



ISSN: 3049-2017
 IJMH 2026; 3(1): 26-30
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 www.themultijournal.com

Received: 27-12-2025
 Accepted: 14-01-2026
 Publish : 16-01-2026

Gajanan Rekhchand Jadhav
 Research Scholar,
 Department of Law,
 Chhatrapati Shivaji Maharaj-
 University, Panvel, New Mumbai,
 Maharashtra 410221

Dr. Pankaj Dwivedi
 Supervisor,
 Department of Law,
 Chhatrapati Shivaji Maharaj-
 University, Panvel, New Mumbai,
 Maharashtra 410221

A Study of Expanding Horizons of Fundamental Rights Under Article 21 of Indian Constitution

Gajanan Rekhchand Jadhav, Dr. Pankaj Dwivedi

ABSTRACT

Fundamental Rights is a charter of rights contained in the Constitution of India. It guarantees civil liberties for all Indians to lead their lives in peace and harmony as citizens of India. The right to life and personal liberty is the most exquisite and essential fundamental human right, around which other rights of the individual revolve. Therefore, this study assumes great significance. The study of the Right to Life is, in fact, a study of the Supreme Court's role as the guardian of fundamental rights. Article 21 is the idol provision of the Indian Constitution and occupies a distinctive place as a fundamental right. It guarantees the right to life and personal liberty to citizens as well as aliens and is enforceable against the State. The new interpretation of Article 21 in the Maneka Gandhi case has led to a new era where the right to life and personal liberty has expanded its horizons. The broad and liberal interpretation now covers various aspects that the founding fathers of the Constitution might or might not have foreseen.

This revolution in the basic concept makes it essential to examine the expanding horizons of the right to life and personal liberty, along with judicial interpretation, justification for such liberal interpretation, and the relation of Article 21 with the provisions of Article 32, Directive Principles of State Policy, and International Human Rights Instruments. One of the burning topics of today is the protection of personal life and liberty of an individual. This dissertation attempts to examine the expanding horizons of the right to life and personal liberty.

IMPORTANCE OF RESEARCH

Fundamental Rights are the pivotal rights guaranteed by the Constitution of India. Their facets are increasing day by day. When we specifically deal with the expanding horizon of Article 21 of the Constitution of India, which provides the right to life and personal liberty to citizens as well as non-citizens, we find that with expanding horizons, new interpretations come into view. We need to study and analyze the new interpretations given by the Supreme Court of India to see to what extent they succeed in protecting human rights.

The horizon of the right to personal liberty and meaningful life extended in society is a sign of development and progress. The current study, judicial interpretations, laws, and other subject matter, along with articles and books written by intellectuals, bring out various aspects and opinions. Studies of these aspects are necessary to see where our society is going. Is everyone benefiting from the right to life and personal liberty? With the changing society and changing concept of the right to life and liberty, we need to analyze whether there is a need for more dimensions to come into the picture to serve its purpose for all.

SCOPE OF RESEARCH

The scope of Fundamental Rights is very wide and vast. We will study it in the context of Article 21 of the Constitution, which deals with the right to life and personal liberty of an individual. Our research will proceed as follows: Understand the meaning of the

Correspondence:
Gajanan Rekhchand Jadhav
 Research Scholar,
 Department of Law,
 Chhatrapati Shivaji Maharaj-
 University, Panvel, New Mumbai,
 Maharashtra 410221

concept of the right to life and personal liberty. Look at the trend of cases in Article 21. Examine in detail the different facets of Article 21 and related case laws. "Examine the views of the Supreme Court in detail in respect of the right to life and personal liberty in India.

"HYPOTHESIS The study proposes to test the following hypotheses: The concept of the right to life and personal liberty, and whether there is any correlation between them. Whether Article 21 covers the entire Fundamental Rights of individuals. Whether the socioeconomic status of human beings and society significantly affects Article 21. Whether there is a need to re-evaluate the position of the right to life and personal liberty, and if so, why. Whether Article 21 of the Indian Constitution is equally empowered in comparison with developed countries' Bills of Rights.

