

RIGHT TO LIFE AND PERSONAL LIBERTY: STUDY BETWEEN INDIA, U.K ,U.S.A

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ABSTRACT

Article 21 of the Indian Constitution protects the fundamental right to life and personal liberty, ensuring that no person can be deprived of these rights except according to a procedure established by law.

Every country develops day to day, economically and socially and aims at becoming a welfare state. Along with this it also looks forward to providing a better living to its people. In India, the judiciary has played a crucial role in providing a better living to its people through their judgements and interpretations to various rights. Out of such rights, Article 21 has played a very important role. This is a right that deals with the life of humans and the courts have always provided protection to its people through interpreting Article 21 and including various rights under it.

This paper aims at highlighting the origin of the constitution from British colonial acts like the Government of India Acts of 1858, 1919, and 1935, which gradually introduced concepts of representation and divided powers. This paper will also focus on the drafting and key features of the independent Indian Constitution, emphasizing its length, the influence of other global constitutions, and the principle of separation of powers. A significant portion of this paper is dedicated to Article 21, the right to life and personal liberty, in the Indian Constitution, detailing its broad interpretation by the judiciary to include rights such as livelihood, privacy, and even the right to die with dignity, while also comparing its framework to similar protections in the United Kingdom and the United States. The paper will also be paying attention to the landmark judgements, to understand the different rights that have been embodied under article 21. It also briefly discusses how article 14,19 and 21 are interconnected and how has article 21 evolved as the heart of the Indian constitution.

Key words : *Article 21, freedom, Indian Constitution, Right to life, Personal liberty, Procedure established by law, Protection of life.*

INTRODUCTION

Before we discuss the contents in the Indian constitution, let us first understand the Indian constitution is all about.

The Indian constitution is a written document, adopted on November 26th 1949 and enforced in 1950, making India a sovereign republic. Looking at the history of this document, it dates back to 1858, when the British Crown assumed sovereignty over India and had enacted the first statute i.e.; “The Government of India Act 19”. This act was enacted as a revolt of 1957, when the inefficiencies in the administration of The East India Company were exposed and the Crown decided to take over the administration in its own hands. The act states that, the administration will be exercised by the secretary of the state appointed by the British along with 15 council members, who were exclusively

from England. Therefore, the administration was centralized and unconcerned on public opinion. There was no separation of functions and powers and the entire authority was vested on the Governor General who was answerable to the secretary of the state. Later with the coming of the “**Indian Councils Act 1961**”, an important component was added, which stated that, the Governor-Generals, Executive Council will no longer only compose of Official Members, but also of Non-official members while transacting legislative business as a legislative council. Yet they were not given any Independent power, and all the functions from sanctioning the Bills to vetoing the Bills, all power were still vested on the Governor General. Later through the Indian Councils Act 1892, certain powers were shifted to the councils who had powers of analyzing the revenue statements. The act further also included that the Non-Official Members would be elected by the Bengal Chamber of Commerce and Provincial Legislative Council. The major changes to the Legislative Councils was after the introduction of the **Morley Minto Reforms and the Indian Councils Act 1909**, which aimed at enlarging the legislative councils and election of Non-official members to let go of the majority members. The next landmark development in India was the enactment of the **Governments of India Act 1919**, which was a result of the Montagu-Chelmsford report. This report was introduced by the British to address the self-governing institutions which was a response to the growing Indian nationalism i.e., the growing demand for self-rule by nationalist movements and the forming political environment, which formed the basis for the GOI Act 1919. This act introduced the system of ‘Dyarchy’, which spread the centralized power of the Governor General into two independent governments in the provinces which we today call the dual government. The administration was divided into two subjects i.e., Central and Provincial. The central subjects were solely dealt with by the central government and the provincial subjects were further divided into transfers and reserved. The transferred subjects were to be dealt by the governor along with the members of the legislative council and the reserved subjects were to be dealt by the governor and the executive council. Both these subjects were independently delta without any overlap between the authorities.

