

Personal Liberty and Its Expanding Dimensions

Meghanjali Tiwari

**Assistant Professor (Department of law)
Shri Krishna University, Chhatarpur**

1. INTRODUCTION

Freedom or liberty is about individual choice and voluntary actions performed Without any restriction and constraint . Traditionally , liberals believed that a free society is one which allows free actions or voluntary actions of individual to prevail And at the same time, it should limit the Use of coercive law by the state to reduce Interference in the individuals life and thus should allow Variety of human choices and ‘goods’. The very essence of life is the liberty or freedom that is given to such life.

Said by the famous author FILTZERALD PJ. “ The evolution of individual as an ultimate measure of thing is an universally accepted standard of democratic society but the concept of society which is based and a society where each individual having some well defined rights is the special ideal of democracy and the greatest heritage of democracy to mankind is the right to personal liberty.” We being a democratic polity have this right to personal liberty and should keep in mind this frame while going through this right of life and personal liberty provided in Article 21 of the Indian constitution. It has been rightly said by DICEY “The right to personal liberty as understood means in substance a person’s right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification.”

Liberty has numerous perspectives. The views on liberty keep on changing but the concept of liberty always remains unchanged. These views have attained the status of dimensions of liberty. Many of such new facets of liberty has recently been explored through landmark judgments of the H.C and S.C in the judgment of section 377 verdict, Aadhar verdict in the context of privacy, sabrimala verdict, Euthanasia verdict etc. Not only this but there are numerous and attributable facets of liberty which are yet to be explored and they can be explored by way of new dimensions by the Courts. In this project, an attempt is made to highlight the concept of liberty through dimensions which were laid down by Supreme Court and High Court in different decisions of Right to Privacy and Right to Marry which now also includes right to marry of LGBTQ.

2. MEANING OF PERSONAL LIBERTY

The term personal liberty is used in Art. 21 as a compendious term to include within itself all the varieties of rights which go to make up the ‘personal liberties’ of man other than those dealt with in the several clauses of Art. 19 (1). While Article 19 (1) deals with particular species or

attributes 'of that freedom, 'personal liberty' in Article 21 take in and comprises the residue. Article 21 has been used by the courts in a number of judgments, dealing with a range of social issues. Broadly interpreting "life and personal liberty" to mean a number of things, the courts have ruled that working conditions that violate human dignity are impermissible, Hence making bonded labor illegal. Workplace exposure to contamination from hazardous materials, access to roads and transportation in hilly areas which if denied would gravely endanger livelihood, mandatory sentences awarded to those already convicted of another crime, the rights of prisoners to publish their works, and the significant right to free legal aid as part of the due process of law, are among the issues that have fallen under the lens of this law. Liberty is the essence of one's life, therefore the right of life and personal liberty have discussed together in the constitution of the country under article 21 as:

"No one shall be deprived of his life or personal liberty except according to the procedure established by law"

Although the terminology of Article 21 starts with negative word but the word 'No' has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. The basic concept of liberty is to create an environment of welfare state where every individual will rely on the government of the country. Article 21 of Indian constitution is inspired by Section 1 of American constitution as "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. LANDMARK JUDGMENTS ON PERSONAL LIBERTY

3.1. INDIA CASES

Article 21 is one article which has been so transformed by the Supreme Court that it now encompasses all conceivable human rights within its ambit. Prior to Maneka Gandhi's case state could interfere with the liberty of the individual if it support its action by a valid law ,after that Article 21 not only protects the personal liberty from the executive actions but from the legislative actions also.

A.K GOPALAN V STATE OF MADRAS-

This case is known for the narrow interpretation of Article 21. The petitioner challenged validity of his detention under preventive detention act, 1950, on the ground that it was violative of his right to freedom of movement under Art. 19 (1) (d) which is the very essence of personal liberty guaranteed by Art. 21.

Courts have taken the view that since the word 'Liberty' is qualified by the word 'personal' and it is a narrow concept so it doesn't include all the rights that are only implied in the term 'Liberty', that is every aspect of freedom also the court has said that the procedure established by law and due process of law can't be interpreted same.

So here in the said case the personal liberty has given a narrow interpretation by the court as 'liberty relating to or concerning the person or body of the individual.

