

# Protection of Life and Personal Liberty: A Critical Analysis

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## INTRODUCTION

In the advent of delving into what has unfurled into one of the most controversial issue that could have tremendous ramifications on basic ethical concepts and most importantly, the sanctity of life...The precious words of Thomas Jefferson strike a chord...

**“The care of human life and happiness and not their destruction is the first and only legitimate object of good governance.”**

A right to life is a right to have or strive for whatever one needs to live, provided that having it does not violate rights of other beings.

Article 21 of the Constitution says-

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

These eighteen words guarantee us the right to live, meaning no one can injure us and get away with it; meaning we cannot be illegally deprived of our personal liberty. This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence.

## HISTORICAL EVOLUTION

The origin of the right to life enshrined under Article 21 can be traced by the analysis of various international human right instruments and legal documents. The concept of life has emerged from the times of Adam and Eve and has constantly evolved since ages. The right of life is an inherent and inalienable right bestowed on every human being by all the powerful God himself. Similarly, various countries have incorporated this all powerful right in their legal documents to give it a legal force.

## MEANING AND CONCEPT OF RIGHT TO LIFE

The next important ingredient of Article 21 is the expression 'Life'. Right to life under Article 21 is something more than mere survival or animal existence. It is something more than mere breathing. The Hon'ble Supreme Court has held in *Francis Coralie Mullin v. Union Territory* that right to life would include the right to live with human dignity.

Thus while interpreting the expression 'Right to live with Human Dignity' one must not lose sight of the other face. For instance, the Right to live with human dignity will not include a right under a settlement to claim bonus or DA, a

right of wife not to be subjected to a decree in restitution of conjugal rights, a right not to be subjected to death penalty or conviction for an offence under criminal law.

### **MEANING AND CONCEPT OF PERSONAL LIBERTY**

The next important ingredient of Article 21 is the expression 'Personal Liberty'. When the Constitution was being framed, the word used in the draft Constitution as prepared even up to the stage of Advisory Committee was "liberty" without being qualified the word "liberty" by "personal" being of the view that otherwise "liberty" might be construed very widely so as to include freedom already dealt under article 19. The result is that article 21 as it finally found place in our Constitution protects "personal liberty". Expansion of Article 21 has led to many of the directive principles being enforced as fundamental rights. On account of this expanded interpretation, now the right to pollution free water and air, right to food clothing, environment, protection of cultural heritage, Right to every child to a full development, Right of persons residing in hilly areas to have access to roads and Right to education (**Mohini Jain v. State of Karnataka**) have all found their way into Article 21.

### **PROCEDURE ESTABLISHED BY LAW**

A reading of Article 21 would go to show that a person may be deprived of his life or personal liberty only in accordance with the procedure established by law. In other words, those who are called upon to deprive other person's of their personal liberty will have to observe the forms and rules of the law strictly and scrupulously. The word 'Law' has been used here to mean state made or enacted law and not as an equivalent of law in the abstract or general sense. Therefore, the expression 'Procedure established by law' means prescribed by law of the State. The parliament has power to change the procedure by enacting a law by amending it and when the procedure is so changed it becomes the procedure established by law.

### **CHANGES IN CRIMINAL JUSTICE SYSTEM AFTER MANEKA GANDHI'S CASE**

The criminal justice system in India beginning with the year of 1978, marched towards new dimension when the Apex Court held in **Maneka Gandhi v. Union of India**, that the procedure established by law contemplated by Article 21 must answer the test of reasonableness. Procedure must be "right, just and fair" and not arbitrary or oppressive. Article 21 forbids deprivation of personal liberty except in accordance with the procedure established by law and curtailment of personal liberty to such an extent as to be a negation of it would constitute deprivation.

Administration of criminal justice is a state matter. Fortunately by reinterpreting Article 21 in **Maneka Gandhi v. UOI**, and by giving up the sterile approach in **A.K. Gopalan v. state of madras**, the supreme court has found a potent tool to seek to improve matters, and to fill the vacuum arising from governmental inaction and apathy to undertake reform in the area of criminal justice. The court has now been seeking to humanize and liberalize the administration of criminal justice.

### **EXTENDED VIEW OF PERSONAL LIBERTY**

A very fascinating development in the Indian constitutional jurisprudence is the **extended dimension** given to Article 21 by the supreme court in the post Maneka era. The supreme court has asserted that in order to treat a right as a Fundamental Right, it is not necessary that it should be expressly stated in the constitution as a Fundamental Right. Political, social and economic changes in the country entail the recognition of new rights.

### **RELATION OF ARTICLE 21 WITH OTHER CONSTITUTIONAL PROVISIONS**

Inter-relation between Article 14, 19, and 21 :

OLD VIEW : In **A.K. Gopalan v. State of Madras**, the supreme court held that Article 19 has no application to laws depriving a person of his life and personal liberty enacted under Article 21 of the constitution. It was held that

Articles 19 and 21 dealt with different subjects. Article 19 deals only with certain (six freedoms) important individual rights of personal liberty and the restrictions imposed on them. Article 21, on the other hand, enables the state to deprive a person of his life and personal liberty in accordance with procedure established by law. Thus the view taken by the majority in **A.K. Gopalan's** case was that so long as a law of preventive detention satisfies the requirements of Article 22, it would not be required to meet the challenges of Article 19.

**PRESENT VIEW:** In **Maneka Gandhi v. UOI**, the supreme court has overruled its earlier decision and held that Article 21 is controlled by Article 19, that is, it must satisfy the requirements of Article 19 also. The court observed :

“ the law must therefore now be settled that **Article 21 do not exclude Article 19** and that even if there is a law prescribing a procedure for depriving a person of his personal liberty, and there is consequently no infringement of the fundamental right conferred by Art.21 such a law in so far as it abridges or takes away any fundamental right under Art.19 would have to meet the challenges of that Article(Art.19). Thus a law depriving a person of his ‘personal liberty’ has not only to stand the test of Art 21 but also of Article 14 and 19 of the constitution”.( **Maneka Gandhi v. UOI ; R.C.Cooper v.UOI**).

#### **ARTICLE 32 OF THE INDIAN CONSTITUTION: A PROVISION TO ENFORCE ARTICLE 21**

The most unique feature of the Indian constitution is Article 32 (remedies for enforcement of rights conferred by this part). It is a fundamental right guaranteed to citizens of India under Part III of the constitution. The provision states that :

1. The right to move to the supreme court by appropriate proceedings for the enforcement of the rights conferred by Part III of the constitution.
2. The supreme court shall have the power to issue directions, orders or writs whichever may be appropriate for the enforcement of any of the rights conferred by this part.

In the constituent assembly debate Dr. Ambedkar once said, “ **if iam asked which is the most important provision of the Indian constitution, without which the constitution would not survive, I would point to none other than Article 32 which is the soul of the Indian constitution**”.

#### **CONCLUSION**

The supreme court by creatively interpreting the scope of Article 21, the apex court has strived to secure the people of this country a better life and greater liberty. But at the same time these judicial pronouncements and innovations are not as spectacular and revolutionary as is generally thought of. The inherent nature of adjudicatory process is such that judicial innovations has to be incremental, has to be in consonance with the prevailing law and the system. The judges have to justify their innovations by a persuasive dialectical reasoning, they are expected to be reasonable and conscientious and objective lest their purely personal preferences and values get infiltrated into the fabric of law and they have to take into account the possible consequences of their innovations. We should therefore, look at the courts as symbolic transmitters of the normative images of a legitimate society in which human dignity and liberty is considered to be sacrosanct.