

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 4 | Issue 3**

---

**2021**

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Sacred Concept of Liberty in India

---

SUVANSH MAJMUDAR<sup>1</sup>

## ABSTRACT

*The idea of individual freedom is anything but a straightforward or disconnected issue. Its security through law definitely clashes with other significant qualities. Accordingly, in this paper, I will in general illuminate the current referencing of individual freedom in the Constitution of India. Likewise, the light of giving equity to each resident of India. The article talks about the concept of liberty in India. According to the constitution, the protection of our liberty is the responsibility of our law. Personal Liberty includes right to privacy, right against cruel punishment, right to fair trial, right to travel abroad, etc. The article mentions various types of liberty and different meanings given to it by different philosophers. The article has talked about the constitutional provisions related to it. The author has mentioned the reasonable restrictions under it in brief. Further, it talks about the landmark cases, various judgements of Supreme Court on this concept. It also talks about the evolution of law related to liberty. The author concluded by mentioning some of the safeguards that are essential for the protection of liberty.*

**Keywords:** Liberty, Freedom, Article 21, Maneka Gandhi Case, Reasonable Restrictions.

## I. INTRODUCTION

In layman language, liberty means absence of restraint. But this is not true because according to today's society, no one can be given a right to do anything. So, this concept is limited by social principles and laws of the states.

Personal liberty is the liberty of a creature to perform as one pleases except for individuals fetters compulsory by laws and codes of conduct of the culture in which one lives to safeguard the physical, moral, political, and monetary welfare of others. For instance, liberty of a particularized country which consists in the rule of locomotion, of altering situation, or removing his individuality to at all point his be the owner of inclination may direct, without term or restraint, if not by the manner customary by law. The as it should be to individual liberty is one of the generally essential being civil rights as it affects the of the essence fundamentals of an individual 's material freedom. If the precise to go is the heart of society, the exactly to liberty is the essence of creature existence. Operate has not in words of one

---

<sup>1</sup> Author is a student at Amity Law School Noida, Amity University Uttar Pradesh, India.

syllable to live, but to live benevolently and income to a great degree method breathing a moral, honorable and content life. People has a honorable craft to go or perform his task in the common life.

## II. CONCEPT OF LIBERTY

The idea of liberty means the freedom on the activities of Indian nationals. This is one of the oldest concepts to be protected by national courts. The Magna Carta also provided that no free man shall be taken or imprisoned except by the law of land. 'Liberty' has been given a very wide meaning in the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the US Constitution. In contrast to this, Article 21 of our Indian Constitution qualifies 'liberty' by 'personal' which means that the scope of liberty is narrower in India than in US. But it has been developed over the time through various judgements given the Supreme Court of India.<sup>2</sup>

Liberty is derived from the Latin word 'Liber' that means 'absence of restraint'. Various philosophers have defined it differently. Few of the definitions are<sup>3</sup>:

- **Gettell** defined it as, "*Liberty is the positive power of doing or enjoying those things which are worthy of enjoyment and work.*"
- **C. D. Burns** said, "*Liberty is to grow to one's natural height and to develop one's ability.*"
- **Laski** defined it as, "*Liberty is the larger maintenance of that atmosphere in which men have the opportunity to be at their best selves.*"

Liberty is limited by the social norms and laws of the state. It is simply the power of picking, thinking and addressing oneself, autonomy from control or limit. It is the quality individuals need to control their own actions. Taken together, it ought to be seen that opportunity exists not just without impediments yet rather inside seeing possibilities as well. "Liberty is the consequence of Rights. It is the most outrageous opportunity to do needed things within any event controls and rules consonant with a well – mentioned society."<sup>4</sup>

Life would be meaningless without movement, and it would not climb above the level of animals without the use of human abilities. Individual liberty is a basic requirement. Individuals are protected against the majority's tyranny. It sets a baseline degree of intellectual, philosophical, spiritual, and economic diversity in a community to ensure that the optimal

---

<sup>2</sup> Liberty: Definition, Features, Types and Essential Safeguards of Liberty, available at: <https://www.yourarticlelibrary.com/essay/liberty-definition-features-types-and-essential-safeguards-of-liberty/40364>.

