

## Guardians of Liberty: The Expansive Role of Article 21 in Protecting Human Rights in India

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**Abstract:** This paper examines the pivotal role of Article 21 of the Indian Constitution in safeguarding human rights, specifically the right to life and personal liberty. It explores how the judiciary has interpreted and expanded the scope of Article 21 to encompass a wide array of fundamental rights, thereby limiting the arbitrary exercise of state power. Through a qualitative analysis, the research investigates the extent to which Article 21 has served as a bulwark against state overreach and has been instrumental in promoting justice and equity. The study delves into landmark Supreme Court judgments to illustrate the evolving judicial perspective and its implications for the protection of individual rights in India. By assessing the jurisprudential developments, this paper aims to provide a comprehensive understanding of the transformative potential of Article 21 and its significance in the Indian legal framework.

**Keywords:** Article 21, Constitution of India, Fundamental Rights, General Law, Protection of Life and Personal Liberty, State Action and Remedies.

### Introduction

Human rights generally defined as fundamental entitlements inherent to all human beings, irrespective of nationality, race, gender, religion, or any other status. These rights are universal, inalienable, and interdependent. However, their interpretation and theoretical underpinnings vary across different schools of law, illustrating the multifaceted nature of this crucial concept. Like, the natural law tradition posits that human rights are derived from universal moral principles and human nature. These laws can be discovered by use of reason. This perspective is rooted in the works of philosophers such as Thomas Aquinas and John Locke. Aquinas argued that natural law, a reflection of divine order, underpins human rights, suggesting that these rights are discoverable through reason and are universally applicable.<sup>1</sup> Locke further developed this idea, asserting that individuals possess natural rights to life, liberty, and property, which governments are established to protect.<sup>2</sup> This tradition emphasizes the intrinsic nature of human rights, suggesting they exist independently of legal systems and governmental acknowledgment.

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<sup>1</sup> Angier, T. (2021). *Natural Law Theory*. Cambridge: Cambridge University Press. doi:10.1017/9781108580793.

<sup>2</sup> Ibid.

Contrary to the natural law tradition, the positivist school of law views human rights as constructs of legal systems and state authority. Legal positivists, such as John Austin, argue that rights are valid only if they are enacted by legitimate legislative bodies. According to this perspective, human rights are not inherent but are granted and defined by legal statutes and conventions. Hans Kelsen further elaborated this view, proposing that law is a normative system based on a hierarchy of norms, where human rights are legal norms derived from the fundamental “grundnorm” of a given legal system. Positivism underscores the importance of formal recognition and institutionalization of human rights within legal frameworks.

The positivist school of law offers a distinct approach to understanding human rights, emphasizing their nature as constructs of legal systems rather than inherent moral principles. Legal positivism asserts that law is a set of rules and norms created by legitimate authorities, and its validity is not dependent on moral considerations but on adherence to formal procedures. Key figures in the positivist tradition include John Austin and Hans Kelsen, who provide foundational insights into this perspective. Austin’s theory had similarities with views developed by Jeremy Bentham, a prominent utilitarian, whose theory could also be characterized as a “command theory.” Jeremy Bentham, a prominent utilitarian, famously critiqued natural rights as “nonsense upon stilts,” arguing that rights should be evaluated based on their utility in promoting the greatest happiness for the greatest number.

John Austin posited that law is a command issued by a sovereign backed by sanctions, and thus, rights are granted and defined by these commands.<sup>3</sup>

The existence of law is one thing; its merit or demerit is another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry. A law, which actually exists, is a law, though we happen to dislike it, or though it varies from the text, by which we regulate our approbation and disapprobation.<sup>4</sup> (Austin 1832: Lecture V, p. 157).

Legal positivism does not deny that moral and political criticism of legal systems is important, but insists that a descriptive or conceptual approach to law is valuable, both on its own terms and as a necessary prelude to criticism.

Andrew Halpin has argued (2013) that Austin shaped the nature of modern analytical jurisprudence and legal positivism by his choice to exclude legal reasoning from his discussion of “jurisprudence.”<sup>5</sup>

From a positivist-utilitarian perspective, human rights are justified and valuable insofar as they contribute to social welfare and public good. This means that the creation and enforcement of rights are contingent upon their utility in enhancing collective well-being. While utilitarian also recognizes the importance of individual rights, as they are essential components of a utilitarian society. J. S. Mill argued that protecting certain fundamental rights, such as freedom of speech and personal liberty, ultimately serves the greater good by fostering individual development and social progress. Thus, within a positivist framework, rights are instrumental—they are valuable not in themselves but for the utility they provide to society.<sup>6</sup>

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<sup>3</sup> Austin, J. (1832). *The province of jurisprudence determined*. Cambridge: Cambridge University Press.

