
UNDERSTANDING THE CONCEPT OF LIBERTY: JURISPRUDENTIAL PERSPECTIVES AND ITS SOCIO- POLITICAL RELEVANCE

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ABSTRACT

Liberty, while often conflated with freedom, holds a more nuanced and legally grounded significance within societal structures. This paper explores the conceptual foundations of liberty, tracing its philosophical and legal interpretations through the lenses of eminent thinkers such as Hohfeld, Isaiah Berlin, John Stuart Mill, and Christopher Caudwell. It distinguishes liberty from absolute freedom, emphasizing that liberty is constrained by legal and ethical boundaries established to protect the rights of others. Berlin's dichotomy of positive and negative liberty reveals the tension between personal autonomy and social regulation, while Mill advocates for individual liberty as a safeguard against both governmental tyranny and the overreach of societal norms. Caudwell, through a Marxist framework, critiques capitalist structures that mask inequality under the illusion of liberty, asserting that true liberty lies in the capacity and resources to act freely. The study also connects these theoretical views with the constitutional guarantees of liberty in India, particularly Articles 19, 32, and 226, highlighting the judiciary's role in upholding these rights. Ultimately, the paper underscores liberty not just as a philosophical ideal but as a foundational element of a just and progressive society.

1. Introduction

A society or community exists where a group of people starts living together. Society can only be formed if there is a centralised system of regulation that works by imposing some restrictions, rules, and duties over its subject matter. Whereas, on one side, people are willing to follow the rules and principles imposed by authority for the sake of protection in large and other essential matters. Still, on the other hand, people want some liberty and freedom to do whatever they want or are interested in. Here, the liberty refers to the reasonable freedom of an individual. The term liberty derives from the Latin word '*Libertas*', which means the ability to do as one wishes or freedom¹. Liberty is generally guaranteed by the country's legal system. It may be political liberty, civil liberty, economic liberty, cultural liberty, or social liberty. Liberty is not absolute; it comes with certain restrictions that have to be followed by individuals. Protection of liberty is granted by the state till the fair use of that liberty.

2. A fragile veil lies between Liberty and Freedom, unseen but felt

People frequently conflate freedom and liberty, measuring them through the same lens and perceiving them as interchangeable, despite their nuanced distinctions. Primarily, Freedom expresses a large public, and liberty expresses an individual. Freedom is for a large group of people, and liberty is for individuals. For example, freedom movements for large people are not a liberty movement.² Although it is strenuous to trace the difference between these two terms, as both are closely related, the essence of the difference can be found. Freedom says "I can", whereas Liberty says "I may". Here, I can represent the power, total freedom, and ability to do the act, whereas I may represent the permission or legal right to act, which is governed by the procedure established by law.

Generally, freedom refers to being free from everything, indicates absolute freedom, and on the other hand, liberty refers to being free to do something. Freedom is genus, and liberty is species. Freedom comes from nature, and liberty comes from the legal system or controlling system.

¹ Ethan Parker, Liberty: Meaning, Origin, and Characteristics uncovered, What the Name, <https://wtname.com/liberty/>, [Accessed on 10 July 2025]

² Nitisha, Liberty: Definition, Nature and Theories., Political Science, <https://www.politicalsciencenotes.com/liberty/liberty-definition-nature-and-theories/787> [Accessed on 10 July 2025]

3. Nature and Scope of Liberty

Some philosophers and jurist says that liberty is negative in nature as to freedom. They advocated that in liberty person are capable of doing something within an established or fixed area by the State. They further contended that restriction always comes with liberty and none of one is permitted to go beyond that restriction. It is similar to a gun with no bullets.

The area and scope of liberty are not limited but not exhaustive. It has both a quality limited by restriction, but ambiguity in restriction gives some exhaustive essence to the liberty. The scope of study in this matter is so wide because of the different approaches and different legal systems.