<sup>3</sup> Concept of liberty, available at: <https://www.davuniversity.org/images/files/study-material/Liberty.pdf>.

<sup>4</sup> Liberty - Slide Share, Available at: <https://www.slideshare.net/>.

solution emerges from the free play of ideas. Individual liberty is critical for every civilization that wishes to progress, whether economically, philosophically, spiritually, or materially.<sup>5</sup>

### III. VARIOUS KINDS OF LIBERTY

1. **Natural Liberty**, which means that it is the natural right of a man to be free without any chains as he is born free.
2. **Civil Liberty**, which a man gets being a part of the society. It may include liberty to express our views, religious liberty etc.
3. **Political Liberty**, which gives liberty to actively participate in the administration of the state. It may include right to be elected, right to vote, etc.
4. **Economic Liberty**, it means security from unemployment, poverty and other such issues. It includes right to get reasonable wages, right to work, etc.
5. **National Liberty**, it means every nation is free from any external or internal control with some exceptions and it has right to establish a sovereign state.
6. **Religious Liberty**, India, being a secular state provides the liberty to adopt any religion to its citizens and the state won't interfere with the religious affairs.
7. **Moral Liberty**, which means that an individual has liberty to act according to his inner consciousness.
8. **Individual Liberty**, it means liberty to do anything which does not disturb or affect others.<sup>6</sup>

### IV. CONSTITUTION AND LIBERTY

The most important Article 21 talks about the 'Protection of Life and Personal Liberty'. It says, "*No one shall be deprived of his life and personal liberty except according to the procedure established by law.*" These rights are available to all the people including non-citizens.<sup>7</sup>

Article 5 of Human Rights Act, 1998 also states that, "*Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the few cases and in accordance with a procedure prescribed by law.*" It protects individual's freedom from unreasonable detention. It ensures right to liberty and security.

**Article 21** of the Constitution of India is the vault of the other Critical Rights guaranteed by

---

<sup>5</sup> Kharak Singh v State of U.P AIR 1963 SC 1295

<sup>6</sup> Supra Note 3

<sup>7</sup> Article 21: Meaning & Scope of Protection of Life & Personal Liberty, available at: <https://blog.ipleaders.in/article-21/>.

the Indian Constitution. The High Court has drawn liberal understanding of Article 21 and given multi-layered definitions to Article 21.

a) **Right to clean the environment, "Right to clean environment"** - Article 21 includes justification to live existence of dignity in fit environment with respectable cleanliness system and free of pollution.<sup>8</sup>

b) **Right to legal aid**, court case be capable of befall unthinkably exclusive touching the civil liberties of destitute people to gain their hardly an average claims adjudicated in the courts of law. In view of the same, the Supreme court has provided liberty to inferior people to harness to the pomp for free above-board army and it shall be the job of the ceremonial to bestow assistance to such needy people and own their claims adjudicated without burden of official fees and expenses. as it should be to free authorized advance has been seized to be the deep-seated correct and it is the import tax and obligation of any check risk to notify the accused about his proper to free above-board aid. The fit to quick distress has too been seized as incontrovertible correct of every city dweller of the country.<sup>9</sup>

c) **Right to privacy**- The Supreme Court derived the right to privacy from Article 21 and several other constitutional articles, as well as the Directive Principles of State Policy. Although, no single statute confers a crosscutting 'horizontal' right to privacy, several legislations have provisions that either implicitly or explicitly protect this right.

d) **"Right of prisoners and entitlement against illegitimate detention"** - The Article 21 is existing to every and every one and no single to the citizens of India. It recognizes the constitutional rights of the arrested people by as long as an impartial and satisfactory machinery to be followed in detention of people hence that no persona is illegally detained.

e) **Right to go abroad** - The Supreme Court, in *Satwant Singh Sawhney v. Assistant Passport Officer*<sup>10</sup> New Delhi, interpreted the word "personal liberty" to include the right to go abroad within the meaning of Article 21. The legality of Section 10(3)(c) of the Passport Act 1967, which authorised the government to confiscate a person's passport in the public interest, was challenged before a seven-judge Supreme Court Bench in *Maneka Gandhi v. Union of India*<sup>11</sup>.

f) **"Right to disclosure of dreadful diseases"** - Every self has been apprehended permitted for the entire human being constitutional rights plus the perfectly to be told about any dreadful and deadly disease.