<sup>4</sup> Austin, J. (1832). *The Province of Jurisprudence Determined*. Cambridge: Cambridge University Press, 1995.

<sup>5</sup> Halpin, A. (2013). Austin’s Methodology? His Bequest to Jurisprudence. In M. Freeman & P. Mindus (Eds.), *The Legacy of John Austin’s Jurisprudence* (pp. 15-40). Dordrecht: Springer.

<sup>6</sup> Mill, J. S. (1863). *Utilitarianism*. Parker, Son, and Bourn.

Hans Kelsen's "Pure Theory of Law" further advanced legal positivism by seeking to separate law from morality and other social sciences. Kelsen's work focused on the formal structure of legal systems and the hierarchical nature of legal norms. Central to Kelsen's theory is the concept of the "grundnorm" or basic norm, an assumed foundational rule from which all other legal norms derive their validity.<sup>7</sup> The grundnorm itself is not validated by higher norms but is presupposed to exist within a legal system. This provided a more structured and systematic approach to understanding the source of legal authority. Kelsen emphasized the importance of understanding law as a system of norms rather than a set of commands. He argued for a "pure" science of law that analyzes the structure and function of legal norms independently of moral, social, or political considerations. This approach aimed to provide a clear and objective framework for legal analysis.

H.L.A. Hart is perhaps the most influential figure in the development of legal positivism after Austin. In his landmark book, "The Concept of Law" (1961), Hart introduced several key innovations that addressed the limitations of Austin's command theory. He argued that legal rules and the validity of laws are grounded in social practices or social fact and the acceptance of these rules by a community, particularly by the officials who apply and enforce the law. He distinguished between primary rules, which impose duties, and secondary rules, which provide methods for the creation, alteration, and adjudication of primary rules.<sup>8</sup> This distinction highlighted the complexity of legal systems and the necessity for rules about rules (secondary rules), which Austin's framework did not adequately address. Hart introduced the concept of the "rule of recognition," a fundamental secondary rule that provides criteria for identifying valid legal norms within a given legal system. The rule of recognition is accepted by officials and serves as the ultimate source of legal validity. This concept replaced Austin's notion of a sovereign and provided a more nuanced understanding of legal authority. Hart emphasized the internal perspective of law, where individuals within a legal system accept and follow rules not merely out of fear of sanctions but because they recognize these rules as standards of behavior. This contrasted with Austin's focus on external coercion and acknowledged the normative dimension of legal systems.

**Joseph Raz**, a prominent contemporary legal positivist, has contributed significantly to the theory of legal authority and the interpretation of legal norms. Raz's work builds on and critiques the ideas of Hart and Kelsen, offering a more detailed account of legal systems and their operation. In "The Authority of Law" (1979) and other works, Raz argued that law claims legitimate authority and is characterized by systematic organization and coherence. He introduced the "service conception" of authority, which posits that legal authorities are justified in issuing directives if they help individuals better conform to reasons that already apply to them.<sup>9</sup> This approach links legal authority to the practical reasoning of individuals and the benefits provided by following the law. He also emphasized the importance of interpretation in understanding legal texts and the role of legal institutions in maintaining the structure of legal systems.

Meanwhile, the sociological school of jurisprudence provides a framework for understanding the intricate interplay between law and society. This approach emphasizes that law is not merely a set of abstract rules but a social institution deeply embedded within and responsive to the fabric of societal norms, values, and power dynamics. This perspective acknowledges that society is composed of various groups with differing interests, and these interests often

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<sup>7</sup> Kelsen, H. (1967). *Pure theory of law* (M. Knight, Trans.). University of California Press.

<sup>8</sup> Hart, H. L. A. (1961). *The concept of law*. Oxford University Press.

<sup>9</sup> Raz, J. (1979). *The authority of law: Essays on law and morality*. Oxford University Press.

conflict. The work of Karl Marx also significantly influences the understanding of group conflict within sociological jurisprudence.<sup>10</sup> The law reflects the collective conscience of society, as posited by Emile Durkheim, who argued that laws are expressions of social norms and collective values. When societal norms change, the legal system must adapt to remain relevant and effective.<sup>11</sup> Max Weber made a distinction between formal and substantive rationality. Formal rationality refers to the systematic and procedural aspects of law, while substantive rationality pertains to the law's alignment with societal values and norms.<sup>12</sup>

Roscoe Pound, a leading figure in American sociological jurisprudence argued that law should be understood within its social context and that rights must evolve to address societal needs and issues.<sup>13</sup> He emphasized the role of law in achieving social justice and harmony.<sup>14</sup>

The relationship between law and power dynamics is another critical area of focus within sociological jurisprudence. Michel Foucault's analysis of power and knowledge provides valuable insights into how legal systems operate.<sup>15</sup> Foucault argued that law is a mechanism through which power is exercised and knowledge is constructed and disseminated. Legal norms are thus seen as instruments of power that can control, regulate, and shape social behavior. Thus, this school views human rights as dynamic and adaptable, shaped by social conditions and public interests.