4. Hohfeld's views on Liberty

Professor Wesley Newcomb Hohfeld (1879-1918) was a graduate of the University of California. He was an American legal scholar. Although he had a short life span but his jurisprudence had a lasting impact on legal theories; his work is famous for a detailed analysis of the framework of legal rights and their relations. As per Hohfeld's theory, if there is liberty, then there is no right in (co-relation), i.e., the absence of right. It says that if someone has liberty, then that liberty is independent. No one has the right to exploit or interfere with that liberty. If someone is going to interfere, then the government will protect that person. Primarily, the difference between liberty and right is that what we do for ourselves is a liberty, whereas anything that others do for us is right in the strict sense.³

In case of Jural Opposites, if one person has some liberty to do something as per their will, then the other person has a duty not to interfere in the execution or enjoyment of that person's liberty.

5. Isaiah Berlin's views on Liberty

Liberal philosopher Isaiah Berlin delivered his lecture before Oxford University on 31st Oct 1958. The text of his lecture was published by Oxford University under the title of "Two Concepts of Liberty" through Clarendon Press.⁴ He has classified liberty into *two parts*. These

³ Hohfeld's Analysis of Legal Rights (05 Mar., 2020), Lawbhoomi, <https://lawbhoomi.com/hohfeld-s-analysis-of-legal-rights-jurisprudence/> [Accessed on 10 July 2025]

⁴ Berlin, I. (2012). Two Concept of Liberty. Sage Journals, 12(1), pp.31-48 [Accessed on 11 July 2025].

are as follows;

I. Negative liberty

Negative Liberty, defined by Berlin, was similar to that explained by liberal philosophers Thomas Hobbes, Locke, and Bentham. All they disagreed with the view that freedom or liberty should be absolute with external power or social control. He used the phrase “*absence of something*”, such as obstacles, barriers, constraints, or interference from others. Further, Berlin asked the question of what is the area within which a person should be left free to do any act without any interference. To answer this question, Berlin has given the concept of negative liberty.⁵

It refers to the absence of interference and control by some authority. Further, he stated that it is against the ideology of liberty. He also stated that this type of liberty is dangerous for a welfare society and is contrary to the policy of humankind, and promotes arbitrariness. This type of liberty is free from every restriction, and no civilian society accepts that.

II. Positive Liberty

Positive liberty refers to self-mastery through self-control. Berlin used the phrase “*the presence of something*”. Here, it means the presence of control, self-mastery, self-determination, or self-realisation. It talks about the presence of interference and a restraining system by some authority. Berlin stated that in positive liberty, people choose who will govern the society in which they are part. He took the idea of positive liberty from Aristotle’s concept of citizenship, in which people have the right to choose their government; similarly, in positive liberty, people choose authority to impose restrictions and conditions on liberty.⁶

5.1 Abuse of positive liberty

Berlin stated that after the 18th century, positive liberty began to be abused. He stated that positive liberty should be rationally restrained, but it was open to political abuse. According to him, in a political system of positive liberty, some people regulate and control the acts of people

⁵ Positive and Negative Liberty (27 Feb., 2003) revised on (19 Nov., 2021), Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/liberty-positive-negative/> [Accessed on 11 July 2025]

⁶ Berlin, I. (2016). Positive and Negative Liberty, Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/liberty-positive-negative/> [Accessed on 11 July 2025].

for the establishment of positive liberty, which is an essential principle, but on the other hand, there are also some chances or risks for misuse of power by the officials of the country. Berlin talked about the misuse of power in the 18th century by the political leaders of the country and by some high-profile people of the country. Further, he stated that Social engineering, utilitarian theory, and some other movements came into force to remove these abuses⁷. However, if we talked about Berlin's concept of liberty, then as far as concerns today's scenario, there is abuse of power by the political and administrative authority, but the principle which is given by Berlin still has good qualities is implemented by several nations.

6. John Stuart Mill's views on Liberty

John Stuart Mill was a great English philosopher, and his work by the name of "On Liberty" gained a lot of popularity and was published in 1859. He established some basic standards between the relationship of an individual's liberty and the state. He was a great supporter of individualism and emphasised individual liberty rather than social liberty. He further used the tyranny of the majority, which he used as a contradiction with the concept of individual liberty.⁸

The work of John Stuart Mill was highly acceptable even in today's era, but despite that, several philosophers criticised his work because of discontinuity in utilitarian theory and its vagueness.