---

<sup>8</sup> Vellore Citizens' Welfare Forum v. Union of India: 1996 (5) SCC 647).

<sup>9</sup> Hussainara Khatoun vs State of Bihar: declare 1979 SC 1369, and Khatri v. State of Bihar: 1981 SCC (1) 627

<sup>10</sup> Satwant Singh Sawhney v. Assistant Passport Officer 1967 AIR 1836, 1967 SCR (2) 525

<sup>11</sup> Maneka Gandhi v. Union of India 1978 AIR 597, 1978 SCR (2) 621

g) **Right Against Handcuffing** - Handcuffing has been deemed prima facie inhumane, irrational, overly harsh, and, on the surface, arbitrary. It was deemed unjustified and in violation of Article 21.

The Supreme Court ruled in *Prem Shankar v. Delhi Administration*<sup>12</sup> that the Rules requiring every under-trial accused of a non-bailable offence punishable by more than three years in prison to be handcuffed were unconstitutional. The Court decided that handcuffing should only be used when there was a “clear and present danger” of the accused breaking free from police control while on trial.

h) **Right Against Solitary Confinement** - It has been decided that a convict's fundamental rights are not completely stripped from him, and that his conviction does not turn him into a non-person whose rights are subject to the whims of the prison administration. As a result, any severe penalty imposed inside the prison system is contingent on the adherence of procedural safeguards.

The petitioner in *Sunil Batra v. Delhi Administration*<sup>13</sup> was sentenced to death by the Delhi session court, and his appeal to the high court was pending. During the pendency of the appeal, he was held in Tihar Jail. He claimed that he had been held in solitary confinement following his conviction by the session court.

**Article 21:** No person shall be deprived of his life or personal liberty except according to procedure established by law. The Article blocks the difficulty of the above rights other than according to a technique set up by law. Article 21 thinks about the Magna Carta of 1215, the Fifth Correction to the American Constitution, Article 40(4) of the Constitution of Eire 1937, and Article XXXI of the Constitution of Japan, 1946.

Article 21 applies to standard individuals. The right is open to every person, occupant or outcast. Subsequently, even a pariah can ensure this right. It, regardless, doesn't entitle an untouchable alternative to stay and get familiar with India, as referred to in Article 19 (1) (e).<sup>14</sup>

## V. REASONABLE RESTRICTIONS

- "The principal prerequisite that there should be a law in presence to legitimize an infringement on protection is an express necessity of **Article 21**. For, no individual can be

---

<sup>12</sup> Prem Shankar v. Delhi Administration AIR 1980 SC 1535

<sup>13</sup> Sunil Batra v. Delhi Administration AIR 1978 SC 1675

<sup>14</sup> Article 21 of the Constitution of India – Right to Life and Personal Liberty, Available at:<https://www.lawctopus.com/>.

denied his life or individual freedom besides as per the method set up by law. The presence of law is a fundamental prerequisite."

- As far as a genuine state point, guarantees that the nature and substance of the law which forces the limitation falls inside the zone of sensibility ordered by **Article 14**, which is an assurance against subjective state activity. The quest for a genuine state point guarantees that the law doesn't experience the ill effects of show assertion.

- The methods which are embraced by the council are relative to the item and requirements tried to be satisfied by the law. Proportionality is a fundamental feature of the assurance against discretionary state activity since it guarantees that the nature and nature of the infringement on the right isn't unbalanced to the reason for the law.<sup>15</sup>

- **Under Article 19(2)** reasonable restrictions can be constrained on the option to talk uninhibitedly of talk and verbalization considering a real worry for the security of the State. In any case, the articulation "security" is a critical one. The articulation "security of the state" insinuates just to veritable and irritated sorts of public solicitation for instance rebellion, waging war against the State, revolt and not typical breaks of public solicitation and public security, for instance unlawful social occasion, revolt, affray.

