

RIGHTS TO LIFE UNDER THE CONSTITUTION OF INDIA WITH REFERENCE TO HUMAN RIGHTS

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Abstract

The right to life is a moral principle based on the belief that a human being has the right to live and, in particular, should not be killed by another human being. Right to life is the most cherished and pivotal fundamental human rights around which other rights of the individual revolve and, therefore, the study assumes great significance. The study of right to life is indeed a study of the Supreme Court as a guardian of fundamental human rights. Article 21 is the celebrity provision of the Indian Constitution and occupies a unique place as a fundamental right. It guarantees right to life and personal liberty to citizens and aliens and is enforceable against the State. In human history, there has not been a general acceptance of the concept of a right to life that is innate to all human beings rather than granted as a privilege by those holding social and political power. The evolution of human rights as a concept took place slowly in multiple areas in many different ways, with the right to life being no exception to this trend, and the past millennium in particular has seen a large set of national and international law or legal documents (examples being the Magna Carta and the Universal Declaration of Human Rights and The constitution of India) codifying the general ideal into specifically worded principles.

Keywords: Rights, Life, The Constitution of India, Human Rights

1. INTRODUCTION

Right to life is the modern name for what have been traditionally known as 'natural right.' It is the primordial rights necessary for the development of human personality. It is the moral right which every human being everywhere at all times ought to have simply because of the fact that in contrast with other beings, he is rational and moral. It is the fundamental right which enable a man to chalk out his own life in the manner he likes best. Right to life and personal liberty is one of the rights of the people of India preserved by the Constitution of India, 1950 and enforced by the High Courts and Supreme Court under article 226 and 32 respectively. In this essay we will discuss the modern and liberal interpretation given to the concept of right to life and personal liberty by the Indian Judiciary.

Interpretation, and relation of Article 21 with the provisions of Article 32 and Directive Principles of the State Policy and International Human Rights Instruments. Further, the protection of this right is burning topics of the day. Hence an attempt has been made in this essay to examine the modern day standards adopted for protecting the right to life and personal liberty.

The Constitution said Woodrow Wilson, is "not a mere lawyer's document." It is, he said, "the vehicle of a nation's life." The Indian Supreme Court has created major reforms in the protection of human rights. Taking a judicial activist role, the Court has put itself in a unique position to intervene when it sees violations of these fundamental rights. "in India the guardian of democracy is not the legislative wisdom but the wisdom of the highest court of the land." "The court has acted as protector of the workers, and at time played the role of legislator where labour legislation is silent or vague." The Supreme Court, as the arbiter and interpreter of the Constitution, serves not merely the negative purpose of checking excesses in judicial practice, but also the vital and dynamic function of modulating the life of the nation.

The Supreme Court is the guardian of the Constitution under whose protective wings the nation has prospered and grown to greatness. Thus, the law as seen in the wordings of the enactment gets a dynamic and wider scope in day to day events by the legal processes advanced by judicial creativity.

2. HISTORICAL ASPECT OF RIGHT OF LIFE

While belief in the sanctity of human life has ancient precedents in many religions of the world, the foundations of modern human rights began during the era of renaissance humanism in the early modern period. The European wars of religion and the civil wars of seventeenth-century England gave rise to the

philosophy of liberalism and belief in natural rights became a central concern of European intellectual culture during the eighteenth-century Age of Enlightenment. These ideas lay at the core of the American and French Revolutions which occurred toward the end of that century. Democratic evolution through the nineteenth century paved the way for the advent of universal suffrage in the twentieth century. Two world wars led to the creation of the Universal Declaration of Human Rights.

The post-war era saw movements arising from specific groups experiencing a shortfall in their rights, such as feminism and the civil rights of African-Americans. The human rights of members of the Soviet bloc emerged in the 1970s along with workers' rights in the West. The movements quickly jelled as social activism and political rhetoric in many nations put human rights high on the world agenda.^[1] By the 21st century, Moyn has argued, the human rights movement expanded beyond its original anti-totalitarianism to include numerous causes involving humanitarianism and social and economic development in the Developing World.^[2] The history of human rights has not been entirely progressive. Many established rights would be replaced by other less tolerant systems. Stable institutions may be uprooted such as in cases of conflict such as war and terrorism.^[3]

It was, however, quite recently that a universal recognition of human rights was articulated and adopted. Atrocities by the Nazis and mis governance by Fascists in the 1940s which resulted in the suppression of people gave birth to the Universal Declaration of Human Rights. There was broad-based international support for the declaration when it was adopted. It represented a "world milestone in the long struggle for human rights". The declaration was drafted by committee of the UN Commission on Human Rights set up in 1946 and 58 member-states of the UN General Assembly adopted the declaration on December 10, 1948. India was also a signatory. The Universal Declaration of Human Rights has served as a Magna Carta for all humanity. The year 1998 marked the golden anniversary of this Magna Carta.