He discussed in his essay, the struggle between the authority, and liberty. He stated that the tyranny of government may be removed if that abusing power is controlled by liberty of citizen not liberty should controlled by government.

He further established two methods by which the tyranny of government may be removed.⁹ These are:

1. Necessary or basic liberty should be in the hands of citizens and solely controlled by them.
2. Establishment of constitutional checks by which the consent of the community whose interest is going to be represented, imposes or makes some rules for the controlling

⁷ Gary frank reed(1981), "Isaiah Berlin on liberty(essay):libertarianism"p.p.365-380 [Accessed on 12 July 2025]

⁸ John Stuart Mill, On Liberty, <https://www.econlib.org/library/Mill/mlLbty.html> [Accessed 12 July. 2025].

⁹ John Stuart Mill, On Liberty, BLTC, <https://www.utilitarianism.com/ol/one.html> [Accessed 12 July. 2025].

power of government.

Another important aspect of his work was “tyranny majority”. He said that in the old era, rulers were empowered to make rules and controlled the liberty of any person, but after the abolishment of that system, the large group of the community or majority tried to impose their will on the minority group. This is called the tyranny of the majority.

He discussed in his lecture about three basic liberties. These are the following.

1. That every individual has the liberty to think and express.
2. That individual has the liberty to pursue their tastes and plan their own lives.
3. That individual has the liberty to join other groups for a common purpose which not intend to hurt any other person.

He further talked about social liberty (societal liberty), which means that for the growth and development of the state, and individual society may control liberty of individual for large public interest but on the other hand he also stated that it may be dangerous if it was implemented for the sake of powerful few. To remove this tyranny he said people required government which can control these malaise acts.¹⁰

6.1 Criticism of John Stuart Mill's theory of liberty

As aforesaid, the theory of liberty by John Stuart Mills was highly populated and accepted by several nations, but irrespective of having qualities and essential analytical principles yet several scholars criticised his theory.

John Stuart Mill was an individualistic person and believed in individualism, even though he strongly emphasised individualism like Bentham. To some extent, he extended the utilitarian principle, and he advocated for liberty at the individual level, not at the societal level. Further, he believed that the liberty of the individual could only be infringed by either the state or society. So, firstly, scholars criticised his approach towards liberty. They said liberty is not a

¹⁰ Bouton, C. (1965). John Stuart: On Liberty and History. Sage Journals, [online] 18(3), pp.569-578, <https://journals.sagepub.com/doi/abs/10.1177/106591296501800303?journalCode=prqa> [Accessed 12 July 2025].

minor principle of society that can only be held by individuals. They said it is the base of society, that's why it belongs to a large community, not for individuals.

John Stuart Mill further contended that an individual's liberty was violated by the government, and that's why the controlling power of liberty should be in the hands of citizens, not the government. Other philosophers criticised this contention and said that the government is not just a mere watchdog of society but has sovereign power by which they can regulate the country and its citizens. If the controlling power over liberty is given to the citizen, then there would be arbitrariness in exercising liberty and infringement of others' liberty, and that would also lead to an unjust and unfair society. Berlin also discussed the same thing in his work by giving the concept of negative liberty.

Major criticism of John Stuart Mill's theory was that his theory "On Liberty" was ambiguous and unclear even some scholars even said that J.S. Mill was confused regarding liberty because he gave different approaches in a single theory. At one point he argued for liberty in the favour of individual which shows his individualistic approach and criticised societal as well as governmental interfere in the individual's liberty, furthermore he also stated that individual liberty is greater than societal liberty and society must not interfere in the individual liberty but on the other side he also contended that for the growth of society and large public interest, individual liberty may be override or infringed by the society. Furthermore, he stated government may control the liberties of individuals, which creates conflicts in his work.