- To keep up the sway and honesty of a state is the great obligation of the public authority. Considering, the right to speak freely of discourse and articulation can be confined so as not to allow anybody to challenge power or to allow anybody to lecture something which will bring about danger to the honesty of the country.

- **Under Article 19(6)** the public authority may force limitations upon the opportunity to rehearse any calling in light of a legitimate concern for the overall population, and further, the public authority may make laws according to expert or specialized capabilities for rehearsing any calling and the public authority will not be banned from doing any business or exchange, industry or administration.

## VI. EVOLUTION OF LAW RELATED TO IT

It was generally believed that the fundamental rights are available only against the State and could not be invoked against the non-State entities or individuals. In *Vidya Verma v. Shiv Narain Verma*<sup>16</sup>, court held that a person must seek remedy under the ordinary law and not under Article 21 if his right to personal liberty is infringed by a private individual. But instances

---

<sup>15</sup> What are the 'reasonable restrictions' that can be put on the fundamental Right to Privacy? Available at: <https://scroll.in/>, .

<sup>16</sup> *Vidya Verma v. Shiv Narain Verma* AIR 1956 SC 108: (1955) 2 SCR 983.

are available where this right has been invoked against private persons also. It is argued that Article 21 should be given the widest interpretation possible and should not be restricted to State action only.

In the case of *A. D. M. Jabalpur v. Shivkant Shukla*<sup>17</sup>, also known as Habeas Corpus case, the Apex Court observed that Article 21 was the only repository of the right to life and personal liberty and if it got suspended by the presidential order under Article 359, the detainee would have no right to file for a writ petition for challenging the legality of his detention. This resulted in denial of the cherished right to personal liberty guaranteed to the citizens. Hence, the Constitutional Amendment Act, 1978 amended Article 359 through which the fundamental right guaranteed by Article 21 would not be suspended when the proclamation of emergency is in operation.

## VII. CASE LAWS

- ***Sunil Batra v. Delhi Administration***<sup>18</sup> the High Court repeated with the endorsement of the above perceptions and held that the "right to life" incorporated the option to have a solid existence to appreciate all resources of the human body's thriving conditions. It would even incorporate the right to security of an individual's custom, culture, legacy and all that offers significance to a man's life. It incorporates the right to live in harmony, to rest in harmony and the option to rest and wellbeing.

- ***Maneka Gandhi vs. Union of India***<sup>19</sup> For this situation, it was deciphered by the High Court which gave another measurement and part of Article 21 of the Constitution. It was held by the High Court that the right to life isn't simply restricted to actual rights yet in addition fuses the right to live with human respect.

- ***Kharak Singh vs. State of Uttar Pradesh***<sup>20</sup> this case, Article 21 of the Constitution of India, 1949, was deciphered by the High Court and held that the term 'Life' isn't the simple presence of a living being, it is more than that. The right to everyday routine is likewise abused when any experiencing being is denied any appendage by which that person makes the most of their life, or speaks with the external world.

- ***State of Maharashtra vs. Prabhakar Pandurang***<sup>21</sup>, For the present circumstance, the applicant formed a book while he was in his sentence and referenced to send his book to

---

<sup>17</sup> A. D. M. Jabalpur v. Shivkant Shukla AIR 1976 SC 1207.

<sup>18</sup> Supra Note 13

<sup>19</sup> Supra Note 11

<sup>20</sup> Supra Note 5

<sup>21</sup> 1966 CRI. L. J. 311



his loved one for circulation. The request was denied. The Court held that this renouncing is considered as violative of Article 21 of the Indian Constitution, each individual has an advantage to form a book.

- **D.K. Basu vs. State of West Bengal** <sup>22</sup>, For the current condition, the Hon'ble High Court of India held that each arrestee enjoyed their benefits and also set out the standards to be followed to keep a person. In the event that the rules are not followed, it's anything but a show which is violative of the plans put down in Article 21 of the Constitution of India, 1949.<sup>23</sup>

For this situation, interestingly, the inquiry was raised whether the right to security could be inferred from the current basic rights, for example, Article 19(1)(d) of the Constitution, Article 19(1)(e) of the Constitution, and Article 21 of the Constitution was brought up in the courtroom. The seven-judge seat held that Article 21 of the Indian Constitution does exclude the right to protection however Equity Subba Rao however was in the minority in the judgment yet prepared for the right to security to be joined in Article 21 of the Constitution of India, 1949.

