

# Right to Life in India : A Conceptual Analysis and the Legislative History The Jurisprudential Essence of Right to Life

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**Abstract:** *The concept of right to life could be traced in natural law. The right to life is one of the pious rights and it is one of the God given right to the individual. The right to life has been asserted to be a divine right as it belongs to its holder and this could not be adjudicated by the judge, but could be only respected*

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## I. INTRODUCTION

The right to life is not any kind of privilege which is to be bestowed by the judge; it is inherent and is god given.<sup>1</sup> Philosopher John M. Finnis describes natural law as a reality which is what it is whether one personally likes it or not.<sup>2</sup> Blackstone termed the law that was being fixed by god as the 'law of nature'. In a society there exists human and natural law. The human right to life and human existence are coterminous and coextensive.<sup>3</sup> There could be no right without life and in the same way there can not be any life without right. The life is being recognised as natural right by the proponents of the unalienable rights. A "natural" right is one that exists in nature apart from some positive enactment of law by a governmental entity. Indeed, it precedes governing because it is written into the very fabric of nature by the finger of God.<sup>4</sup> For example something is already wrong without it being proclaimed by the government that the particular act is wrong. That is what is considered as the law of nature. Locke has observed that But though this be a *State of Liberty*, yet it is not a *State of License*, though Man in that State have an uncontrollable Liberty, to dispose of his Person or Possessions, yet he has not Liberty to destroy himself, or so much as any Creature in his Possession, but where some nobler use, than its bare Preservation calls for it. The *State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason,

<sup>1</sup> The scriptural record is clear that life was a gift given to human beings by god. In various mythological and spiritual books this all has been claimed that the life is a gift to human beings given by god. Even it could also be said that the life is the prima facie basis of all laws. All other laws are being formulated to protect the life of any human being. The criminal law and all form the basis on the right to life. Criminal codes, for example, were conceived to preserve life and its attendant interests: peace, well-being and property. Destroying that life, apart from due Scriptural authorization, is construed as the ultimate capital crime.

which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions. For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, who's Workmanship they are, made to last during his, not one anothers pleasure. And being furnished with like Faculties, sharing all in one Community of Nature, there cannot be supposed any such Subordination among us, that may Authorize us to destroy one another, as if we were made for one anothers uses, as the inferior ranks of Creatures are for ours. Every one as he is bound to preserve himself, and not to quit his Station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of Mankind, and may not unless it be to do Justice on an Offender, take away, or impair the life, or what tends to the Preservation of the Life, Liberty, Health, Limb, or Goods of another.<sup>5</sup>

## II. CIVIL GOVERNMENT IS ENTRUSTED WITH THE PURPOSE OF PROTECTING LIFE

According to Locke, the purpose of civil government is to "provide for their own Safety and Security, which is the end for which they are in Society."<sup>6</sup> He then further observed that the law of nature is coterminous with the will of god. The basic

<sup>2</sup> John M. Finnis, "Natural Law and the Rights of the Unborn", in *Abortion and the Constitution: Reversing Roe v. Wade Through the Courts* 115, 116 (D. Horan, E. Grant & P. Cunningham eds. 1987).

<sup>3</sup> Paul S McConnell, "The Unalienable right to life", 8J *Christian Jurisprudence* 53 (1990).

<sup>4</sup> *Ibid.*

<sup>5</sup> J. Locke, *Two Treatises of Government* 311 (P. Laslett rev. ed. 1963).

<sup>6</sup> *Id.* at 461.

principle of law of nature is preservation of mankind. Locke gave view that the natural law does not even allows any individual to take his own life. Each individual is also prohibited from taking any other person's life by the theory of natural law. Although it is permitted that the life could be only taken whenever the person is exercising his right to self defence. Thus the state also could not possess any of the derivative power over life. The state has to respect the right to life of an individual. Finally, this law of nature, according to Locke, remained binding "as an Eternal Rule to all Men" including government. He thus summarized both individual right and governmental obligation as the direct outflow of the law of nature, that is "the Will of God."<sup>7</sup>

According to Blackstone 'Law of Nature' is 'Will of God' on which authority of all human law is dependent.<sup>8</sup>

Samuel Rutherford, in *lex rex*, stated, "The safety of the people is the supreme and cardinal law to which all laws are to stop."<sup>9</sup> He was of the opinion that this particular principle has been recognised on the basis of Roman Law as well as Scriptural Precedent.