Modern applications of sociological jurisprudence can be seen in various legal reforms and judicial approaches that seek to address social injustices and inequalities. For example, Critical Race Theory<sup>16</sup> and Feminist Legal Theory<sup>17</sup> draw on sociological insights to highlight how legal systems can perpetuate racial and gender inequalities. These theories argue for a more inclusive and equitable legal framework that considers the experiences and perspectives of marginalized groups.

Human rights are universally acknowledged as fundamental, yet they are subject to varying interpretations across different schools of law. In the natural law tradition, they are seen as inherent and universal principles rooted in morality or divine law. On the other hand, positivism emphasizes the importance of legal recognition and formal enactment of human rights within specific legal systems. Sociological jurisprudence considers the social functions of human rights, while critical legal studies critique the power dynamics inherent in human rights discourse.

These diverse perspectives enrich our understanding of human rights, highlighting the complexity and multidimensional nature of this essential concept. Despite the differences in ontological and epistemological foundations among various schools of law, there is a consensus on the importance of human rights. Whether one subscribes to natural law theory, positivism, legal realism, or any other legal philosophy, the recognition of human rights as crucial for a just and equitable society is pervasive.

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<sup>10</sup> Marx, K. (1967). *The Communist manifesto*. Penguin Classics.

<sup>11</sup> Durkheim, E. (1997). *The division of labor in society*. Free Press.

<sup>12</sup> Weber, M. (1978). *Economy and society*. University of California Press.

<sup>13</sup> Pound, R. (1943). *A survey of social interests*. Harvard Law Review, 57(1), 1-39.

<sup>14</sup> Pound, R. (1911). *The scope and purpose of sociological jurisprudence*. Harvard Law Review, 24(8), 591-619.

<sup>15</sup> Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Vintage Books.

<sup>16</sup> Unger, R. (1983). *The Critical Legal Studies Movement*. Harvard University Press.

<sup>17</sup> MacKinnon, C. (1989). *Toward a Feminist Theory of the State*. Harvard University Press.

In essence, while the philosophical underpinnings and justifications for human rights may vary among different schools of law, there exists a broad consensus on their essential role in upholding the dignity and autonomy of individuals. The denial or infringement of human rights not only undermines the principles of fairness and justice but also poses a direct threat to the inherent worth and integrity of every human being.

### **State and Human Rights**

The discourse on human rights has significantly influenced the drafting and content of constitutions in many countries around the world. As a result, numerous constitutions now explicitly incorporate provisions that enshrine fundamental human rights and freedoms. These constitutional provisions serve as the foundation for the legal protection and recognition of human rights within a particular jurisdiction. Constitutions typically establish both substantive and procedural frameworks for the protection of human rights.

Substantive provisions within constitutions delineate the nature and scope of individual rights and freedoms, such as the right to life, liberty, equality, privacy, and freedom of expression. These substantive rights are often accompanied by provisions that prohibit discrimination, torture, arbitrary detention, and other forms of human rights abuses. By embedding these rights directly into the constitution, countries establish a legal framework that sets clear standards for the protection of human dignity and individual liberties.

In addition to substantive provisions, constitutions also establish procedural mechanisms for the enforcement and protection of human rights. Procedural provisions within constitutions outline the processes and procedures by which individuals can assert their rights, seek redress for violations, and hold state actors accountable for human rights abuses. These procedural safeguards may include guarantees of due process, fair trial rights, access to justice, and the independence of the judiciary. By establishing robust procedural mechanisms, constitutions ensure that individuals have effective means of enforcing their rights and accessing remedies for violations.

Furthermore, human rights typically held against the state. When considering how a state can deny individual rights, the focus shifts to the legal procedures that govern such actions. This leads us to the debate surrounding due process of law versus procedure established by law. Due process of law refers to the principle that individuals are entitled to fair and impartial legal proceedings before any deprivation of their rights or property by the state. Due process requires that individuals be given notice of the charges against them, an opportunity to be heard, the right to present evidence and witnesses, and a decision based on legal standards and evidence.

On the other hand, procedure established by law simply means that actions taken by the state are in accordance with existing legal procedures or statutes, regardless of their fairness or impartiality. This approach places emphasis on the legality of government actions rather than their fairness or adherence to principles of justice.

