal Liberty”. The Universal Declaration of Human Rights also uses the term “Liberty” only.<sup>20</sup>

This is evident from the first version of the Indian Constitution using the word "liberty";<sup>21</sup> later it was when the Constituent Assembly inserted the word " personal " before the word "liberty"<sup>22</sup> to ensure that the word "liberty" was misconstrued that it even included that freedom.

The Indian Supreme Court also first granted the smallest word "Personal Liberty" in Article 21 of the Constitution in writing for the definition given to Dicey under English law. But we find that the Supreme Court after giving a very limited opinion, for e.g., Dicey's view of the phrase “Personal Liberty” in the Gopalan's case<sup>23</sup> went on expanding with gradually.

In the case of **Kharak Singh's** case<sup>24</sup> the court released a certain amount of "personal liberty" in the limited view given to Gopalan. When the court ruled that the phrase "personal liberty" as it used in the Article 21 covered all kinds of inherent rights except such rights covered under Article 19.

However, by following the judgment of Maneka's Gandhi case<sup>25</sup>, the expression "personal liberty" contained in Article 21 has gained considerable momentum and now recognizes various rights including the rights granted under the same article. The expression of the term ‘personal liberty’ as explained by the Lord Denning and Earnest Barker has been now recognised in the same manner under the said article of the Constitution of India.

The phrase "personal liberty" in Article 21 of the Constitution is no longer considered the exact parameter as been suggested by the Dicey in his own concept of personal liberty but refers such freedom or rights granted to a person under by the established procedure of law.

## **CLASSIFICATION OF PERSONAL LIBERTY**

There are two aspects of personal freedom which is to say that one is positive liberty and the

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<sup>20</sup> Art. 3 of the Universal Declaration of Human Rights.

<sup>21</sup> *Constituent Assembly Debate* 441 (Vol. III, 1947).

<sup>22</sup> *Constituent Assembly Debate* 1001 (Vol. VI, 1948).

<sup>23</sup> A.K. Gopalan, *Supra* note 3 at 27.

<sup>24</sup> Kharak Singh, *Supra* note 11 at 1295.

<sup>25</sup> Maneka Gandhi, *Supra* note 4 at 621.

other one is in contrary of positive that is, negative liberty.<sup>26</sup>

The personal freedom if we try to understand in the negative aspect refers to such is the absolute restraint on the freedom of person's thoughts, speech and conduct etc. which can be observed in terms of individual rights meant nothing to him but interference by the state authority; And thus the restriction as we observed in the American Bill of Rights exactly the same aspect i.e., negative notion of liberty being recognised in the chapter of the fundamental rights of the Indian constitution.

On the other hand, the positive aspect of individual freedom is embodied because the right of the individual has mean something for the community members, that is, the state provides the individual with the opportunity to maximize his or her individuality. Therefore, it is the duty of the state to obtain all the opportunities necessary for the development of one's personality.

New rights like right to education, right to clean and healthy environment etc. come under positive aspect of personal freedom. In fact, for the development of a person's personality, each civilized community has a responsibility to guarantee negative freedom to the individual, besides guaranteeing the negative to him. That is, the state should not only interfere with the right of the individual to publish a political booklet} but also give it the right to be given facilities to publish it.<sup>27</sup>

The category of negative liberty is the traditional one as regarded as the most personal freedoms fall under this category. But the idea of positive freedom should not be ignored; Because no book is available, freedom to read is meaningless.

The Rights against interference by the self-government and Right against intervention by the private individuals body or groups can be categorized into two aspects of the negative liberty. Enjoying negative freedom does not only violate state encroachment on the rights of the individual, but also other individual organizations or groups. For example, to be frankly speaking, not only assuring that the police will leave him alone but also assuring that they are subject of protection against any angry reaction from the audience in the sense that state will 'hinder hindrance' to his freedom.<sup>28</sup>

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<sup>26</sup> Sir Isaiah Berlin, *Two Concepts of Liberty* 7-16 (Clarendon Press, Oxford, 1961).

<sup>27</sup> D.L. Sills(ed.), *International Encyclopaedia of the Social Sciences* 307 (Vol. III, 1968).

<sup>28</sup> Ibid.



## LIMITS OF PERSONAL LIBERTY

The idea of Absolute and Unrestricted personal liberty will never and quite impossible for any Modern (Democratic) state. Unrestricted liberty is like giving someone with full privilege immunity though he commits an action or offence against the interest of individual or society or state. With recognizing some human freedom, personal freedom cannot be sacrificed. The need, then, is to maintain personal freedom within the controls. Personal liberty as guaranteed by the constitution means that there is an organized society that preserves the public order.