This was the time, when the power was in fact divided between the central and the provinces without any overlap. All subject matters were distributed between the central and the provinces which also included financial and revenue subjects and not administrative subjects alone. The act also took forward and let the provinces grow on its own independently, where they had their own budgets and taxes. But yet the devolution of the power between the center and the state was considered as a federal government. The center still had more authority when dealt with legislations. The provinces were only given a delegatory power. The law making power was still help with the center. The provinces were working independently only in certain matters. The center and governor were still answerable and under the working of the British parliament. But slowly to make India more representative, the bicameral legislative system was introduced. The system comprised two houses i.e., Council of state with 60 members and the lower house called the legislative assembly composed of 144 members. But here the power to both the houses were almost equal except that of the power to vote supply. Which yet again is an important power, which was extensively with the legislative council. But the act of 1919 led to a failure as it could not meet the expectations of the people of India. Slowly, people wanted an independent government, not involving the British Empire. Though the empire claimed it followed “the Dyrarchy system”, the whole power and authority was still in the hands of the Governor General. The ‘Dyrarchy system’ was only on paper but never followed. The provinces could still not independently take any decisions and required prior sanction of the Governor-General. This dissatisfaction led to a non-corporative movement by the Indian which led to the setting up of the “Simon-Commission a statutory commission” led by Sir John Simon, to report on the working of the government of India act 1919. The commission came up with a report, from a conference that comprised delegates of the British government and British India. This report led to the drafting of the Government of India Act 1935. The conference had also discussed granting India the dominion status but the same was not implemented in the 1935 act.

The GOI Act 1935 led to an all India federation that consisted of the provinces and the princely states as units. It was through this act that the powers were divided between the center and the state. This was not just on paper but also practiced. The powers were divided between three lists namely, federal list, provincial list and concurrent list. The center was the federal legislature which had complete authority over the federal lists which included military naval etc. and the provincial legislature had authority over the provincial list which included matters of police, provincial public service. The criminal procedures were under the concurrent list where both the Center and state had authority. But any matter related to emergency would be exclusively dealt with by the federal legislature only. This act also led to the setting up of the Federal Court, which had original, appellate and advisory jurisdiction and was set up to hear matters related to disputes between the provinces and appeals from the high courts. Slowly this act also had come to an end, with the want of an Independent Country and established the Indian Independence Act 1947.

RESEARCH OBJECTIVE

The objective of this paper is to understand the phrase “right to life” with specific reference to India and a brief on the UK and USA. The paper also aims at understanding how the Indian Constitution evolved.

THE CONSTITUTION OF INDIA

The Indian constitution was not drafted overnight, but was a hard work of 7 members in a committee headed by Dr. B.R Ambedkar. The committee was established on August 29, 1947. The Indian constitution has been an amalgamation and adoption of ideas from various other constitutions of the world. It is today the lengthiest written constitution in the world. The members of the committee aimed at giving the best constitution to its citizens and hence borrowed various features from other constitutions of the world. Amidst many criticisms that the constitution would be a document of the “west” , today this document holds a strong position, protecting rights of millions of citizens. Our constitution being a written document has certain limits in exercising of power, we follow the separation of powers and the powers have been divided among three different organs namely, legislature, executive and judiciary which stand independent of each other. Since we have a written document, no organ can act arbitrarily or have any absolute discretionary power.

The Indian constitution is also the lengthiest constitution comprising 448 articles, divided into 25 parts and 12 schedules. The need for such a lengthy constitution, is because of India being a diverse country, that involved people from different religions and with different traditional values and customs. India was also ruled under the British Empire for almost 200 years, which had a strong impact on the functioning of the country and a need to start from scratch. It can also be said, the government of India act 1935 during the British era in itself was a bulky document involving various aspects of administration, this can also be a contribution to having the lengthiest document. The framers of the constitution aimed at having a constitution that would be effective and efficient after the rule of the British over India and also in order to avoid defects and loopholes, they gathered different features from other working constitutions.

Let us begin with the most important part of the constitution i.e., the Fundamental Rights. The fundamental rights we have today have been inspired from the U.S. Bill of rights in order to protect individual liberties. The U.S was the first country ever to give Fundamental rights a constitutional status. The parliamentary form of government adopted from the United Kingdom, directive principles of state policy from Eire.

ARTICLE 21

Protection of life and personal liberty

Of all rights guaranteed under the constitution, the right to life has been a very important and impacting right of all. There have been multiple scenarios where this right has been interpreted by the judiciary for the benefit of its citizens. The article 21 is not just a single right alone, but involves various rights in it through different interpretations by the court. The right to life is a right recognized by almost every institution in the world. It is the life of a human and his personal liberty. Article 21 is one of such articles incorporated in the constitution to safeguard from legitimate sovereignty and if these rights never existed then it would lead to the end of one's personal liberty.