MANEKA GANDHI V UNION OF INDIA-

In this case the petitioner's passport was impounded by the central government under sec 10(c) of the passport act 1967. On writing a letter to the government by the petitioner for assigning the reason for doing so, the ministry of external affairs has refused to give any reason on being doing so in the interest of general public and this reason of refusal was challenged by Maneka Gandhi.

Court said that Article 14, 19 and 21 are interlinked and any law which deprives the life or personal liberty under Article 21 must satisfy the test of Article 14 and 19. Court made it clear that Right to travel abroad also comes under Article 21. With respect to the relationship between Article 19 and Article 21, the Court held that Art. 21 are controlled by Art. 19, i.e., it must satisfy the requirement of Art. 19. Most importantly court has said that any law which curtails the right under Article 21 should be Just, Fair and Reasonable.

4. EXPANDING DIMENSIONS OF PERSONAL LIBERTY IN INDIA

4.1. RIGHT TO PRIVACY

Right to Privacy is also a part of right to life and personal liberty. It is very important right which has been recognized by the honorable supreme court of India. It is very important in many ways for securing emotional and tangible things of an individual.

If we give a glance to previous judgments, it has only been the government surveillance which has been challenged as in the case of MALAK SINGH V STATE OF PUNJAB Court has said that, "The police should not violate the privacy of an individual while exercising surveillance over him" till now only the government could be challenged for violating the privacy of the citizen. In the year 1997 after the famous Phone Tapping case PEOPLE'S UNION FOR CIVIL LIABILITIES V UNION OF INDIA S.C held that 'wiretapping is the violation of individuals privacy' the court said that the telephonic conversation is a man's private affair. Telephone tapping under the S 2(5) of the telegraph act 1888 would violate the individual's privacy if it has been conducted without following any reasonable procedure established by law.

In my opinion the above judgments was an important decision as between two individuals the right of one individual should not violate the like right of the other individual.

Further increasing the facet of privacy under personal liberty court in the recent judgment of SELVI V STATE OF KARNATAKA 2010 for the first time recognized the mental privacy and held that the involuntary administration of physiological tests like brain mapping test, live detective tests, Norco analysis is an unjustified intrusion into the mental privacy of an individual.

Finally In 2017 the landmark judgment of Justice K.S PUTTASWAMY (Retd.) V .UNION OF INDIA also known as AADHAR CASE The nine-judge bench of the Supreme Court has unanimously delivered its judgment holding that privacy is a constitutionally protected right which not only emerges from the guarantee of life and personal liberty in Article 21 of the constitution, but also arises in varying contexts from the other facets of freedom and dignity recognized and guaranteed by the fundamental rights contained in Part III of the Indian constitution.

The bench has overruled its decisions in M.P. Sharma v Satish Chandra, District Magistrate, Delhi (1954), rendered by a bench of eight judges and, in Kharak Singh v State of Uttar Pradesh (1962), rendered by a six judges bench , which contained observations that the Indian constitution does not exclusively protect the right to privacy.

Justice D.Y. Chandrachud, delivering the main judgment, has held that privacy is intrinsic to life, liberty, freedom and dignity and therefore, is an inalienable natural right.

The judgment says:

“Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian constitution. Life and personal liberty are not creations of the constitution. These rights are recognized by the constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within.”

4.2 RIGHT TO MARRY

Right to Marry is another right in which Supreme Court of India has recognized under fundamental right in right to life and personal liberty is Right to Marry. It is one’s personal autonomy and it covers under right to life and personal liberty. Honorable Supreme Court has recognized it in many judgments. Right to marry is an essential attribute to right to privacy but it's not absolute.

In the case of LATA SINGH V UTTAR PRADESH The court held that the right to marry is a fundamental right under Article 21 and a person has the liberty to choose and marry the partner of

his or her choice in a free and democratic world. Similarly in the case of SHAKTI VAHINI V UNION OF INDIA the court said that the khap panchayat has no right of honour killing.

4.2.1 RIGH TO MARRY OF LGBTQ

NAZ FOUNDATION CASE 2009, Nas foundation is an organization that deals with HIV AIDS and other health issues in the case of NAS FOUNDATION V GOVT. OF NCT DELHI questions, whether section 377 of IPC be stuck down. Court has deal with this question by two angles, first court has said that no personal can enjoy right to life and personal liberty without privacy and dignity and second the court said that section 377 is violative of article 14 and 15 of Indian constitution. Court in 2009 held that the part of section 377 which decriminalize the homosexual act should be declared unconstitutional and the amendment part was remaining to parliament.