States may justify limitations on individual rights in the name of national security or public order. In some cases, the state may intervene to protect the rights of others from infringement by individuals. For example, the state may impose restrictions on freedom of speech to prevent hate speech or incitement to violence, or it may limit freedom of movement to prevent harm to others. However, such limitations must be necessary and proportionate to

achieve the intended purpose and must be applied in a manner consistent with human rights standards. The distinction between due process of law and procedure established by law is crucial in determining the legitimacy of state actions that may affect individual rights. While both ensure that state actions are conducted within a legal framework, due process goes further by guaranteeing fairness, transparency, and protection of individual rights throughout legal proceedings.

In essence, the debate surrounding due process of law versus procedure established by law underscores the tension between legal formalism and substantive justice. While adhering to legal procedures is important for maintaining order and consistency in the legal system, it is equally essential to ensure that these procedures uphold fundamental principles of fairness, equality, and human rights.

### **Methodology**

The research adopts a qualitative approach to analyze the impact and evolution of Article 21 of the Indian Constitution in the context of human rights protection. The methodology involves conducting an extensive review of existing literature on the Indian Constitution, human rights, and judicial interpretation of Article 21. This includes academic papers, legal commentaries, books, and reports from human rights organizations. It also examines the key Supreme Court judgments that have significantly interpreted and expanded the scope of Article 21. Assessing how these rulings have broadened the understanding of the right to life and personal liberty to include various socio-economic rights and procedural safeguards. Finally, this paper applies the thematic analysis to identify and categorize the different dimensions of the right to life and liberty as interpreted by the judiciary. Themes may include the right to privacy, right to health, right to a clean environment, and protection against arbitrary arrest and detention.

### **The Indian Constitution**

In the United States, public apprehension towards both the legislative and executive branches led to the Bill of Rights (the first ten amendments) being binding on both. This arrangement established the supremacy of the judiciary, contrasting with the British model where Parliament holds primacy. Consequently, US courts possess the authority to declare any law passed by Congress void if it contravenes the Bill of Rights.<sup>18</sup>

In India, public opinion has favored a Bill of Rights since the publication of the Nehru Report during the colonial era. The Indian Constitution, however, enshrined certain fundamental rights in Part III, with Article 13 assigning the judiciary the role of guardian of these rights. Article 13 specifically prohibits the state from enacting laws that abridge the rights conferred by Part III of the Constitution.<sup>19</sup>

To this extent, the Indian Constitution mirrors the American model. However, judicial power relative to the legislature is weaker in India for two reasons. First, while in the US, the judiciary has the prerogative to impose reasonable restrictions on fundamental rights, in India, this power resides with Parliament. Second, the 44th Amendment of 1978 removed the right to property from the list of fundamental rights and relocated it to Article 300A in Chapter IV.

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<sup>18</sup> Call, J. L. (1957). Judicial Review vs. Judicial Supremacy. *Dickinson Law Review*, 62(1), 1957-1958; Kanwar, R. (2022, July 6). Models of Judicial Review in US viz a viz India: Analysis Paving a Path Towards Filling Legislative Lacunas. *Manupatra*. Retrieved from <https://articles.manupatra.com/article-details/Models-of-Judicial-Review-in-US-viz-a-viz-India-Analysis-Paving-a-Path-Towards-Filling-Legislative-Lacunus>

<sup>19</sup> Pandey, J. N. (2005). *Constitutional Law of India* (42nd ed.). Allahabad: Central Law Agency.

As a result, if an individual's property is taken by the executive or legislation, they cannot seek remedy under Article 31. The 45th Amendment Bill made the right to property a legal right rather than a fundamental one.<sup>20</sup>

The legislative supremacy concerning fundamental rights is problematic because the legislature is not infallible.<sup>21</sup> It may be influenced by the majority ideology, potentially threatening India's multicultural fabric. Constitutional safeguards are essential to protect individuals from legislative tyranny.

Additionally, India has amended its fundamental rights and introduced exceptions through Articles 31A, 31B, and 31D to facilitate agrarian reforms and implement the directive principles of state policy. Laws made under the 9th Schedule cannot be invalidated by the courts based on fundamental rights.<sup>22</sup>

The 42nd Amendment introduced fundamental duties, thereby reducing the emphasis on fundamental rights. Unlike the US Constitution, which upholds the natural rights of individuals, the Indian Parliament remains sovereign. However, the judiciary has expanded the interpretation of fundamental rights, especially Article 21. In the landmark *Kesavananda Bharati* case, the Supreme Court established the doctrine of the basic structure, limiting Parliament's power to amend fundamental rights under Article 368.<sup>23</sup>

Moreover, the state can suspend fundamental rights under specific conditions, such as during a national emergency declared under Articles 352 and 356 (for war or external aggression but not armed rebellion). However, the 44th Amendment ensures that Articles 20 and 21 cannot be suspended even during emergencies.