Let's suppose the people being invest with the full fledged personal liberty, the prohibited action though restricted in the eye of law will not be applicable upon him impose heavy burden upon the state to maintain public law and order as everyone will tried to justify his action as guaranteed by the our constitution. Thus, in order to avoid tyranny situation and tension among member of the society required to maintain the between personal liberty.

Isaiah Berlin<sup>29</sup> was surprised with the fact there never ever happens in the history of human mankind either east-side or west- side of city state observed so many notions violently upset with the ongoing altered lives by the ongoing social and political doctrine; and also considered dangerous that the ideas which is necessary to attend and dealt with it were neglected by whom possess irresistible power over the society and critical thinkers too.

Berlin assumed the fact that the coercion upon the person is by only learned with the history of protean and every moralist in the human history that like good or bad, like nature or reality everything needs a little interpretation of its term though we have a hundred of ideas over the certain points or things or material. What he proposed that the prevailed ideas from the very beginning of human history considerably dealt with the with the central ideas that is 'political sense of freedom or liberty' called by him as the 'Negative Liberty' and on the other hand, is the interest of persons or group of individual left over with the liberty in terms of his ability or area of interest without any interference by the other persons ought to be called as 'Positive liberty'.

In his own words "It is generally said to me that any man or man's body should be free as long as it does not interfere. My Activity In this sense, political freedom is the only area in which a man can work uninterruptedly. Others. If I am prevented from doing what others can, I am

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<sup>29</sup> Berlin, I., (1958) "Two Concepts of Liberty, In Isaiah Berlin, *Four Essay on Liberty* (Oxford University Press , Oxford, 1969).

in that degree of Unfree; And if this area is constricted by other men beyond a certain minimum, I can be described as such or to be finish, or rather, it can be a slave. Bullying, however, is not a word that covers every form Inability. If I say I can't jump more than ten feet in the air, or can't read because I'm there I don't understand the blind or the Hegel's dark pages intends for. I'm mad for the degree of slavery or coercion. Forced means the deliberate intervention of other human beings Field that I could otherwise work on.”<sup>30</sup>

The need, then, is to maintain personal freedom within its respective sphere and in terms of control as well. Personal liberty as guaranteed by the constitution means that there is an organized society that preserves the public order. The complete personal freedom without the social control creates chaos and thus the result would be wasteful and confusing.<sup>31</sup>

Therefore, in order to avoid astriction and despotism situation, the balance between the personal liberty and public control must be adopted by means of just, fair and reasonable proceedings thus the treatment of equality is to be ensured. But the task of equal treatment is ensured by the government is a tough and critical job. This is the most critical task that each government faces. The reason behind the above statement is due to the vary of desirement of dynamic nature of Indian society. In some cases, personal freedom or freedom is more desirable than social control while in other matters social administration is more important.

Thus, in some cases, if the free hand use of the human rights somehow contradict the protection of the public interest thus it will requires upto extent put certain restrictions; on the other hand, existing social controls for the public good must be prevented, it could not be used in the detriment of individual rights and freedoms. The aforesaid, even though no one is allowed to override civil rights altogether, the public should not infringe on human rights unless there is an urgent and most important reason.<sup>32</sup> Thus, it is therefore argued that the claim of liberty for each individual must be judged by the public's need for security.<sup>33</sup>

Now a days, people are giving too much importance and become very active regarding rights with respect to the changing socio-economic conditions. It is important to be noted that the is required in the times essence to give the people certain rights under the changed socio-economic circumstances. Let's consider the example of developed country whatsoever form of

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<sup>30</sup> *Id.* at 3.

<sup>31</sup> Willis, *The Constitutional Law of the United States* 477-82 (The Principia press, 1936).

<sup>32</sup> Chandrashekhar Rao, R.V.R, “*Fundamental Rights and the Problem of Judicial Review*” 71 *S.C.J.* 2 (1961).

<sup>33</sup> Paras Diwan, *Abrogation of Forty Second Amendment: Does Our Constitution Need a Second Look* 69 (Sterling Publishers, 1978).

the government reflects the central theme of their constitution like rich developed country attach their personal liberty importance in terms of political perspective whereas the socialist democratic state commitment towards the economic and political perspective of personal liberty rights.<sup>34</sup>

Thus, we find that the limits of personal freedom or the constraints of personal freedom are likely to vary from time to time and from country to country depending on social, political, economic and other factors.<sup>35</sup>

## **CONSTITUTIONAL DEVELOPMENT OF RIGHT TO LIFE AND PERSONAL LIBERTY**

The Constituent Assembly got the privilege and responsibility to draft the constitution for the Indian people after a long freedom struggle. It was but natural to expect them and they were also under a moral but binding obligation to frame a constitution, which guarantees freedoms or liberties to all.