In the case of SURESH KUMAR KAUSHAL V NAS FOUNDATION 2013 there were two contentions made ,homosexuality is a criminal offence and only parliament can decriminalize it and right to privacy cannot extend to such limit as it involve a criminal offence. After this judgment society starts looking towards the LGBTQ group as criminals who were start to disclose their identity after the NAS FOUNDATION judgment. So right to privacy will not cover homosexual acts. This judgment was criticized by many international organizations. The most celebrated judgments of the year with reference to personal liberty and much other aspect is the NAVTEJ SINGH JOHAR V UNION OF INDIA 2018 case, Which has partially declared sec 377 IPC unconstitutional.

Finally the 5 judges' bench formed for these judgments held that -

In respect of article 21 of right to life and personal liberty includes the privacy, dignity, autonomy of an individual although these rights can be curtailed with reasonable restrictions.

5. DIMENSIONS OF LIBERTY IN UNITED STATES OF AMERICA

The federal government is gratified by various constitutional provisions to respect the individual or citizen's basic rights. After the civil war of America, three new constitutional amendments were adopted:

The Thirteenth (1865), which abolished slavery;

The Fourteenth (1868), which granted citizenship to former slaves; and

The Fifteenth (1870), which guaranteed former male slaves the right to vote.

The Fourteenth Amendment placed an important federal limitation on the states by forbidding them to deny to any person "life, liberty, or property, without due process of law" and guaranteeing every person within a state's jurisdiction "the equal protection of its laws." The American government has provided a much wider interpretation of liberty than in India, as in

USA they talk about Liberty and in Indian constitution we talk about a restricted meaning of liberty in form of personal liberty. The United States decisions also guided the Indian courts at many fronts for defining the term 'life and 'personal liberty'.

In the case of *MUNN V. ILLINOIS* 94 U.S. 113 (1876) while referring the U.S Fourteenth amendment Justice. Field has explained the meaning of life and personal liberty as ; life has a wide meaning i.e. something more than mere animal existence and personal liberty as Something more than mere freedom from physical restraint or the bounds of the prison. A most significant case of United States origin is *ALLGEYER V. LOUISIANA*. In which the United States Supreme Court observed that The term Liberty in 14th amendment not only means Freedom from physical restraint But the term Liberty means:

Right of the citizen to be free in the enjoyment of all his Faculties ; To be free to use them in all lawful ways ; To live and work where he will ;To earn his livelihood by any lawful calling; To Pursuit any livelihood or avocation ; And for that purpose enter into any contract which is required, necessary , essential to carry out the successful conclusion of above mentioned 165 U.S. 578 (1897).

In America in 1789 the meaning of "liberty," in the Fifth Amendment, meant no more than freedom from physical restraint of the person. It is significant that between 1789 and the adoption of the Fourteenth Amendment in 1868, the Supreme Court had no occasion to define the meaning of the word as used' in the Fifth Amendment. During this period the state courts had in a few instances dealt with the "liberty" secured by the due process clauses of the state constitutions, but apparently in only one of these cases had it then been given a broader meaning than restraint of the person, But very early after the adoption of the Fourteenth Amendment there were intimations that "liberty" might no longer be so rigidly confined. In the *Slaughter House Cases* Mr. Justice Bradley, dissenting, opinion was-

In my view, a law which prohibits a large class of citizens from adopting a lawful employment, or from following a lawful employment previously adopted, does deprive them of liberty as well as property, without due process of law. Their right of choice is a portion of their liberty; their occupation is their property.

5.1. IN RESPECT TO PRIVACY

The United States of America as a civilized country gave new dimensions to the Bill of Rights and in that process the concept of privacy has emerged out as a fundamental right. In fact there is no explicit guarantee of the right to privacy in American Constitution except that in the Fourth Amendment, the right to privacy is given to the people to be secure in their persons, houses, papers and effects. The U.S. Supreme Court from then have given personal decisions as regards

to birth, education, marriage, divorce and death. American Supreme Court has recently given some new judgments in respect of privacy.