RIGHT TO LIFE: INDIA, UK, USA

INDIA

Right to life is dealt under article 21 of the constitution which states that “***No person shall be deprived of his life or personal liberty except according to procedure established by law.***”¹

The question does arise as to whether article 21 only refers to the life of a human or does it have other interpretations. There have been various judgements that have been interpreted by the supreme court that have embodied various other rights to fall under the right to life. As the article says, it is the protection of life and personal liberty. Therefore, anything that relates to one's life and personal liberty would be dealt under article 21. The supreme court also refers to this article as the “**heart of fundamental rights**”. This is one of such rights that is important to every human being that cannot be taken away even during an emergency.

Earlier, the right to life and personal liberty was not under article 21 of the constitution, instead the makers passed it under article 15 of the constitution which stated “protection of life and liberty and equality before law : *no person shall be deprived of his life or personal liberty except according to procedure established by law.*”² The phrase procedural established by law was not accepted by many as one's personal life or liberty could be deprived if it is done through a legally enacted procedure irrespective of whether it is unfair or unjust. During the framing, Kazi Syed Kaarimuddin, who specifically stated that both terms personal and procedure established by law cannot go hand in hand. He also stated,

“ That in article 15, for the words, “no person shall be deprived of his life or personal liberty except according to the procedure established by law “ the words “No person shall be deprived of his life or liberty without due process of law” be substituted”.³

Therefore, the only argument was not to combine the terms personal and procedure established by law together. It is said it would become difficult to enforce this right when it can be deprived through a procedure established by law. This would end the duties of the court, where they have to blindly follow the procedure irrespective of whether it is capricious, unjust or unfair. So, even if a procedure is unjust or deprives the right, the courts are in no position to provide justice. *“As soon as the procedure is compiled it gives an end to everything and the judges will only be spectators”.*⁴

¹ INDIA CONST.art 21

² Vol 2, SAMARADITYA PAL, INDIAN CONSTITUTION ORIGIN AND EVOLUTION 468 (Lexis Nexis).

³ Vol 2, SAMARADITYA PAL, INDIAN CONSTITUTION ORIGIN AND EVOLUTION 468(Lexis Nexis).

⁴Vol 2, SAMARADITYA PAL,INDIAN CONSTITUTION ORIGIN AND EVOLUTION 468 (Lexis Nexis).

But nothing helped., the proposition to amend article 15 and remove “*procedure established by law was negated*”

While compared to the right to life, implemented by other constitutions, the Indian constitution has not only dealt Article 21 as a life and liberty of a person, but as also through deep visualizations and interpretations has also included livelihood, freedom, all round development as right to life and personal liberty.

India holds various traditional and customary values, and article 21 has its foundation from the same. While there is no definitive consensus that Article 21 was directly inspired by ancient Indian texts, many of its principles resonate with traditional Indian values like *dharma*, which emphasizes social duty, justice, and dignity for all. Over time, the judiciary has expanded the interpretation of Article 21 to cover broad aspects of dignified living, reflecting a synthesis of modern constitutionalism and deep-rooted Indian ethos.

Article 21 provides two primary rights i.e., firstly, Right to life and secondly Right to personal liberty. But this right is not absolute and holds certain reasonable restrictions and is subject to procedure established by law. Let us also understand the broader meaning of these two phrases.

It was in **A.K Gopalan v State of madras**⁵, where the detenu A K Gopalan challenged the validity of preventive detention act 1950, arguing it violated article 19(1)(g) and article 21 of the constitution. His first contention was that both article 19 and 21 were interconnected and secondly questioned the phrase “procedure established by law” under article 21. The court held that, article 19 and 21 are not co-related and are both independent. In a five judge bench of the supreme court it was also held in a narrow interpretation article 21 is not an absolute right and is subjected to limitations. The court held that one's right under article 21 can be deprived by a procedure enacted by law irrespective of whether the law is unreasonable or unjust.

The next question is whether livelihood also fall under article 21 of the constitution which was discussed in **Sant Ram, In Re**⁶. where Mr. Sant Ram with another individual were excluded from the court premises after an enquiry by the registrar upon receiving complaints from the supreme court bar association for being involved in toutism. The argued that, their removal violates Article 21, because their livelihood is being affected. The supreme court held that livelihood will not fall under article 21 when an act practiced is unethical. The courts aim to keep away corruption and other unethical practices from the profession. But this has been changed through various judgements. It was from the landmark 1985 judgement of **Olga Tellis v Bombay Municipal Corporation**⁷ where the supreme court made livelihood an integral part of article 21. It was in this case where the Bombay municipal corporation decided to evict the pavement dwellers from the pavements arguing they were illegal occupants. Y.V Chandrachud held that nobody could survive without the means to live and it violates their right to life which includes livelihood. In another case the supreme court has stated that, when a person suffers from any disease and is unable to perform his duties then he has the right to be posted in another post where he is able to discharge his duties. The court held that article 21 protects the right to livelihood as an integral part of the right to life.⁸ Therefore, every person needs monetary access for his survival and nobody can die of hunger. Livelihood is important for the survival of a human being.