The Indian Constitution, adopted on January 26, 1950, is renowned for its robust framework for protecting human rights. It not only incorporates traditional civil and political rights but also encompasses socioeconomic and cultural rights, making it one of the most comprehensive constitutions in the world in terms of human rights protection.

As such, the core principles of the Constitution, including fundamental rights, are safeguarded from easy amendments, the Constitution can be amended to accommodate changing societal needs and evolving interpretations of human rights. In order to address historical injustices and promote social equality, the Indian Constitution provides for reservation policies in education, employment, and political representation for marginalized communities, including Scheduled Castes, Scheduled Tribes, and Other Backward Classes. The Indian Constitution provides specific protections for minorities, including religious and linguistic minorities. This principle allows different segments of to exercise self-governance in certain areas, especially those directly affecting their identity and interests and preventing majoritarian dominance and fostering mutual respect.

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<sup>20</sup>Singh, M. K. (2019). *Indian Constitution and Government* (1st ed.). Gyan Geeta Prakashan. ISBN: 9789388244022.

<sup>21</sup>Suresh, M. (Year). *The Shifting Scales of Justice: The Supreme Court in Neo-liberal India*. Orient BlackSwan.

<sup>22</sup>Basu, D. D. (2022). *Introduction to the Constitution of India* (26th ed.). Educational Printed.

<sup>23</sup>Supreme Court of India. (2024). Background information on the case and its origins. Retrieved from <https://judgments.ecourts.gov.in/KBJ/?p=home%2Fintro>

### **Fundamental Rights:**

Part III of the Indian Constitution enumerates fundamental rights, which are justiciable and enforceable by the courts. These rights include:

**Right to Equality (Articles 14-18):** Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.

**Right to Freedom (Articles 19-22):** Guarantees freedoms such as speech and expression, assembly, association, movement, residence, and profession.

**Right against Exploitation (Articles 23-24):** Prohibits trafficking, forced labor, and employment of children in hazardous industries.

**Right to Freedom of Religion (Articles 25-28):** Ensures freedom of conscience and the right to profess, practice, and propagate religion.

**Cultural and Educational Rights (Articles 29-30):** Protects the rights of minorities to conserve their culture, language, and educational institutions.

**Right to Constitutional Remedies (Article 32):** Provides for the right to move the Supreme Court for the enforcement of fundamental rights.

### **Analysis of Article 21 of the Indian Constitution**

Article 21 of the Indian Constitution is one of the most significant provisions and has been hailed as the heart and soul of the Constitution. The Indian judiciary has played a pivotal role in expanding the meaning and scope of human rights, particularly through its interpretation and application of Article 21 of the Indian Constitution.

### **Ingredients of Article 21**

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

Prior to Maneka Gandhi's<sup>24</sup> case decision, article 21 guaranteed the right to life and personal liberty to citizen only against the arbitrary action of the executive, and not from legislative action. The State could interfere with the liberty of citizens if it could support its action by a valid law. But after the Maneka Gandhi's decision Article 21 now protects the right of life and personal liberty of citizen not only from the executive action but from the legislative action also.

A person can be deprived of his life and personal if two conditions are complied with,

1. *Firstly, there must be a law and*
2. *Secondly, there must be procedure prescribed by the law, provided that the procedure is just, fair, and reasonable<sup>25</sup>*

Article 21 of the Constitution came up for interpretation number of times before Apex Court, and the Supreme Court dealt with each aspect of Article 21 exhaustively and from a reading of those decisions the following ingredients emerge.

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<sup>24</sup> Maneka Gandhi v/s Union of India. AIR 1978 SC 597.

<sup>25</sup> Maneka Gandhi v/s Union of India. AIR 1978 SC 597.

- **Person**
- **Deprived**
- **Personal Life**
- **Personal Liberty**
- **Procedure Established by Law**

### **Person**

A careful examination of Article 21 of the Indian Constitution reveals that its protections extend to all "persons." This term is not restricted solely to citizens but encompasses every individual, regardless of nationality or circumstances. Consequently, the rights guaranteed under Article 21 apply even to those who are incarcerated. A prisoner does not forfeit the fundamental rights accorded to all individuals under the Constitution merely by virtue of being convicted and imprisoned. Therefore, a prisoner can invoke Article 21 to assert their rights to freedom of expression, the right to read and write, the right to acquire, hold, and dispose of property, and the right against discrimination.