The theory of John Stuart Mill was criticised because of ambiguity, discontinuity of the utilitarian approach, and a frequently changing approach during the work.

7. Christopher Caudwell's View on Liberty

Christopher Caudwell was a Marxist writer, and his career in writing was very short because he died at the early age of thirty years of age. Some great and famous working was "*The Crisis in Physics*", "*Romance and Realism*", and "*Illusion and Reality*". He discussed the concept of liberty and gave his theory of liberty in "*Illusion and Reality*" poetry. He did not define the word liberty, but provided some circumstances and conditions from which we can get the

meaning of liberty. Caudwell's work is based on liberty, based on illusions.¹¹

Generally, he talked about literature, art, poetry, and dramatic work, and his views were totally different from others. He denied others' views regarding literature. Mainly, there are two types of people: those who say that literary work is based upon the creator's thinking and thoughts, and those who say that literary work is based on the condition, circumstances, and past experiences of society. Christopher Caudwell denied both views and said that literature is neither based upon the creator's thoughts nor based upon societal past experiences, but it is something which is a combination of both.¹² He was a supporter of Marxist thoughts, and that's why he heavily emphasised equality and liberty. Some scholars said he was a Marxist, but Christopher Caudwell never accepted this view. He was always against capitalism and said that where a society is capitalistic one, there would always be inequality. Some jurists said liberty is an illusion; in reality, it does not exist. People are born freely, but after coming into society, their liberty ceases to exist. Caudwell never accepted this view and said liberty is something which is difficult to achieve; however, he said people born free and their liberty would never be ceased, but due to a capitalistic society, it becomes invisible. To achieve liberty, first we have to remove and destroy the capitalistic society and have to establish a society having qualities of fairness and equality. All the thoughts and work of Caudwell are based upon freedom or liberty. We can say the central point of his work was liberty. Furthermore, he stated that artist, scientist, researcher, and philosophers never define their work precisely without freedom. He stated that freedom can't be given just by providing some rights and privileges unless they are capable of enjoying those rights.

He tried to explain the concept of liberty by giving three situations in which he took every class of society. In the first example, he gave an imaginary situation in which Mr. A, who is working in a multinational company and has a good position as well as a high salary. He desired to purchase a craft, but he was not able to purchase one. On the other hand, he can purchase a car and go traveling as per his wish, even though he has a luxurious life. He has everything necessary for a good and meaningful life.

In the second example, he gave another illusory situation in which Mr. Smith is free from

¹¹ Ellen Sypher, Christopher Caudwell His Aesthetics and film (2004), JUMP CUT A REVIEW OF CONTEMPORARY MEDIA, <https://www.ejumpcut.org/archive/onlinessays/jc12-13folder/caudwell.html> [Accessed 13 July 2025].

¹² Ibid.

everything. He is doing nothing. He has a family with four members, one wife, and two children. He always spends his time gossiping with friends, and in the remaining time, he stays at home. He has no source of income and used to fight with family members. No responsibility, no job on his part.

In the third example, he gave the last illusionary situation in which Mr. Robin, who is a servant of C. He always has a fear of becoming jobless and living under that. He has no freedom or liberty. He has to work as per the command given by his master, but he believed in god and hoped that the time would come when he would get everything and become free to live his life. He does not like his job, but he also can't leave his job because he has no other source of income. Furthermore, he believed in hell and heaven, good and bad, morality, spirituality, religious ceremony, and sculptures. He is doing his work by following this approach.¹³

Now, Caudwell puts a question after giving all these situations and asks in this entire situation, who has liberty?

We all know that Mr. A has liberty as per the first situation. In the second and third situations, there is no liberty. Christopher also explained that in the first situation, Mr. A, who is living a luxurious life and has all the means to enjoy his life, although he desired to purchase a craft that he can't purchase but except for this, he can do everything as per his wish. Caudwell said this is liberty in a real sense because he has the capabilities to do anything he wants. Further, he said liberty does not mean just materialistic things, but it refers to capabilities.