HYPOTHESES

The study proposes to test the following hypotheses:

- 1) Concept of Right to Life And Personal Liberty and is there any correlation between them.
- 2) Article 21 covers the entire fundamental rights of Individuals or not.
- 3) Socioeconomic status of the Human being and Society is having a significant effect of Article - 21 on them or not?
- 4) Is there need to re-evaluate the position of right to life and personal liberty if so why?
- 5) Whether there is Article 21 of Indian Constitution is equally empowered in comparison with developed Countries Bills of Rights?

RESEARCH METHODOLOGY

Research methodology is a systematized investigation to gain new knowledge about the phenomena or problems after finalization of subject matter or study . Methodology to Be Used

There are two types of methodologies,

- 1) Doctrinal / Non-Empirical Legal Research.
- 2) Non - Doctrinal / Empirical Legal Research.

According to S. N. Jain,

"Doctrinal research involves analysis of case law, arranging, ordering & systematizing legal propositions and study of legal institution through legal reasoning or rational deduction."¹ Empirical research is research using experiential, experimental and

imperative evidence. It is a way of gaining knowledge by means of direct and indirect observation or experience.²

CONCEPT OF FUNDAMENTAL RIGHTS

1.1 MEANING AND CONCEPT OF FUNDAMENTAL RIGHTS

Fundamental rights are a generally regarded set of legal safeguards in the relation to legal system, wherein such

system is itself based upon this same set of basic, fundamental, inalienable rights. Such rights thus belong without deduction or cost of privilege to all human beings under such jurisdiction. The concept of human rights has been promoted as a legal notion in large part owing to the idea that human beings have such "fundamental" rights, such that transcend all jurisdictions, but are typically armoured in different ways and with different emphasis within different legal systems.³

The concept of human basic rights can be traced back to the Natural law philosophers, such as Locke and Rousseau. The Natural law philosophers gave philosophies over such inherent human rights and sought to protect these rights by propounding the theory of 'Social Contract'. According to Locke, man is born "with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of Nature." and he has by nature a power – "to preserve his property- that is, his life, liberty and estate against the injuries and attempts of other men."⁴

The Fundamental Rights, embodied in Part III of the Constitution, assured civil rights to all Indians, and put a stop to the State from invading on individual liberty while simultaneously placing upon it a duty to protect the citizens' rights from infringement by society. Seven fundamental rights were initially provided by the Constitution – right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978.⁵

The purpose of the Fundamental Rights is to protect individual liberty and democratic principles based on equality of all members of society. They act as restrictions on the powers of the legislature and executive, under Article 13, and in case of any infringement of these rights, the Supreme Court of India and the High Courts of the states have the power to pronounce such legislative or executive action as unconstitutional and void. These fundamental human rights are largely enforceable against the State, which as per the wide definition provided in Article 12, includes not only the legislative and executive arms of the central and state governments, but also local administrative authorities and other agencies and institutions which discharge public functions or are of a governmental character. However, there are certain rights – such as those in Articles 15, 17, 18, 23, 24 – that are also available against private individuals. Further, certain Fundamental Rights – including those under Articles 14, 20, 21, 25 – apply to persons of any nationality upon.

The Fundamental Rights are not absolute and are subject to reasonable restrictions as essential for the protection of

public interest. In the *Kesavananda Bharati v. State of Kerala case in 1973, the Supreme Court, overruling a previous decision of 1967, held that the Fundamental Rights could be amended but such amendment will not violate the basic structure of the Constitution. The Fundamental Rights can be improved, removed or otherwise altered through a constitutional amendment, passed by a two-thirds majority of each House of Parliament. The imposition of a state of emergency may lead to a temporary suspension any of the Fundamental Rights, excluding Articles 20 and 21, by order of the President. The President may, by order, suspend the right to constitutional remedies as well, thereby barring citizens from approaching the Supreme Court for the enforcement of any of the Fundamental Rights, except Articles 20 and 21, during the period of the emergency. Parliament may also restrict the application of the Fundamental Rights to members of the Indian Armed Forces and the police, in order to ensure proper discharge of their duties and the maintenance of discipline, by a law made under Article 33.*