In accordance with Article 367(1) of the Constitution, Section 3(42) of the General Clauses Act is applicable in defining the term "person." According to the General Clauses Act, the term "person" includes both natural persons and juristic persons. This broad definition underscores the extensive scope of protection under Article 21, reaffirming that its guarantees are not limited to citizens alone but are extended to all individuals, thereby ensuring a comprehensive safeguard of human rights.

### **Deprivation**

The second crucial element of Article 21 is that it is triggered only when there is a deprivation of life or personal liberty. The term "deprived" was first examined in the landmark case of *A.K. Gopalan v. State of Madras* (AIR 1950 SC 27). In this case, the Supreme Court held that Article 21 is applicable only in instances of deprivation, understood as "total loss," and that the article did not apply to mere restrictions on the right to move freely.

However, this interpretation of "deprivation" was later refined by the Supreme Court. In *Kharak Singh v. State of U.P.* (AIR 1963 SC 1295), the Court ruled that Article 21 requires legal authority even for restrictions on personal liberty. This significant modification expanded the scope of Article 21, ensuring that any action infringing upon personal liberty, even if not amounting to total deprivation, must be backed by the authority of law.

### **Personal Liberty: Meaning and Scope**

The meaning of the term "personal liberty" was first examined by the Supreme Court in the case of *A.K. Gopalan v. State of Madras* (AIR 1950 SC 27). In this case, the petitioner, A.K. Gopalan, a communist leader, was detained under the Preventive Detention Act, 1950. Gopalan challenged the validity of his detention, arguing that it violated his right to freedom of movement under Article 19(1)(d), which he claimed was an essential aspect of personal liberty guaranteed by Article 21 of the Constitution. He contended that "personal liberty" included the freedom of movement, and therefore, the Preventive Detention Act, 1950, must also satisfy the requirements of Article 19(5). Essentially, Gopalan argued that Article 19(1) and Article 21 should be read together, with Article 19(1) addressing substantive rights and Article 21 addressing procedural rights.

Furthermore, Gopalan argued that the reference in Article 21 to "procedure established by law" meant "due process of law," and that the impugned law did not meet the

due process requirement. However, the Supreme Court rejected both contentions. The Court held that "personal liberty" in Article 21 means nothing more than the liberty of the physical body—specifically, freedom from arrest and detention without legal authority. This interpretation followed the definition provided by constitutional theorist A.V. Dicey, who defined personal liberty as "freedom from bodily restraint and compulsion not sanctioned by law."<sup>26</sup>

The term "liberty" is indeed comprehensive and could include the rights mentioned in Article 19. However, by qualifying it as "personal liberty," the Court narrowed its meaning to align with the English legal concept of "liberty of person." The majority opinion held that Articles 19 and 21 address different aspects of liberty: Article 21 guarantees against the deprivation (total loss) of personal liberty, while Article 19 protects against unreasonable restrictions (partial control) on the right of movement. The Court asserted that the freedoms guaranteed by Article 19 could be enjoyed by a citizen only when they are free, not when their personal liberty is deprived under a valid law.

This restrictive interpretation of "personal liberty" in the Gopalan case was not followed in later decisions by the Supreme Court. In *Kharak Singh v. State of U.P.* (AIR 1963 SC 1295), the Court expanded the scope of "personal liberty," holding that it was not limited to bodily restraint or imprisonment. Instead, it encompassed a wide range of rights that constitute personal liberty, beyond those specified in Article 19(1). In other words, while Article 19(1) deals with specific attributes of freedom, personal liberty under Article 21 includes a broader array of rights that contribute to an individual's overall liberty.

This broader interpretation underscores the significance of personal liberty as a fundamental right, ensuring protection not only from physical confinement but also from any form of restriction on individual freedom that lacks legal authority.

### **Right to Life**

A crucial component of Article 21 is the term "life." The interpretation of "life" was significantly expanded by the Supreme Court in *Kharak Singh v. State of U.P.* (AIR 1963 SC 1295). In this case, the Court held that the expression "life" is not confined to mere bodily restraint or confinement to prison but encompasses something more than mere animal existence.<sup>27</sup>

The Supreme Court ruled that the domiciliary visits by policemen constituted an invasion of the petitioner's personal liberty. The Court asserted that the term "life," as used in Article 21, implies more than mere animal existence.<sup>28</sup> It encompasses the full range of experiences and faculties through which life is enjoyed. Consequently, the protection against deprivation of life extends to all those attributes that contribute to a meaningful and dignified existence.