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>36</sup> It was implicit in the formation of Indian National Congress in 1885. Indians wanted the same rights and privileges that their British masters enjoyed in India and that Britishers had among themselves in England.

Perhaps the first explicit demand for Fundamental Rights appeared in the Constitution of India Bill of 1895.<sup>37</sup> The 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.

A series of Congress resolutions adopted between 1917 and 1919 repeated the demand for civil rights and equality of status with Englishmen.

By the mid-twenties Congress leaders generally had achieved a new impetus and consciousness of their Indianness and needs of the people. This was brought about mainly by a number of factors like, the experience of World War-I, the disappointment of Montagu Chemsford Reforms, Woodrow Wilson's support for self-determination and Gandhi's arrival on the scene.

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<sup>34</sup> Hari Swarup, *Concept of Freedom under Communism* 52 (Macmillan Publisher, India, 1968).

<sup>35</sup> P.B. Mukherjee *Civil Liberties in India* 14 *ILIJ* 459-470 (1968).

<sup>36</sup> B. Shiva Rao, *The Framing of India's Constitution* 170 (Universal Law Publisher, 1968).

<sup>37</sup> Mrs. Annie Beasant described it as the Home Rule Bill.

These influences were reflected in the tone and form of demands for civil rights; the purpose was now to assure civil liberty among Indians.<sup>38</sup>

Another major development in this direction was drafting of "Mrs. Beasant's Commonwealth of India Bill of 1925 which contained a list of seven Fundamental Rights like the individual's liberty, freedom of conscience, free expression of opinion, free assembly and equality before law. It further provided that there would be no disqualification only on the basis of sex."<sup>39</sup>

The Committee contemplated by the Madras Congress resolution, came into existence in May 1928. Pt. Moti Lai Nehru was appointed its Chairman; The Fundamental Rights of the Committees' report, known as Nehru Report were reminiscent of American and Post-American Constitutions and were reproduced verbatim from the Commonwealth of India Bill.<sup>40</sup>

The Report declared that the first concern of Indians was "to secure the Fundamental Rights" that have been denied to them. In writing a constitution, the Report continued:

"It is obvious that our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances..."<sup>41</sup>

The Indian Statutory Commission ,1930<sup>42</sup> did not support the general demand for the numeration and guaranteeing of Fundamental Rights. Sir John Simon in his report observed:

"We are aware that such provisions have been inserted in many constitutions, notably in those of European States formed after the War. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective."<sup>43</sup>

The demand for a declaration of Fundamental Rights in a constitutional document was again emphasized by several Indian leaders at the "Round Table Conference."

The Joint Select Committee of British Parliament in the "Government of India Bill of 1934" did not view with favour the demand for a constitutional guarantee of Fundamental Rights to

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<sup>38</sup> G. Austin, *The Indian Constitution: Cornerstone of a Nation* 53 (Oxford University Press, New Delhi 1966).

<sup>39</sup> Clause 8(9) of the Commonwealth of India Bill quoted by the Granville Austin. *id.* at 54.

<sup>40</sup> *Supra* note 38 at 55.

<sup>41</sup> All Parties Conference, Report of a Committee to determine principles of constitution of India the Nehru Report, pp. 89-90.

<sup>42</sup> This Commission was also popularly known as Simon Commission. The announcement that the Simon Commission would undertake a study of possible constitutional reforms in India, was made within two years of the printing of the Beasant's Bill.

<sup>43</sup> *Supra* note 38 at 58.

British subjects in India. Expressing its agreement with the views of Simon Commission, the Committee observed:

"... there are also strong practical arguments against the proposal, which may be put in the form of a dilemma, for either the declarations of rights is so abstract in nature that it has no legal effect of any kind, or, its legal effect will be to impose an embarrassing restriction on the powers of the legislature and to create a grave risk that a large number of laws may be declared invalid by the courts as being inconsistent with one or the other of the rights so declared."<sup>44</sup>

However, this did not dampen the enthusiasm of Indians to have a list of Fundamental Rights incorporated. The next major document on Fundamental Rights of the pre-Assembly era was the "Sapru Committee Report" published at the end of 1945. The Committee was appointed by an "All Parties Conference, 1944-55".