In the case of united states of US V JONES 2002 the supreme court of USA was for the first time came up with privacy against GPS surveillance in India till now supreme court has not come up with such decision and in another case of RILEY V CALIFORNIA 2014 the supreme court of America has recognized mobile phone privacy in which the judges observed-

That at the time of arrest of a person an extra search warrant will be required to search the mobile phone of the arrested person; they can't intervene in the mobile phone privacy of such person. Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans "the privacies of life". Therefore the person has his personal liberty whether he wanted to show the mobile phone without warrant or not.

5.2. IN RESPECT TO RIGHT TO MARRY

LOVING V. VIRGINIA is a landmark decision in respect of right to marriage by USA Supreme Court in which they prohibit the laws which invalidate interracial marriages.

It is important because of two significant and primary reasons. First, the unanimous decision serves as a good example of the unconstitutionality of a statute that is discriminatory on its face.

Second, and more importantly, it classifies marriage as a fundamental right, and it set the stage for the Court's decision in *Obergefell v. Hodges*, in which a ban on same-sex marriage was determined to be a violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

It should be observed also that the new liberty is establishing a considerable degree of uniformity throughout the United States for the freedoms to which it extends.

5.3. LGBTQ RIGHT TO MARRY

Right to marry for LGBTQ community was recently been recognized by the united nations supreme court before the NAS Foundation judgment in India in the case of -

BOSTIC V. SCHAEFER 2014 validate same-sex marriage after which it's the citizens personal autonomy to marry whosoever they want doesn't matter if it is of same sex or different sex marriage.

Now under the US constitution the right of a person to marry a person of same race or different and of same sex or not resides with the person and it can't be infringed by the state.

6. CONCLUSION

The state in which a citizen or any individual will be free within society from oppressive restrictions that are imposed by government or any other established authority on one's way of life, choosing opportunities, behavior, or political views is the wide meaning of the way one should live a life and personal liberty. The right to personal liberty as understood means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification. We being a democratic polity have this right to personal liberty and should keep in mind this frame while going through this right of life and personal liberty provided in Article 21 of the Indian constitution.

Liberty has numerous facets and perspectives. The views on liberty keep on changing but the concept of liberty remains unchanged. These views have attained the status of dimensions of liberty. Not only this, but there are numerous and attributable facets of liberty which are yet to be explored and they can be explored by way of new dimensions by the Courts. These rights are inherited in the citizens the only responsibility of the state is to recognize it changing needs of the society if does not violative of any procedure established by law.

The changing dimensions of personal liberty are the assistance of a person's way of life but they do need the legal sanction to get the acceptance of the society as every law or the judgment have their own implications. For example after the case of Suresh Kumar kaushal v. Nas Foundation 2013 society had start to look toward the LGBTQ as criminals and the same society after the navjeet singh johar case now thinking of accepting the LGBTQ community as they being the part of it and only being homosexual does not make them any less of human or citizen. Hence they are at their liberty to choose their partner as they wish.

The increasing dimensions of personal liberty do touch the like liberty of individual either collectively or individually. Hence it is in the favor of a nation to bring every aspect of liberty and work for the welfare of the state.

7. LIST OF CASES

- A.K Gopalan v. State of Madras, AIR 1950 SC 27 Page 7
- Maneka Gandhi v. Union of India, AIR 1978 SC 597 Page 8
- Malak Singh v. State of Punjab, AIR 1981 SC 760 Page 8
- People's Union For Civil Liabilities v. Union Of India, Writ Petition (Civil) no. 494 OF 2012 Page 8
- K.S Puttaswami (Retd.) v. Union of India, Writ Petition (Civil) No.196 of 200 Page 9
- NAS FOUNDATION V GOVT. OF NCT DELHI, WP(C) No.7455/2001 Page 9
- Lata Singh v. Uttar Pradesh, AIR 2006 SC 2522 Page 10

- NAVTEJ SINGH JOHAR V UNION OF INDIA, WRIT PETITION (CRIMINAL) NO. 76 OF 2016 Page 11
- ALLGEYER V. LOUISIANA, 165 U.S. 578 Page 12
- RILEY V CALIFORNIA, 573 U.S 2014 Page 13
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