1.2 EARLIER RECOGNITION OF BASIC RIGHTS:

As early as in 1215, the English people exacted a guarantee from King John for respect of the then ancient liberties. The MAGNA CARTA is the evidence of their achievement, which is a written document. This is the first written document relating to the fundamental rights of citizens. In 1689, the BILL OF RIGHTS was written consolidating all important rights and liberties of the English people. The DECLARATION OF THE FRENCH REVOLUTION, 1789 provided that, "the aim of all political association is the conservation of the natural and inalienable rights of man."

1.3 CONSTITUTIONAL RECOGNITION:

The course by which basic rights became fundamental rights is the fundamental idea in entrenching certain basic rights is to take them out of the reach of the transitory political majorities. It has therefore, come to be regarded as essential that these rights be deep-rooted in such a way that they may not be sullied, tampered or interfered with by an oppressive government. With this end in view, some written constitution's guarantee a few rights to the people and forbid governmental organs from with the same. In that case, a guaranteed right can be limited or taken away only by the elaborate and formal process of the constitutional amendment rather than by ordinary legislation. These rights are characterized as fundamental rights.

1.4 FUNDAMENTAL RIGHTS IN INDIA

Coming to India, a few good reasons made the enunciation of the fundamental rights in the Constitution rather inevitable. Firstly, Congress has been for long demanding

these rights against the British rule. During the British rule in India, the human rights were infringed by the rules on a very wide extent. Therefore, the framers of the Constitution, many of whom had suffered imprisonment during the British rule, had a very optimistic attitude towards these rights. Secondly, the Indian society is fragmented into many religions, cultural and linguistic groups and it was necessary to declare fundamental rights to give to the people a sense of security and confidence.

1.5 IMPACT OF THE US CONSTITUTION

The constitution of USA has been the source of inspiration for the insertion of fundamental rights in the Constitution. The novel US Constitution did not contain any provision relating to fundamental rights, however, in the year 1791 the Bill of Rights was included in the US Constitution in the form of ten amendments, and thus, the Americans became the first to give the Bill of Rights a constitutional status.

When the Indian constitution was framed, the background for the incorporation of Bill of Rights was already present. The framers took stimulation from this and incorporated a full Chapter in the Constitution dealing with fundamental rights. However, the fundamental rights contained in Part III of the Constitution of India vary from the US Bill of Rights.

1.6 DIFFERENCE BETWEEN PART III OF THE INDIAN CONSTITUTION AND THE US BILL OF RIGHTS- 10

While the declarations in the American Bill of Rights are absolute and the power of the state to impose restriction upon the fundamental rights of the individual in the collective interests had to be evolved by the Judiciary. In India, this power of imposing restrictions has expressly bestowed upon the legislature by the Constitution itself, in the case of the major fundamental rights, of course, leaving a power of judicial review in the hands of the judiciary to determine the reasonableness of the restrictions imposed by the legislature.

1.7 NEED FOR FUNDAMENTAL RIGHTS

Fundamental rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their government. They are limitations upon all the powers of the government, legislative as well as executive and they are essential for the preservation of public and private rights. These rights regarded as fundamental because they are most essential for the attainment by the individual his full intellectual, moral and spiritual status. The negation of these rights will keep the moral and spiritual rights stunted and his potentialities underdeveloped. Part III of the Constitution serves, as remainder to the government in power that certain liberties assured to the people by the Constitution

needs to be respect. The object behind the inclusion of Part III in the Constitution is to establish a government of law and not of man.

1.8 NEED FOR FUNDAMENTAL RIGHTS AND OBSERVATION OF THE SUPREME COURT

In *Daryao v. State of U.P.*¹³ the SC observed that, “the fundamental rights are intended not only to protect individual’s rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution...” In *Golak Nath v. State of Punjab*¹⁴, the SC held that, Part III of the Constitution of India guarantees certain fundamental rights because they are considered necessary for the development of human personality. These rights enable a man to chalk out his own life in the manner he likes best. In *Maneka Gandhi v. Union of India*,¹⁵ SC observed that, “fundamental rights are calculated to protect the dignity of the individual and creates conditions in which every human being can develop his personality to the fullest extent”.