"The Fundamental Rights of the new Constitution", said the Sapru Report, "will be a standing warning to all; what the Constitution demands and expects is perfect equality between one section of the community and another in matter of political and civil rights, equality and security in enjoyment of freedom of religion, worship and 12 pursuits of the ordinary application of life."<sup>45</sup>

In 1946, the British Cabinet Mission agreed for the urgent need of a written guarantee of fundamental rights. In the statement of May 16, 1946 proposed (envisaged) the idea of constituting the assembly for the framing of the Constitution of India. The same further recommended for the establishment of an advisory committee to report, *inter-alia*, on Fundamental Rights.<sup>46</sup>

B.N. Rau, Constitution Advisor, in his note to the members of the constituent Assembly, suggested that provision relating to personal liberty should neither be vague nor a meaningless guarantee against the oppressive Laws.<sup>47</sup>

K.T. Shah pleaded for empowering the courts to protect the personal liberty of all persons, citizens as well as non-citizens.<sup>48</sup>

The first meeting of India's Constituent Assembly in New Delhi, on 9th December 1946, was

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<sup>44</sup> The Report of the Joint Committee of Indian Constitutional Reforms Vol. I, Para 366 (1934).

<sup>45</sup> Sir Tej Bahadur Sapru and Others, *The Sapru Report*, at p. 260.

<sup>46</sup> B. Shiva Rao, *The Framing of India's Constitution* 175 (Government of India Press, Nasik, 1968).

<sup>47</sup> *Id.* at 30-32.

<sup>48</sup> *Id.* at 42.

for many of its 296 members the fulfilment of a long-cherished hope. The business before the meeting was purely formal. But the meeting symbolized an event of unique significance, namely the commencement of great task of framing free India's Constitution without outside interference or pressure.

The Constituent Assembly elected an Advisory Committee on fundamental rights, which constituted several subcommittees.

B.N. Rau, the Constitutional Adviser, prepared a draft constitution. The draft clause 16 provided, "No person shall be deprived of his life or personal liberty without due process of law, nor shall any person be denied equality before the law within the territories of the federation".

The Fundamental Rights Sub-Committee completed the preparation of its report on Fundamental Rights and submitted the same on April 16, 1947 to the Advisory Committee. The Advisory Committee considered the report of the Sub-Committee on Fundamental Rights and with certain changes presented it as the Interim Report of the Advisory Committee on Fundamental Rights to the Constituent Assembly on April 29, 1947. The Constituent Assembly debated upon the Report thoroughly before the rights were finally adopted in the Constituent Assembly by December, 1948.

After a careful scrutiny of the draft, the Drafting Committee prepared a revised draft constitution and 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>49</sup>

## **INTERPRETATION OF ARTICLE 21**

The expression "procedure established by law" resembles with the 5th Amendment of the U. S. Constitution.<sup>50</sup> Even though the word 'due' is not specifically provided under Art. 21 but the

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<sup>49</sup> V.K. Bansal, *Right to Life and Personal Liberty in India* 97.

<sup>50</sup> 5th Constitutional Amendment is USA- "No person shall be deprived of his life, liberty or property without due process of law"

Supreme Court in its various judgments interpreted it in a wider and dynamic manner.

Under the Indian Constitution the guarantee against the deprivation of life and liberty of a person is much narrower than the Constitution of United States of America.

Article 21 of The Constitution of India reads as follows:

“No person shall be deprived of his life or personal liberty except according to the procedure established by the law.”<sup>51</sup>

The expression "personal liberty" under Article 21 import wide interpretation was held to mean "Liberty of the physical body e.g., freedom from arrest and detention from false imprisonment or wrongful confinement."<sup>52</sup> It was said later expressed in terms of antithesis of physical restraint and preventive detention. But this restrictive meaning has not been accepted in the subsequent case.<sup>53</sup>

Guarantee against wrongful deprivation of the life or liberty is based on the principles of the procedural regularity and fairness not only to citizens but also to non- citizens. It has not been left to the whim of the executive to rob a person of his personal liberty and put him in detention. A person may be put to in custody if the law warrants and when he is so put, it should be in conformity with the procedure established by the law. All the safeguards that the law prescribes to protect the liberty of person from being jeopardised should be available to a person before he is put in detention.

It also hereby noted that the expression “procedure established by the law” means with the procedural law as it is “due process of law” may also mean just substantive law and procedure.