This broad interpretation of "life" under Article 21 means that the provision equally prohibits any acts that would mutilate the body or cause the amputation of limbs. The Supreme Court's interpretation underscores the notion that the right to life is not merely about physical

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<sup>26</sup> Srivastava, A. K. (2021). Concept of life and personal liberty under Indian Constitution at present time. *Webology*, 18(4), 588-594. ISSN: 1735-188X.

<sup>27</sup> *Kharak Singh vs. State of U.P.*, AIR 1963 SC 1295.

<sup>28</sup> *Ibid.*

survival but includes the right to live with human dignity, encompassing all aspects that make life worth living.

In essence, Article 21's protection of life covers a wide spectrum of human experiences, ensuring that individuals are safeguarded against actions that would impair their ability to live fully and with dignity. This expanded understanding has allowed the judiciary to use Article 21 as a foundation for a wide array of rights essential to the preservation of human dignity and personal liberty.

### **Procedure Established by Law**

An essential component of Article 21 is the "procedure established by law." This concept was notably addressed in *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), where the Supreme Court held that the procedure contemplated in Article 21 could not be unfair or unreasonable. The Court emphasized that the principle of reasonableness, an essential element of equality or non-arbitrariness, must permeate Article 14, like a brooding omnipresence, over the procedure contemplated in Article 21. Therefore, the procedure must pass the test of reasonableness to conform to Article 14. Hence, any procedure that permits the impairment of an individual's right to go abroad without giving them a reasonable opportunity to be heard would be condemned as unfair and unjust.

Thus, Article 21 requires the following conditions to be fulfilled before a person is deprived of their property:

There must be a valid law.

The law must provide a procedure.

The procedure must be just, fair, and reasonable.

The law must satisfy the requirements of Articles 14 and 19, i.e., it must be reasonable.

### **Rights Covered Under Article 21**

**Right to Travel Abroad:** In *Satwant Singh v. Assistant Passport Officer, New Delhi* (AIR 1975 SC 1836), the Supreme Court extended the scope of Article 21, holding that the 'right to travel abroad' is part of personal liberty within the meaning of Article 21.

**Right to Live with Human Dignity:** In *Francis Coralie v. Union Territory of Delhi* (AIR 1981 SC 746), the Court stated that the right to live is not restricted to mere animal existence but means something more than just physical survival.

**Right to Livelihood:** In *Olga Tellis v. Bombay Municipal Corporation* (AIR 1986 SC 180), known as the 'pavement dwellers case,' the Court ruled that the word "life" in Article 21 includes the 'right to livelihood.'

**Telephone-Tapping and Privacy:** In *People's Union for Civil Liberties v. Union of India* (AIR 1997 SC 568), the Court held that telephone tapping is a serious invasion of an individual's right to privacy, which is part of the right to life and personal liberty.

**Right to Shelter:** In *Chameli Singh v. State of U.P.* (1996 2 SCC 549), it was held that the right to shelter is a fundamental right under Article 21.

**Right to Privacy:** In *R. Rajagopal v. State of T.N.* (1994 6 SCC 632), the Court held that the 'right to privacy,' or the right to be let alone, is guaranteed by Article 21.

**Right to Health and Medical Assistance:** In *Paramananda Katara v. Union of India* (AIR 1989 SC 2039), it was held that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting for legal formalities.

**Right to Die - Not a Fundamental Right:** In *Chenna Jagadeeswar v. State of A.P.* (1988 CR LJ 549), it was held that the right to die is not a fundamental right within the meaning of Article 21.

**Right to Pollution-Free Water and Air:** In *Subhas Kumar v. State of Bihar* (AIR 1991 SC 420), the Court held that public interest litigation is maintainable for ensuring enjoyment of pollution-free water and air under Article 21.

**Right to Education:** In *Mohini Jain v. State of Karnataka* (1992 3 SCC 666), the Supreme Court held that the right to education is a fundamental right under Article 21.

**Prisoner's Rights:** In *D.B.M. Patnaik v. State of A.P.* (AIR 1974 SC 2092), the Court held that prisoners retain certain fundamental rights under Article 21.

**Right to Free Legal Aid:** In *M.H. Hoskot v. State of Maharashtra* (AIR 1978 SC 1548), it was held that free legal aid is a fundamental right under Article 21.

**Right Against Solitary Confinement:** In *Sunil Batra v. Delhi Administration* (AIR 1980 SC 1579), the Court held that solitary confinement was violative of Article 21.

**Right to Speedy Trial:** In *Hussainara Khatoon v. Home Secretary, State of Bihar* (AIR 1979 SC 1360), the Court held that the right to a speedy trial is a fundamental right implicit in Article 21.