## VIII. CONCLUSION

In India the conception of liberty has traditional other added extensive interpretation. The Supreme court of India has cast off the view that liberty denotes only abandon from corporal restraint; and has apprehended that it encompasses folk's civil rights and privileges that encompass stretched been important as mortal crucial to the decorous pursuit of happiness by free men.

With the establishment of perception of substantive and routine anticipated course in Article 21, the complete that fairness which is incorporated in the ideology of actual fairness can be announce into Article 21.

The perception of private liberty is not an effortless or solitary issue. Its fortification through regulation inexorably conflicts with other key values. private liberty is an unusually broad term, around in cooperation elemental Constitutional civil rights such as autonomy from regime intrusions into homes and the aptly of citizens to comprise decisions about marriage, contraception and abortion and excluding anyway clear and arguable fewer important issues. in this manner the doctrine of unpretentious acceptability are powerfully high and dry in Article 21 of the Constitution of India. With the establishment of perception of substantive and routine

---

<sup>22</sup> AIR 1996 SC 935

<sup>23</sup> Life, liberty, and privacy under Article 21 of the Constitution of India, 1949, *Available at*: <https://blog.ipleaders.in/>, (Last visited on 18 June, 2021).

anticipated course in Article 21, the complete that fairness which is incorporated in the ideology of actual fairness can be announce into Article 21

## IX. SUGGESTIONS

The courts have expanded the concept of liberty through its various judgements and are still trying to expand the application and scope of Article 21 so that citizen's rights are protected every time. India, being one of the largest democracies has provided these safeguards for the protection of liberty of the people. It is through the joint efforts that the nation is successful to protect the rights of its people and will be able to ensure this in future only when co-operation exist between people and the government.

There are few of the safeguards that are essential for the protection of liberty which are as follows: -

1. **Democratic government**, which is best possible safeguard of liberty as it is the government of the people, by the people and for the people that ensures the people's liberty to express their views, thoughts and criticize the government.

2. **Fundamental Rights** act as a shield for protecting our freedom and ensures that people enjoy their liberty. Rights and liberties are described as the two sides of the same coin and without rights, there is no place of liberty.

3. **Separation of Power** will help in preventing excessive use of power by one organ of government and the power will be distributed among the three organs so that people can enjoy more liberty.

4. **Rule of Law** should prevail. People should be punished on infringement of law. Laws should be equal for everyone. Equality should exist over arbitrariness.

5. **Absence of special privileges:** Everyone should have equal rights; no one should be given special privileges because it will impact the liberty of other people.

6. **Honest and free press:** Mass media is considered to be the guardian of liberty. Press should be honest and free so that they can prevent government from becoming irresponsible. Professor Laski has quoted, "*The people without reliable news are sooner or later a people without the basis of freedom.*"

7. **Love for Liberty:** There should be unconditional and unlimited love for liberty in the hearts of the people, so that they can fight for it whenever someone attacks on their liberty.

\*\*\*\*\*

**X. REFERENCES**

1. <https://www.yourarticlelibrary.com/essay/liberty-definition-features-types-and-essential-safeguards-of-liberty/40364>. (Last visited on 23 June, 2021).
2. <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>.(Last visited on 24 June, 2021).
3. Liberty, *Available at*: [https:// science.jrank.org /](https://science.jrank.org/), (Last visited on 22 June, 2021).
4. Two concepts of freedom, *Available at*: <https://www.open.edu/>, (Last visited on 21 June, 2021).
5. Article 21 of the Constitution of India – Right to Life and Personal Liberty,*Available at*:<https://www.lawctopus.com/>, (Last visited on 19 June 2021).
6. What are the ‘reasonable restrictions’ that can be put on the fundamental Right to Privacy?*Available at*: <https://scroll.in/>, (Last visited on 23 June, 2021).
7. Life, liberty, and privacy under Article 21 of the Constitution of India, 1949, *Available at*: <https://blog.ipleaders.in/>, (Last visited on 24 June, 2021).

\*\*\*\*\*