The right to life is a basic human right and nobody, not authority or not the state, has the right to deprive a person of this right. The court in many cases have also said that it is the duty of the state

⁵ A.K Gopalan v State of madras, AIR 1950 SC 27

⁶ Sant Ram, In re., AIR 1960 SC 932: (1960) 3 SCR 499

⁷ Olga Tellis v Bombay Municipal Corporation, 1986 AIR 180,

⁸ Narendra Kumar Chaudha v State of Haryana, AIR 1995 SC 519 : (1994) 4 SCC 460

to provide an atmosphere for human survival and also to create a climate for members of the society to live together.

The interpretation of Article 21 was further extended in **Maneka Gandhi v Union of India**⁹, which is a landmark Supreme court case which dealt with Articles 14,19 and 21 and called them the “**Golden Triangle**”. This judgment overruled the A.K. Gopalan case and interconnected **Article 14,19 and 21**. Maneka Gandhi's passport was impounded by stating “it was in public interest”. She then filed a writ petition before the supreme court under article 14,19 and 21. The court here cited that going against principles of natural justice gives rise to dictatorship. And further stated that “while following procedure established by law, the procedure should be just and reasonable”. The three articles are interconnected, and violation of one would lead to the violation of the other. The Supreme Court also added that “personal liberty “also includes one's right to travel abroad, therefore impounding her passport without following the procedure does violate article 21.

Life and liberty go hand in hand. It was held in **Ozhair Hussain v Union of india**¹⁰, that life and liberty enjoy a fundamental ascendancy over all other attributes of the political and social order and consequently, the legislature, executive and judiciary are more sensitive to them than to other attributes of daily existence.¹¹

For us, the Right to Privacy is also a very important right, but for a very long period of time this was not accepted as a right under Article 21. According to Black's Law Dictionary ‘Right to Privacy’ means “right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any un-warranted interference by the public in matters with which the public is not necessarily concerned”. Right to privacy is related to one's personal space and to be alone without any hindrance. The right to privacy has not been specifically recognized by the constitution, but has been by the supreme court. In **R. Rajagopal vs State of Tamil Nadu**¹² also known as the “ auto shankar case” discussed whether the right to privacy falls under article 21. Here, Rajagopal who was the editor of the Tamil Nadu magazine Nakheeran , sought to publish the autobiography of a prisoner and the state was against this. The autobiography involved corruption details involving various police and state officials. The court here recognized Right to Privacy as a right but said it's not absolute. The court held, there must be a balance between the freedom of press and right to privacy. Even before the publication is made one cannot restrict. The court stated, after the publication is made the officials will have the right to file a defamation suit and not prior to the publication. One does have the right to privacy but this is not absolute. But yet the court specifically does not include the right to privacy under article 21. It was in 2017 the supreme court in its landmark judgment held Right to privacy was embodied under article 21. **Puttuswamy v Union of India**¹³, which was a case on whether the Adhaar Card Scheme and claimed it to be unconstitutional and violate of one's privacy. Adhaar card was mandatory with the introduction of the Adhaar(Authentication) regulation act 2016. Previously to this, in 2009 a commission was set up for making Adhaar a unique identification for the BPL families. This was challenged before the court in 2012. Later after the act of 2016 was enacted another petition was filed before the Supreme court again by Puttuswamy. We had Justice Chandrachud who stated that, the right to privacy is not any independent right like other rights guaranteed under part III of the constitution, yet it is a right related to human dignity and also a natural right. Though the other judges were of the view that the right to privacy cannot be regarded

⁹ Maneka Gandhi v Union of India, AIR 1978 SC 597 : (1978) 1 SCC 248

¹⁰ Ozhair Hussain V Union of India, AIR 2003 Del 103

¹¹ Commentary on the constitution of India volume 5, P. 4709

¹² R. Rajagopal vs State of Tamil Nadu, (1994) 6 SCC 632

¹³ Puttuswamy v Union of India, (2017) 10 SCC 1

as a fundamental right. But the court held that, right to privacy does fall under the ambit of right to life and upheld the act and only struck down some terms of the act.