**Right Against Handcuffing:** In *Prem Shankar v. Delhi Administration* (AIR 1980 SC 1535), the Court held that handcuffing is offensive to human dignity and violative of Article 21.

**Right Against Inhuman Treatment:** In *Kishore Singh v. State of Rajasthan* (AIR 1981 SC 625), the Court held that the use of 'third degree' methods by the police is violative of Article 21.

**Right Against Delayed Execution:** In *T.V. Vatheeswaram v. State of Tamil Nadu* (AIR 1983 SC 361), the Court held that delay in the execution of a death sentence exceeding two years would be sufficient to invoke the protection of Article 21.

**Right to Not Be Compelled to Undergo DNA Testing:** In *Ningamma v. Chikkaiah* (1996 1 SCC 742), the Karnataka High Court held that compelling a person to undergo a blood test without consent violates Article 21.

**Right Against Sexual Harassment:** In *Vishakha v. State of Rajasthan* (AIR 1997 SC 3011), the Court held that sexual harassment violates Article 21.

**Right to Compensation for Custodial Violence:** In *Rudal Shah v. State of Bihar* (AIR 1983 SC 1086), the Court held that compensation can be awarded to victims of custodial violence.

**Right of Children of Women Prisoners:** In *R.D. Upadhyay v. State of A.P.* (AIR 2006 SC 1946), the Court held that children of women prisoners shall be retained with them and given all necessary facilities for their maintenance.

**Rights of Child Offenders:** In *Sheela Barse v. Union of India* (AIR 1986 SC 1773), the Court held that child offenders are entitled to special facilities.

**Prohibition of Public Hanging:** In *A.G. India v. Lachma Devi* (1989 Supp. (1) SCC 264), the Court prohibited public hanging.

**Right to Marry:** In *X v. State of Andhra Pradesh* (AIR 2003 SC 664), the Court held that the right to marry is not suspended if one of the parties is suffering from HIV.

**Right to Bail:** In *State of Haryana v. Bhajan Lal* (AIR 1992 SC 604), the Court held that failure to file a chargesheet within the prescribed period does not extinguish the right to bail.

**Right to Dignified Life:** In *Shakti Vahini v. Union of India* (AIR 2018 Supreme Court 1601) the Court recognized the right to marry a person of choice as part of Article 21, providing protection against honor killings.

**Right to Live with Dignity and LGBTQ+ Rights:** The *Navtej Singh Johar v. Union of India* (AIR 2018 Supreme Court 4321) case decriminalized consensual homosexual acts between adults, reaffirming the right to live with dignity and privacy under Article 21.

Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, has been expansively interpreted by the judiciary to encompass a wide range of rights necessary for leading a dignified life. The Supreme Court of India has played a pivotal role in this process, ensuring that the fundamental rights under Article 21 are not restricted to mere physical survival but include various aspects essential for human dignity and freedom.

## **Conclusion**

Over the years, the Supreme Court of India has expansively interpreted Article 21, transforming it into a cornerstone of fundamental rights protection. This judicial interpretation has significantly impacted executive and government behavior, ensuring that their actions are aligned with constitutional mandates and human rights standards. One of the most profound impacts of Article 21's interpretation has been the emphasis on procedural fairness. It has also established a framework of judicial oversight over executive actions, ensuring that laws and policies comply with constitutional mandates. The doctrine of "basic structure" has reinforced the judiciary's role in reviewing legislative amendments and executive orders that might infringe on fundamental rights. This has acted as a deterrent against the abuse of power, compelling the government to enact and implement laws that are just, fair, and reasonable.

Judicial interpretation of Article 21 has significantly impacted the treatment of prisoners, ensuring that their fundamental rights are respected even within the confines of incarceration. Cases like *Sunil Batra v. Delhi Administration* (1978) and *D.K. Basu v. State of West Bengal* (1997) have highlighted the need for humane treatment, protection against torture, and access to legal aid for prisoners.

Furthermore, the interpretation of Article 21 has underscored the importance of human dignity, influencing government policies and actions across various domains. Like

Article 21's interpretation has expanded importance of human dignity and to include various socio-economic rights, compelling the government to adopt a more holistic approach to governance. As such, government of India has recognized to develop policies that aim at providing health care, housing, and education to its citizens and particularly to the poor and marginalized sections of the society.

Thus, the expansive judicial interpretation of Article 21 has profoundly impacted executive and government behavior in India. By embedding principles of fairness, accountability, and human dignity into the fabric of governance, the judiciary has ensured that the protection of fundamental rights remains paramount. This has not only restrained arbitrary executive actions but also fostered a governance model that prioritizes the welfare and rights of individuals, reflecting the true spirit of the Constitution.