Post to the Maneka Gandhi’s case, the Supreme Court took very literal view and interpreted these expressions in a very narrow manner. 'Personal liberty' was said to mean only liberty relating to, or concerning the person or body of the individual and in this sense, it was antithesis of physical restraint or coercion. It was further limited to freedom from punitive and preventive detention. The meaning accepted for the purposes of Art. 21 of the Constitution was restricted to limits set by Dicey, according to whom "personal liberty" means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification.

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<sup>51</sup> Article 21 of the Constitution of India.

<sup>52</sup> A. K. Gopalan, *Supra* note 3 at 27.

<sup>53</sup> Kharak Singh, *Supra* note 11 at 1295.

The decision of Constitutional Bench of Seven judges while overruling the judgment of Gopalan's case, in the **Maneka Gandhi's case**<sup>54</sup> which is became the origin point to interpretate and further became the tradition, like the springboard, of the evolution of laws with the help of judicial intervention via the individual human rights cases. As a result, the principles have been well settled by the Supreme Court that the term law as emphasised under Article 21 must ensure the principles of natural justice and in this regard the established procedure should be fair, just, and reasonable.

### **THE JUDICIAL APPROACH OF ARTICLE 21**

The traditional view of the Supreme Court is difficult to fully appreciate the development of the right to life without observing the traditional view.

The traditional interpretation of Article 21 as envisaged in the case **A. K. Gopalan v Union of India**<sup>55</sup> was that the person could be only deprive from his right to life only in accordance with the procedure established by the law was the initial view of the supreme court. And thus, the initial understanding of the judiciary regarding the provision of said article was confining and grinding one.

With the outcome of said judgment, the state started to strolling down by means of enforcing the mechanism in regard of intervention with the person's right to life, with fixing the certain manner of proceeding which is laid down properly and enacted in accordance with the law. It did not matter whether the law was fair and impartial.

Moreover, in the Gopalan case, the Court refused to deny the due process as guarantee by the law contained in the Article 21 unless the Preventive Detention Act was duly approved and enacted in accordance with the due procedures of law as mentioned under Article 22 of the Constitution of India.

The judiciary interpretation in this regard was nothing more or less but a release from arrest and detention against the wrongful or falsely implicated imprisonment of the physical body of the individual. Thus, "personal freedom" simply means freedom relating to the person or body of the person, and in this sense, it was opposed to physical restraint or coercion. Over time, the accustomed and confined view of the Supreme Court while interpreting the Article 21 of the Constitution of India has changed.

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<sup>54</sup> Maneka Gandhi, Supra note 4 at 621.

<sup>55</sup> Supra note 3 at 27.



In the case of **Maneka Gandhi**, a dramatic change can be found by the Court in the regard of manner or interpretation of the Article 21 is interpreted, so that the content of Article 21 contains 'due process of law'. Thus, the new interpretation ushered a new dimension in the expression of horizons of the right to life and personal liberty. As a result, this right till present times covers various aspects of the human right whether our founding fathers of the Constitution wished to or not wished to be include.

Though the language of Article 21 is in the negative form but after the Maneka Gandhi Case, it is now well settled principles that Article 21 has both negative as well as affirmative dimensions. Positive rights are very well conferred under the article 21 as it also been frequently used and interpretate by the supreme court in a number of cases. The following rights are held to be covered under the Article 21.

### **RECENT TREND OF ARTICLE 21**

In addition to the traditional approach, the Supreme Court observed Article 21 in the sense of social justice and while interpreting the same at a certain period made and gave extended dimension to Article 21 after the post Maneka Gandhi era. Some of the landmark decisions are mentioned below.

#### **1. Article 21 includes Right to Education**

Right to education is considered as third eye of man without which no one can lead good, decent and dignified life. Earlier right to education was a part of directive principles of state policy.<sup>56</sup>

However as per the changing needs of society Supreme Court in **Mohini Jain v. State of Karnataka**<sup>57</sup> and **Unni Krishna v. State of Andhra Pradesh**<sup>58</sup> rule that right to education , as a guaranteed fundamental right , thus included under the right to life because it directly influence the mental and physical capacity, and also responsible for the individual growth in society.

Moreover, in another case it was held that the Right of Education includes Right to safe education.<sup>59</sup>

Earlier the courts interpreted Right to Education under Article 21 expressly declared under

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<sup>56</sup> Art. 51 A of the Indian Constitution.

<sup>57</sup> AIR 1992 SC 1858.

<sup>58</sup> AIR 1993 SC 2178.

<sup>59</sup> Avinash Mehrotra v. Union of India (2009) 6 SCC 398.

Article 21-A<sup>60</sup> while inserting the provisions regarding educational right and made the same to available for every citizen as a fundamental right.