1.9 FUNDAMENTAL RIGHTS- TO WHOM AVAILABLE Part III of the Constitution of India deals with various fundamental rights in its Articles 12- 35. The fundamental rights in Articles 15, 16, 19, 29 and 30 are available only to citizens, while the rights guaranteed by other Articles are available to the citizens and non-citizens alike.

RIGHT TO LIFE AND PERSONAL LIBERTY:

“Unlike a drop of water which loses its identity when it joins the ocean, man does not lose his being in the society in which he lives. Man’s life is independent. He is born not for the development of the society alone, but for the development of his self.” – Dr. B. R. Ambedkar.²¹ As well said above by Dr. B.R Ambedkar, Man’s life is not only for development of society but for himself as well. For the development of human being, life and liberty are two essential ingredients, which enshrined in constitution of India fundamental right under Article-21. Life and Liberty is the utmost civilization in the modern sense of the child. In an organized and law-abiding society, turbulent wave raised stagnates. In society extend the right to meaningful life and liberty is a sign of advancement, progress and development. It inherited from generations.

Country’s culture and civilization can be measured by the current state of life and liberty and all events for preservation and prosperity of individual human freedom, status of that freedom prevailing in society. It is chained, so cribbed, cabined or assumed in society independence plant becomes lifeless.

EXPANDING HORIZON OF LIFE AND PERSONAL LIBERTY WITH JUDICIAL INTERPRETATION OF ARTICLE - 21.:

Article -21 provides Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

No person: Rights guaranteed by article 21 are for all persons, citizens and aliens. This is the

Import of article 21 saying ‘no person shall be deprived’ etc. It seems improper to read article 19 as dealing with the same subject as article 21. Article 19 gives the rights specified therein only to the citizens of India while article 21 is applicable to all persons. The word citizen is expressly defined in the Constitution to indicate only a certain section of the inhabitants of India. The protection given by article 21 is very general. It is of “law” –whatever that expression is interpreted to mean. The legislative restrictions on the law-making powers of the legislature are not here prescribed in detail as in the case of the rights specified in article 19. Therefore, article 19 should be read as a separate complete article. Article 21 extends the protection of life and personal liberty to ‘all persons’ — citizens and non-citizens alike.’⁵³

COMPARATIVE STUDY OF RIGHT TO LIFE AND PERSONAL LIBERTY

Article-21 in Indian constitution expressly forbids the executive from interfering with the life and liberty of the individuals without the authority of law. This article secures for Indian citizens same rights which the British citizens derive from the famous Magna Carta. Art. 21 oblige the executive to observe the “*forms and rules of law when depriving individuals of their rights to life or liberty.*” Besides Art 21 individual liberty is also protected by courts by means of writ of Habeas Corpus issued under Arts 32 and 226. But right to liberty can nowhere be absolute. In the U. S. A., the executive may impinge upon individual liberty if it acts in accordance with “**due process of law.**” In the U. S. A. the Supreme Court examines the constitutional validity of the law under which executive actions are taken. Executive actions are valid only if the law is constitutional. Thus the “due process” restrains both the executive and the legislature. But in India executive actions in encroaching upon an individual’s liberty is to be confined only within the “*procedure established by law.*”

CONCLUSION AND SUGGESTIONS

Article 21 yarns an endless and doubtless saga of welfare piece of legislation; its extent with time. It redefined and re-extended its meaning and scope. No fundamental right ever interpreted widely and liberally as of article 21. Judicial activism saw as the key to public welfare in all lines of action. We have seen vast role of judicial activism in Article -21 context. New interpretation and meaning of right to life and liberty came in picture expanded its

horizon. No legal provision has ever more controversial than Article 21 of the constitution, which provides for 'right to life and personal liberty' with so many colours hidden in it and it interpreted widely as so many facets and new colour of life and personal liberty comes in.

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