The declaration recognizes that the "inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world" and is linked to the recognition of fundamental rights which every human being aspires to—the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and to enjoy in other countries a slum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education; freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment among others. These rights are to be enjoyed by all human beings of the global village—men, women and children, as well as by any group of society, disadvantaged or not; they are not gifts to be withdrawn, withheld or granted at someone's whims and fancies

3. MEANING AND CONCEPT OF RIGHT TO LIFE

Everyone has the right to life, liberty and the security of person. The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to life as interpreted and applied by the Supreme Court of India.

Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21 so many rights have found shelter, growth and nourishment. Thus, the bare necessities, minimum and basic requirements that is essential and unavoidable for a person is the core concept of right to life.

In the case of *Kharak Singh v. State of Uttar Pradesh*[i], the Supreme Court quoted and held that:

By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

In *Sunil Batra v. Delhi Administration*[ii], the Supreme Court reiterated with the approval the above observations and held that the "right to life" included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person's tradition, culture, heritage and all that gives meaning to a man's life. It includes the right to live in peace, to sleep in peace and the right to repose and health.^[4]

4. RIGHT TO LIFE IN INTERNATIONAL HUMAN RIGHTS LAWS

The right to life covers issues such as extrajudicial killings by State agents, imposition of the death penalty, and enforced disappearance. The right to life is protected in the core regional and universal human rights instruments, including the following:

- African Charter on Human and Peoples' Rights (art. 4)
- American Convention on Human Rights (art. 4)
- American Declaration of the Rights and Duties of Man (art. 1)
- Arab Charter on Human Rights (arts. 5-8)
- Convention on the Protection of the Rights of Migrant Workers and Members of their Families (art. 9)
- Convention on the Rights of the Child (art. 6)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 2)
- Inter-American Convention on the Forced Disappearance of Persons
- International Covenant on Civil and Political Rights (art. 6)
- Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances
- Protocol to the American Convention on Human Rights to Abolish the Death Penalty
- Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty
- Universal Declaration on Human Rights (art. 3)

Relatedly, violations of international humanitarian law (e.g. use of prohibited weapons resulting in death, or disregard for civilian loss of life) and of international criminal law (e.g. genocide) may also involve violations of the right to life. For example, see the Genocide Convention and Geneva Conventions.^[5]

Rights give expression to how all humans participate fully in civil society, defining the idealized norms against which a society may be measured. As expressions of the civic values that operate within any society, rights derive from the marriage of religious, philosophical, and legal principles that address social justice in the context of worldwide struggles to combat oppression and inequity, they do so out of an underlying, deep-rooted respect for human life, dignity, and diversity.

5. HUMAN RIGHTS AND THE CONSTITUTION OF INDIA

The constitution of India is known as one of the most right-based constitutions in the world. It was drafted around the same time when the Universal Declaration of Human Rights by the United Nations came into force (1948). Indian constitution provides the spirit of human rights in its preamble and the sections on Fundamental rights and Directive Principle of State Policy.

Individual partly and wholly expects that he/she should be provided the good environment for his/her overall development. Rights provide that environment. Rights have been defined as those claims of an individual that are necessary for the development of his/her own self and recognized by state or society. Some of the rights provided by the state and enshrined in the constitution are known as fundamental rights. Fundamental rights are those rights that are enforceable through the court of law.

The Indian constitution is based on the theory that guided India's struggle against British colonialism, which was marked by the violation of civil, political, social, economic and cultural rights of the people. Therefore, after independence the framers of the constitution provided some fundamental rights to the citizens which are enshrined in the part III of the constitution. These fundamental rights are defined as basic human freedom for a proper and harmonious development of personality of every Indian citizen. These fundamental rights apply to all Indian citizens, irrespective of caste, creed, colour, sex, race or place of birth. They are also enforceable by the courts, subject to certain restrictions. The rights have their origins in many sources including England's Bill of Rights, the United States Bill of Rights and France's declaration of the Rights of Man.

6. RIGHT TO LIFE AND THE CONSTITUTION OF INDIA

The constitution guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced:

Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it. Moreover, no person accused of any offence shall be compelled to be a witness against himself. "Compulsion" in this article refers to what in law is called "Duress" (injury, beating or unlawful imprisonment to make a person do something that he does not want to do). This article is known as a safeguard against self incrimination. The other principle enshrined in this article is known as the principle of double jeopardy, that is, no person can be convicted twice for the same offence, which has been derived from Anglo Saxon law. This principle was first established in the Magna Carta.

Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can be disputed only if that person has committed a crime. However, the right to life does not include the right to die and hence, suicide or an attempt thereof, was an offence. (Attempted suicide being interpreted as a crime has seen many debates. The Supreme Court of India gave a landmark ruling in 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year.^[6] In 1996 however another Supreme Court ruling nullified the earlier one.^[7] But with the passage of the Mental Healthcare Bill 2017, attempt to suicide has been decriminalized.^[8] "Personal liberty" includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under "personal liberty" in Article 21.^[9]

In 2002, through the 86th Amendment Act, Article 21(A) was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age.^[10] Six years after an amendment was made in the Indian Constitution, the union cabinet cleared the Right to Education Bill in 2008.^[11]

Rights of a person arrested under ordinary circumstances is laid down in the right to life and personal liberty. No one can be arrested without being told the grounds for his arrest. If arrested, the person has the right to defend himself by a lawyer of his choice. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours. The rights of a person arrested under ordinary circumstances are not available to an enemy alien. They are also not available to persons detained under the *Preventive Detention Act*. Under preventive detention, the government can imprison a person for a maximum of three months. It means that if the government feels that a person being at liberty can be a threat to the law and order or to the unity and integrity of the nation, it can detain or arrest that person to prevent him from doing this possible harm. After three months such a case is brought before an advisory board for review.

7. RIGHT TO LIFE AND ARTICLE - 21 THE CONSTITUTION OF INDIA

Article 21 ensures every person right to life and personal liberty. Both the terms, life and personal liberty has been given a very expansive and wide amplitude covering a variety of rights. Its deprivation is only possible through the procedure established by law. The expression "life" has been broadly interpreted by the Supreme Court, which has given it, an expansive scope.

In the case of *Munn v. Illinois*, the Court referred to the observation of Justice Field, wherein he stated that by the term 'life' as here used something more is meant than a mere animal existence. Thus, it embraces within itself not only the physical existence but also the quality of life.^[12]

7.1 The expression personal liberty

The expression personal liberty does not only mean freedom from:

- Arrest
- Detention
- False or Wrongful confinement

The Supreme Court of India held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men. The expression procedure established by law has also been a subject matter of interpretation. It means the procedure laid down by statute or procedure prescribed by the law of the State.

7.2 Expanding Horizon of Article 21

The fundamental right to life and personal liberty which has become an inexhaustible source of many other rights and mentioned under the following subheads:

7.3 Right to Live with Human Dignity

1. The Supreme Court in the case of *Maneka Gandhi vs. Union of India* held that right to life embodied in Article 21 of the Indian Constitution, is not merely a physical right but it also includes within its ambit, the right to live with human dignity.

2. In the case of *Francis Coralie vs. Union Territory of Delhi* it was held that right to live includes the right to live with human dignity with bare necessities of life such as: Adequate nutrition

3. 1. Clothing, and
2. Shelter over the head and facilities for: Reading
3. 1. Writing, and
2. Expressing oneself in diverse form

7.4 Right against sexual harassment at workplace

1. In the case of *Vishakha vs. the State of Rajasthan*, the court declared that sexual harassment of a working woman workplace amounts to a violation of rights under Articles 14, 15 and 21 of the Indian Constitution. The guidelines have been laid down in order to protect the rights of a woman at workplace
2. Following which the Sexual Harassment of woman at Workplace (prevention, prohibition, and Redressal) Act, 2013 was passed

7.5 Right to clean environment

1. The Right to life under Article 21 means a life of dignity to live in a proper and healthy environment.
2. The maintenance of various things like: Health
3. 1. Proper sanitation system, and
2. Preservation of environment comes under the purview of the Article 21.
4. In the case of *Vellore Citizens Welfare Forum vs Union of India* the Supreme Court held that though industries are vital for the country's development, having regards to the pollution caused by them, the principle of 'sustainable development' has to be adopted as the balancing concept.

7.6 Right to know or right to be informed

It has been recognized by the Courts, in the case of *Reliance Petrochemicals Ltd. vs. Proprietors of Indian Express Newspapers* that right to know falls under the scope of Article 21 of the Indian Constitution as an essential ingredient of participatory democracy.

7.7 Right of prisoners

1. The protection under Article 21 is also available to those who have been convicted of any offense. Even though he is deprived of his other rights, but he is entitled to the rights guaranteed under Article 21.
2. In the case of *Sunil Batra vs. Delhi Administration*, the petitioner sentenced to death on charges of murder and robbery was held in a solitary confinement since the date of his conviction by the session court, pending his appeal before the High Court.
3. The petitioner filed a writ petition before the Supreme Court, contending that solitary confinement itself is a substantive punishment under the Indian Penal Code, 1860, and only the Courts had the authority to impose such punishments and not the jail authorities, thus, it violates Article 21.
4. The Supreme Court accepted his contentions and held that the conviction of a person for a crime does not reduce him to non-person vulnerable to a major punishment imposed by jail authorities without observance of due procedural safeguards, thus violative of Article 21.