## 2. Article 21 includes Right to Livelihood

Right to livelihood is the outcome of the right to life because no person can live without sustenance. If the right to livelihood is not to be considered as the integral part or parcel of the right to life, it would become the easiest way for depriving the person to exercise his right to life as a result will lose his livelihood accordingly. Rejecting livelihoods is not only rejecting their effective content and meaningful life but also making life impossible.

Right to livelihood has been declared as an integral facets of the right to life.<sup>61</sup>The Supreme Court in the case of **Olga Tellis v. Bombay Municipal Corporation**<sup>62</sup> held that the concept of “right to life and personal liberty” guaranteed under Article 21 of the Constitution includes the “right to live with dignity” which in turn includes right to livelihood.

## 3. Article 21 includes Right to Speedy Justice and Speedy Trial

In the matter of denial of speedy justice, the court expressed the concern at delay in disposal of cases. The concerned authorities were directed to do needful in the matter urgently before situation goes totally out of control.<sup>63</sup> A procedural law would be declared void if it fails to provide speedy trial. A petition for a writ of habeas corpus was filed by number of under trial- prisoners who were in jails in Bihar for years awaiting for their trial. The right to speedy trail was considered as the implicit guarantee in the tight o life and right to personal liberty.

The Supreme Court held in **Hussainara Khatoon (I) v. Home Secretary, State of Bihar**<sup>64</sup> and was followed by the **Kadra Pahadia v. State of Bihar**<sup>65</sup> that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Art. 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under Art. 32 for the purpose of enforcing such right and the Supreme Court in discharge of its constitutional obligation has the power to give necessary directions to the State.

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<sup>60</sup> Article 21-A was inserted by the 86th Constitutional Amendment Act, 2002.

<sup>61</sup> Narendra Kumar v. State of Haryana, JT 1994 (2) SC 94.

<sup>62</sup> (1985) 3 SCC 5.

<sup>63</sup> Moses Wilson v. Kasturiba AIR 1978 SC 1675.

<sup>64</sup> 1979 AIR 1360.

<sup>65</sup> Writ Petition (Crl.) 5943 of 1980.

#### **4. Imposing Capital Punishment is not violation of Article 21**

In the Case of **Mithu v. State of Punjab**<sup>66</sup>, it was held that the compulsory death sentence for murder committed by the life convict who is undergoing the sentence of imprisonment for life under Section 303 of The Indian Penal Code, 1860 is unconstitutional.

The validity of death sentence has been raised in various cases before Supreme Court. In **Jagmohan Singh v. State of Uttar Pradesh**<sup>67</sup> the Supreme Court held that freedom to live could not be denied by a law unless it is reasonable & in public interest.

However, in **Bachan Singh v. State of Punjab**<sup>68</sup> it was held that, the death penalty is an alternative punishment of murder in section 302 of I.P.C. Hence it is not unreasonable & is in public Interest. It should be imposed only in “rarest of rare Cases.”

Moreover, in the case of Solitary Confinement, it was held that solitary confinement violates the fundamental right guaranteed under Article 21.<sup>69</sup>

#### **5. Delay in Trial and Execution of Death Sentence is a violation of Article 21**

Inordinate delay by the State for bringing an accused to trial or by preferring an appeal to against his acquittal violates the article 21 though his fault or not.<sup>70</sup> Assurance of Fair Trial is the first imperative of the dispensation of justice.<sup>71</sup>

In **T. V. Vatheeswaran v. State of Tamil Nadu**<sup>72</sup> the Supreme Court evolved another principle that prolonged delay (2 years) in executing death sentence would be unjust, unfair & unreasonable & therefore violative of Article 21 of the Constitution. In such a case, the accused has a right to get the death sentence commuted to life imprisonment.

In **Triveniben v State of Gujarat**<sup>73</sup>, the Supreme Court ruled that no fixed period of delay in necessary to make the death sentence non – executable.

#### **6. Article 21 includes Right to free legal aid**

The word ‘Law’ which is figured in article 21 of the Constitution of India should be a validly

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<sup>66</sup> AIR 1983 SC 473.

<sup>67</sup> 1973 SCR (2) 541.

<sup>68</sup> 1980 Cri.L J 636.

<sup>69</sup> Sunil Batra v. Delhi Administration AIR 1978 SC 1675.

<sup>70</sup> Rudal Shah v. State of Bihar, (1983) 4 SCC 141.

<sup>71</sup> Police Commissioner, Delhi v. Registrar Delhi Court, AIR 1997 SC 95.

<sup>72</sup> 1983 SCR (2) 348.