On the other hand, Mr. Smith, who seems to be free and having liberty because of doing nothing but also has no capabilities and can't do anything because of the unavailability of sources. Mr. Caudwell said that this is not liberty; however, Smith is free from everything because of no responsibility, no work, but liberty does not refer to this type of freedom. In this situation, Smith has no capability no resources, and that's why he has no liberty.

In the third situation, Caudwell said that Mr. Robin also does not hold liberty because of fear, which always comes to his mind, and due to which he can't do anything as he wishes. He depends upon his master. Now, Caudwell asked whether we can establish equality among these different people. The answer is no because in each situation, every person is different from

¹³ Dominic Tweedie, Liberty. A study in bourgeois illusion, Marxists Internet Archive, <https://www.marxists.org/archive/caudwell/1938/studies/ch08.htm> [Accessed 13 July 2025].

each other, and if we are going to establish equality, then that will become impossible because there is a different nature of work, situation, needs, and mindset.

He stated that freedom is based upon the capability and ability to do whatever they want. Freedom is not what can be seen, but it is what can be executed or exercised by the people.

8. Liberty under the Indian Constitution

The concept of liberty holds a central place in the Indian Constitution, beginning with its inclusion in the **Preamble**, which guarantees “liberty of thought, expression, belief, faith, and worship.” This foundational promise is further reflected in **Part III** of the Constitution, where **Article 19** outlines six essential freedoms granted to Indian citizens. These include the right to free speech and expression, peaceful assembly, forming associations or unions, moving freely across the country, residing and settling in any part of India, and practicing any profession or engaging in any occupation, trade, or business. While these rights are not absolute and come with certain reasonable restrictions, their existence affirms the presence of liberty in the lives of Indian citizens.¹⁴

Additionally, **Article 21** plays a crucial role in safeguarding individual freedoms. It declares that **no person shall be deprived of life or personal liberty except through a legal process**. Notably, this right extends not only to citizens but to all individuals residing within the territory of India, including non-citizens.

On a broader international level, in the United Kingdom, **Article 5** of the Act¹⁵ asserts that every individual has the right to liberty and personal security. It strictly prohibits arbitrary detention and affirms that any deprivation of liberty must comply with legal procedures. This ensures that personal freedoms are protected from unjust interference by the state.

9. Judicial Pronouncements and Liberty

Article 21 of the Indian Constitution guarantees that no individual shall be deprived of life or personal liberty except through a procedure established by law. This provision means that any curtailment of personal liberty must strictly adhere to a legal process, one enacted by the

¹⁴ Shefali Chitkara, Concept of Liberty in India, E-Justice India, <https://www.ejusticeindia.com/concept-of-liberty-in-india/> [Accessed on 14 July 2025]

¹⁵ Human Rights Act, 1998, c. 2 (U.K)

legislature. The executive branch, on its own, does not hold the authority to limit or deny a person's liberty.

Unlike the United States Constitution, which uses the phrase "*due process of law*," the Indian Constitution deliberately uses the term "*procedure established by law*." This distinction was addressed in early judicial interpretations, particularly in the landmark case of *A.K. Gopalan v. State of Madras*¹⁶, where the Supreme Court held that "procedure established by law" refers to the procedure established by the legislation, and the same doesn't need to be fair and reasonable.

In the *Gopalan case*, the petitioner challenged his detention under the Preventive Detention Act, claiming it violated his fundamental right to personal liberty. The apex court adopted the narrow interpretation and stated that Art. 19 deals with the specific freedoms and that is independent from the freedom of body, which is given under Art. 21 of the Indian Constitution. The verdict effectively separated the rights under Article 21 from those under Article 19, a stance that was later reconsidered.

This rigid interpretation began to shift in later decisions, most notably in *Kharak Singh v. State of Uttar Pradesh*.¹⁷ In this case, the apex court broadened the meaning of personal liberty to include not just freedom from physical restraint but also protection from unwarranted intrusions. The Court concluded that the act of surveillance on an acquitted person violates Article 21 of the Indian Constitution and therefore, struck down the relevant police regulations as unconstitutional.