7.8 Right against illegal detention

1. In the case of *D.K. Basu vs. State of West Bengal*, the Supreme Court laid down the guidelines to be followed by the Central and the State investigating authorities in all cases of arrest and detention.
2. The petitioner wrote a letter addressed to the Chief Justice drawing his attention to certain news items published in the Telegraph and the Indian express, regarding deaths in police lockups and custody and this letter was treated as a writ petition by the Court.
3. The court not only issued the guidelines but, also went to the extent that any failure by the officials to comply to such guidelines would not only subject them to departmental actions but would also amount to contempt of Court.

7.9 Right to Legal Aid

1. It has been held, in the case of *Hussainara Khatoon vs. State of Bihar*, that right to free legal aid at the cost of the State to an accused who cannot afford legal services for reasons of poverty, indigence or incommunicado situation is a part of fair, just and reasonable procedure under Article 21 of the Indian Constitution.
2. In the case of *Khatri vs. the State of Bihar*, it has also been held that the trial court is under the obligation to inform the accused of his right to free legal aid.

7.10 Right to speedy trial

- The Code of Criminal Procedure does not specifically guarantee speedy trial nor it has the Indian Constitution guaranteed under any of the Fundamental Rights but the Indian Judiciary in the case of *Hussainara Khatoon vs. the State of Bihar*, has made it settled decision that the right to speedy trial is an inalienable right under Article 21 of the Indian Constitution.

7.11 Right to compensation

1. A new judicial trend has manifested a new trend of providing compensation. In the case of *Rudul Shah vs. the State of Bihar*, the petitioner was kept in jail for 14 years even after his acquittal.
2. He was released only after a writ of habeas corpus was filed on his behalf.

3. The Supreme Court held that under Article 21, the petitioner is entitled to an award of INR 35,000 as compensation against the State of Bihar as he was kept in the jail for 14 long years after his acquittal.

7.12 Disclosure of dreadful diseases

1. No law has yet been enacted in India defining the rights and duties of HIV infected persons. Therefore, to fill in the legal gap, the Court has laid various decisions.
2. In the case of Mr. X. vs. Hospital Z, the issue in consideration was whether the disclosure made by a doctor to the fiancée of a person suffering from HIV positive, amounts to infringement under Article 21? The Court herein opined that the lady proposing to marry such a person is entitled to all human rights, which are available to any human being and the right to be told that person is suffering from a deadly disease which is sexually communicable, is her right to life guaranteed under Article 21.
3. The court also held that when two fundamental rights, namely the right to privacy and that if life clashes the right which would advance the public morality or public interest would alone be enforced through the process of Court.

7.13 Right to Privacy

1. In the recent and the most debated case of *Justice K.S. Puttuswamy (Retd.) vs. Union of India and Other*, the Supreme Court's 9 judges constitutional bench held privacy to be a fundamental right under the Constitution of India.
2. The Privacy Bench unanimously held that the right to privacy is a fundamental right protected under the Constitution.

7.14 Right to die with dignity

1. The Court held that the right to life under Article 21 of the Constitution does not include the right to die. But later in *Aruna Ramchandra Shanbaug v. Union of India* the Supreme Court held that passive euthanasia can be allowed under exceptional circumstances under the strict monitoring of the Court.
2. The difference between active and passive euthanasia is that in active euthanasia something is done to end the patient's life while in passive euthanasia something is not done that would have preserved the patient's life.
3. Supreme Court of India held in the case of *Common Cause vs. Union of India* that right to die with dignity is a fundamental right.
4. The right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere individual dignity.

7.15 Right to choose a life partner

In the case of *Shakti Vahini vs. Union of India*, the petitioner, an NGO, had approached the Apex Court, seeking directions to the State Governments and the Central Government to take preventive steps to combat honor crimes. Article 21 weaves a string of an endless yarn of welfare legislation. Its scope and interpretation has been time and again defined and redefined, giving it the widest possible amplitude and judiciary has played an important role in lining up the actions of a welfare state.

8. CONCLUSION

Human being is born with certain natural rights. Those rights basic to humanity are termed as 'Human Rights'. Broadly speaking they may include right to life, liberty, Equality and Dignity of an individual. Social scientists from time immemorial have argued in favour of giving these rights to human beings.

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