<sup>73</sup> 1989 SCR (1) 509.

enacted law meaning thereby just, fair and reasonable.<sup>74</sup> An accused person with whatsoever charges is entitled to be offered free legal aid if he is too poor to afford counsel. Further counsel must be given for the sufficient time to and facility for preparing the defence. Breach of these safeguards of fair trial would invalidate the trial and conviction.

In **M.H. Hoskot v State of Maharashtra**<sup>75</sup> the Supreme Court has invoked Art. 39A and held that state under Article 21 should provide free legal aid to a prisoner who is indigent and or otherwise disabled from securing legal assistance where the ends of justice call for such service.

### **7. Article 21 includes Right to Health and Medical Care**

The Right to life includes the right to health.<sup>76</sup> Art. 21 as well as Directive principles of State policy<sup>77</sup> obligates State to preserve the life of person. In a landmark decision of **Parmanand Katara v Union Of India**<sup>78</sup> the Supreme Court held that in medico legal cases preservation of life is of paramount importance therefore it is the primary duty of doctor to give immediate aid to the victims either he is a criminal or innocent person and shall not wait for the completion of legal formalities.

Similarly, in **Paschim Banga Khet Mazdoor Samiti v State of West Bengal**<sup>79</sup> the Supreme Court awarded compensation to the victims aggrieved by the services provided by the government hospitals.

### **8. Right to life under Article 21 does not include right to die; Human life is precious One.**

The Supreme Court has shown radical change in its view. In earlier view **Gian Kaur v. State of Punjab**<sup>80</sup>, while deciding the validity of Sec. 309 of I.P.C, it was held that punishing the attempt to commit suicide does not violate the article 21.

The Court overruled the earlier view which was taken in **P. Rathinam's case**<sup>81</sup> and held that “right to life” does not include “right to die” and the “extinction of life” is not included in “protection of life” thus provision penalizing attempt to commit suicide is not violative to Art. 21 of the Constitution.

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<sup>74</sup> Delhi Airtech Service Pvt. Ltd. v. State of Uttar Pradesh AIR 2012 SC 573 (592).

<sup>75</sup> 1979 SCR (1) 192.

<sup>76</sup> State of Punjab v. Mohinder Singh Chawla AIR 1997 SC 1225.

<sup>77</sup> Art. 46 and 47 of the Indian Constitution.

<sup>78</sup> AIR 1989 SC 2039.

<sup>79</sup> AIR 1996 SC 2426.

<sup>80</sup> AIR 1996 SC 953.

<sup>81</sup> P Rathinam v. Union of India, AIR 1994 SC 1844.

## 9. Article 21 guarantees Freedom from Police Atrocities

The Supreme Court has shown its great concern in cases of maltreatment of prisoners. As far as mode of punishment is concerned in **Prem Shankar v Delhi Administration**<sup>82</sup> the Supreme Court held that handcuffing is prima facie inhuman in nature therefore it must be the last refuge as there are other ways for ensuring security.

Similarly, in **D.K. Basu v State of West Bengal**<sup>83</sup> the Supreme Court held that any form of torture or cruel inhuman or degrading treatment during the investigation, interrogation or otherwise is violative of Article 21 of the Constitution. For the custodial death the writ court can award compensation and described the custodial death as “one of the worst crimes in a civilised society which is governed by the rule of law.”

In **Sheela Barse v State of Maharashtra**<sup>84</sup> the Supreme Court has given directions to prison authorities to ensure rights of women against torture and maltreatment in police lockup.

## 10. Article 21 includes Right to claim Compensation

The Supreme Court of India has also shown its dynamic and activist role in compensatory jurisprudence.

For the first time in **Nilabati Behera v State of Orissa**<sup>85</sup> the Supreme Court held right to compensation as a fundamental right under Article 21 of the Constitution. Earlier it was the discretion of the Court wherein it has awarded compensation to the victim.<sup>86</sup>

In **Rudal Shah v State of Bihar**<sup>87</sup> the Supreme Court awarded Rs. 35000/- to the petitioner who was kept in jail for 14 years despite of his acquittal order.

Recently in **Chairman, Railway Board v Chandrima Das**<sup>88</sup> the employees of the Railway Board had gang raped a Bangladeshi Women for which the Central Government was directed to award compensation under Article 21 of the constitution.

## 11. Article 21 includes Right to Privacy

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<sup>82</sup> 1980 SCR (3) 855.

<sup>83</sup> (1997) 1 SCC 416.

<sup>84</sup> (1983) CrL LJ 642.