The question does arise whether having the right to life also gives one the right to die? The penal laws in India criminalizes this right. section 309 of IPC, deals with the offense of committing suicide. But in **P. Rathinam v. Union of India**¹⁴, the court found section 309 violate article 21 and held it to be unconstitutional and void. The court held that when one has the right to live, he also has the right to die. But this decision was overturned in **Gian Kaur v State of Punjab**¹⁵ and upheld the validity of section 309. Later in 2017, a major legislative change occurred, from the Mental Healthcare Act (MHCA) of 2017, where section 309 was decriminalized. And various judgements and interpretations arose to the right to die, like in the landmark case in this matter, though, was **Common Cause (A Regd. Society) v. Union of India (2018)**¹⁶, which created passive euthanasia legal. In this case, a five-judge Constitution bench decreed that Right to Life also holds a person's Right to Die with dignity, and therefore allowed passive euthanasia, i.e. the will of sufferers to withdraw medical assistance in case of sliding into an immutable state of coma.

Today various other rights have been included under article 21 through supreme court judgments. Living with dignity, health, a clean environment, privacy, livelihood, shelter, free and compulsory education, fair trial, social justice, and freedom to travel abroad.

UNITED KINGDOM

In the UK, the right to life is primarily protected under Article 2 of the Human Rights Act 1998, derived from the European Convention on Human Rights. England had certain rights recognized in 1215, in the Magna Carta signed by King John. The right to a fair trial, protection from unlawful imprisonment, freedom of the church, and limitations on royal power and taxes were some of the rights. It was later in 1688, the Bloodless Revolution or the Glorious Revolution with a goal to establish Parliamentary supremacy over Monarchy and this led to the establishment of the Bill of Rights in 1689, that created a constitutional monarchy that had limited royal power.

“As to how personal freedom is maintained in England as against the Executive, the words of the Magna Carta are clear enough, viz., that no man can be deprived of his personal freedom save ‘by the law of the land’. Though there is no constitutional guarantee safeguarding freedom, it is safeguarded by the ordinary law itself.”¹⁷

The right to life was not specifically discussed in the acts of the United Kingdom and later in 1998 after the establishment of the human right act 1998, the right to life was also regarded as a right.

Article 2: *Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defense of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

¹⁴ P. Rathinam v. Union of India, 1994 SCC (3) 394

¹⁵ Gian Kaur v State of Punjab, 1996 AIR 946

¹⁶ Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1

¹⁷ Commentary on the Constitution of India, Volume 5, P. 4674

(c)in action lawfully taken for the purpose of quelling a riot or insurrection¹⁸

UNITED STATES OF AMERICA

In the USA the right to life is regarded as a foundational principle and inalienable right. Now it is protected by the fourteenth amendment to the constitution. They follow the due process of law and not the procedure established by law. It keeps in mind both procedural due process and substantive due process while following legal procedures. In **Joint Anti-Fascist Refugee Committee v Mc Grath¹⁹**, stated that due process requires that before a person is deprived of life, liberty or property he must be given a notice of the case. The American courts have also recognized, right to privacy, marriage, property, and interstate travel to be falling under the right to life.

ANALYSIS

We have looked into how the right to life and personal liberty has evolved in India and how it functions in the UK and U.S.A. The article 21 of the Indian constitution deals with right to life and personal liberty. Unlike the US which follows due process of law, India follows procedure established by law. The article 21 has been evolved with judicial interpretations and has included various other rights in it. The US till today follows the due process of law as it is more productive in protecting fundamental rights, whereas the procedure established by law is more stringent. In India we have the procedure established by law to give supremacy to the parliament and limited power to the judiciary for judicial review. It is the same case with the UK as well, which follows procedures established by laws.

Yes, this fundamental right, though guaranteed, has its own restrictions. But the judiciary has played a significant role in balancing the societal interest and legislative interest. It has aimed at protecting both the interests through interpretations. Each country has its own history and emergence of law. We can only compare how the laws are working in other countries to get an idea before we make laws here. The due process may have better functioning in the USA and the procedure established by law may be only suitable for India.

CONCLUSION

The paper has discussed on Article 21 right to life and personal liberty in India. We have understood how important article 21 is one's life. Every country deals with the right and is given utmost importance. The judiciary has played a crucial role in interpreting article 21 and including various other rights under it.

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