A significant transformation in the understanding of Article 21 came with the judgment in *Maneka Gandhi v. Union of India*.¹⁸ In this case, Maneka Gandhi was asked to surrender her passport without being given a valid reason or an opportunity to be heard. She challenged the action because it violated her right to personal liberty. The Supreme Court took a more expansive view, holding that personal liberty encompasses a broad range of rights and that any law curtailing such liberty must also meet the requirements of *just, fairness, and reasonableness* under **Articles 14 and 19 of the Indian Constitution**. This case effectively

¹⁶ AIR 1950 SC 27 (India)

¹⁷ AIR 1963 SC 1295 (India).

¹⁸ AIR 1978 SC 597 (India).

overruled the narrow approach of the *Gopalan case* and established a new standard: the procedure under Article 21 must not be arbitrary, unfair, or oppressive.

Justice Bhagwati, in particular, emphasized that **natural justice** must be an integral part of the process and that personal liberty includes rights such as the ability to travel abroad, which was central to the *Maneka Gandhi case*. This interpretation aligned Article 21 more closely with the “*due process*” philosophy, even though the text itself had not changed.

In *Satwant Singh Sawhney v. Passport Officer*,¹⁹ the Court affirmed that the right to travel internationally is part of an individual’s liberty. The denial of a passport without providing valid reasons amounted to an unlawful restriction, thereby violating Article 21.

There are various other instances where the Hon’ble Supreme Court of India upholds the essence of liberty, like the *right to privacy* of an individual was upheld in the case of **Justice K.S. Puttaswamy (Retd.) v. Union of India**,²⁰ similarly, *Right to Education* in *Mohini Jain v. State of Karnataka*.²¹

These rulings collectively illustrate how **Article 21 has evolved** from a narrowly interpreted clause into a powerful safeguard of individual rights, integrating principles of fairness, equality, and reasonableness. The judiciary has played a pivotal role in interpreting personal liberty in ways that reflect the changing values of Indian democracy and constitutionalism.

10. Conclusion

Liberty is essential for every person. It is considered a basic need for human beings. In this research paper, the author has discussed three different theories of liberty, which were given by great jurists. As Berlin stated that liberty is a quality of life, and it must exist, but on the other hand, he also stated that there should be some control over liberty. John Stuart also explained the importance of liberty and established some basic principles of liberty by which we can defend and protect our liberty. Caudwell explains liberty as capabilities and illusion. All these scholars gave different theories of liberty, but one thing is common among all: the emphasis on the importance of liberty. All stated that liberty is a basic idea of a good society. Society exists where liberty is present. In Indian society, liberty also holds great value. As per

¹⁹ AIR 1967 SC 1836 (India)

²⁰ AIR 2018 SC 1841 (India).

²¹ AIR 1992 SC 1858 (India)

our Constitution, liberty is not only a mere principle but is fundamental right of our citizens. In the preamble of the Indian Constitution word liberty is mentioned. Article 19 of the Indian Constitution provides several types of freedom and liberty, such as freedom to speech & expression of ideas and thoughts, freedom to move anywhere in India, freedom to do any occupation and trade, freedom to make associations, etc. Although there are several reasonable restrictions, but still has great value, and we can even see the importance of liberty by reading Articles 32 and 226 of the Indian Constitution, which provide remedies against infringement of fundamental rights by the state, even the state can't infringe the liberty principle. There are several judgments of the Hon'ble Supreme Court in which compensation was granted by the court against the infringement of fundamental rights by the state.

After going through all these theories and constitutional aspects, the author has observed that liberty is necessary for a meaningful life. It can be seen that wealthy and developed nations are based upon some freedom and liberty principle, as if it is not given to the citizens of the nation, development is not possible. Every growing state should also provide some basic freedoms and liberties to its citizens because it should always keep in mind that liberty is the key to success. It will not only grow the nation but also to its citizens.