<sup>85</sup> 1993 SCR (2) 581.

<sup>86</sup> Khatri v. State of Bihar, (1981) 1 SCC 635.

<sup>87</sup> Supra note 70 at 141.

<sup>88</sup> AIR 2000 SC 1998.

For the first time, the issue was raised in **Kharak Singh v State of Tamil Nadu**<sup>89</sup> Justice Subba Rao in his minority judgment said that the right to privacy flows from the expression personal liberty. This minority judgment paved path for the further development.

In **R. Rajgopal v. State of Tamil Nadu**<sup>90</sup> the Supreme Court observed that the Right to Privacy is nothing but 'right to be let alone and it is implicit in right to life and personal liberty guaranteed under Art.21 of Indian Constitution.

Similarly, the question of privacy was raised regarding the validity of Aadhaar. The judgment of the Supreme Court on 24 August 2017 on the petition of Justice **K.S. Puttaswamy**<sup>91</sup> which holds that the right to privacy is protected as a fundamental constitutional right under Articles 14, 19 and 21 of the Constitution of India, proved to be crucial in the rights of Indian citizens in the 21st century. This decision not only reversed some of the earlier decisions but also opened the way for a progressive and meaningful interpretation on civil-political rights.

## CONCLUSION

With the commencement of the Constitution the most of the rights as earlier mentioned did not guarantee the right as the fundamental rights under part III of the India Constitution. But After the 1978, the liberal judicial interpretation of the Article 21 become the most favourite centre point of justice creativity in regard of human lives. The most of the rights received the status of fundamental rights is only possible due to liberal judicial approach.

The decisions in Gopalan case<sup>92</sup>, Habeas Corpus case<sup>93</sup> and Maneka case<sup>94</sup> are some excellent examples of how changes in society, law and order situation, political situation, human rights situation and many other factors can affect the lives and Judicial declarations regarding personal liberty.

In Gopalan case the majority gave a very restrictive and conservative interpretation of the term personal freedom and expressed the opinion that the right to personal liberty was not so broad as to include freedom of movement within the entire territory of India.

The trend of restrictive and conservative interpretation of Article 21 prescribed by the Supreme

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<sup>89</sup> AIR 1963 SC 1295.

<sup>90</sup> AIR 1995 SC 264.

<sup>91</sup> Justice K. S. Puttaswamy (Retd.) v. Union Of India W.P. ( Civil no. 494 of 2012; (2018) SCC online SC 1642.

<sup>92</sup> A.K. Gopalan, Supra note 3 at 27.

<sup>93</sup> A.D.M. Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207.

<sup>94</sup> Maneka Gandhi, Supra note 4 at 621.

Court in Gopalan continued until Maneka came into the picture. The country had to experience three emergencies during the period from Gopalan to Maneka.

It is clear that during the continuation of the emergency the atmosphere for liberal interpretation of the right to life and individual liberty, there was no individual freedom due to the reason of the security of the country, as freedom and liberty of individuals were to be sacrificed under this scheme of the constitution.

This is the reason why the stipulated trend in Gopalan in relation to the interpretation of Article 21 did not change during this period. However, we find that the term personal liberty received a somewhat broader interpretation during this period when the right to privacy, the right to travel abroad, certain residual rights of detenu to write a book and publish it, etc. components were held of personal freedom.

As stated above in many cases, the Supreme Court of India played an important role in interpreting Article 21 of the Constitution. In this way the Supreme Court has expanded the liabilities, duties and responsibilities of the state and its officials and fully implemented its explanatory and proactive judicial process. Thus, It becomes very clear that over a many time, the Court while interpreting the Article 21 of the Constitution may be able to enforce the rights as guaranteed under Article 21 and also possibly that the court is enable to adjacently add some more rights or considered the rights as inherent provision under the Article 21 of the constitution of India which makes the scope of this article is very wide and in range.

Liberty exist only if the restrictions exist. The full-fledged liberty is not possible so far as civilized society. Though the state is servant of the constitution and his loyalty must be towards its citizens by means of enactment of welfare policy. In Lock's words, "where there is no law, there can be no liberty." Liberty as a positive opportunity for self-development means the creation of law. Nothing can exist apart from the state. Some restrictions are necessary for the common interest, but they should be free from bias and the public should be confident of their prudence. The provisions of the Fundamental Right (Article 12 -32) as envisaged under Part III of the Constitution of India is in the true sense of "The Magna Carta" of the India. Certain restrictions would be imposed upon the fundamental rights but at the ends such restriction must be ensure the equal and fair treatment with all the civilians.

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