Blackstone then agreed and emphasised

For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature; but which could not be preserved in peace without the mutual assistance and intercourse, which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these *absolute* rights of individuals....<sup>10</sup> For no man, that considers a moment, would wish to retain the absolute and uncontrolled power of doing whatever he pleases: the consequence of which is, that every other man would also have the same power; and then there would be no security to individuals in any of the enjoyments of life.<sup>10</sup>

Blackstone explained that the right to life is inherently part of man's natural liberty. He explained, The right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. Life is the immediate gift of God, a right inherent by nature in every individual.<sup>11</sup>

### III. LEGISLATIVE HISTORY OF ARTICLE 21: FRAMING OF THE CONCEPT OF RIGHT TO LIFE AND LIBERTY IN INDIA

The legislative history throws light on the meaning scope and nature of article 21. Draft article 15, as originally was article 21 for the present constitution as it stands today. Article 15

which prescribed that, "No person shall be deprived of his life and liberty without due process of law", this was amended two points firstly, on the point that the word 'personal' should be added before the word liberty and secondly, the particular 'due process' word was to be abrogated and in that place procedure established by law should be substituted. The reason given for the first change was that if 'personal liberty' word will not be present then it may mean other kinds liberty which are already mentioned under article 13 (now article 19) that means to say that it may give a wider meaning to the word liberty,<sup>12</sup> hence they intentionally added the word, thus to have a wider interpretation of liberty was never the intent of the constitution framers. In the present scenario, this difference has been yet maintained or not this will be one of the objects of this paper. Second change was for the reason that the substituted provision is more specific and gives clarity that what the Article wants exactly. However the abuse of substantive due process gave a second thought and it was finalized that the word due process should not be there; hence it was made as procedure established by law. The change was also the result of discussion of constitutional adviser B N Rau with Frankfurter J of U S Supreme Court. As a result the committee gave away the concept of American due process of law completely. Supreme Court being guarantor of Fundamental rights makes the study of right to life as study of role of Supreme Court in enforcing the right. Article 21 has been comprehended in terms of the content and the remedies to be made available. This paper will try to focus on the point that can the rights recognized under article 21 could exactly be related to the point for which they meant. The new interpretation given to Article 21 in Maneka Gandhi's Case has ushered a new era of expansion of horizons of right to life and personal liberty. This wide interpretation given to the article covers many rights which founding fathers of Constitution never would have contemplated. Supreme Court while interpreting article 21 has enlisted various rights, this paper will study those unenumerated rights.

Article 21 of the Indian Constitution guarantees to every man, be he a citizen or a foreigner, that he shall not be deprived of his life and personal liberty except in accordance with the procedure established by law.<sup>13</sup>

This Article is intended that if an individual is deprived of his life and personal liberty then the authority must follow the procedure established by law. It was held that it is open to judiciary to see whether procedural requirements of law are

<sup>7</sup> *Id.* at 402-03.

<sup>8</sup> Blackstone in his Commentry has written:

This law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times; no human laws are of any validity, if contrary to this: and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

<sup>9</sup> S. Rutherford, *Lex Rex* 119 (London 1644 & photo. reprint 1982).

<sup>10</sup> W. Blackstone, Commentaries \*41.

<sup>11</sup> *Id.* at 129.

<sup>12</sup> H.M. Seervai, *Constitutional Law of India* (Universal Book Traders, Delhi 4<sup>th</sup> Edition, 1999).

<sup>13</sup> *A K Gopalan vs State of Madras*, 1950 SCJ 174.

followed or not, but it cannot question the law itself or the wisdom of law makers in enacting the law that particular way.<sup>14</sup>

#### IV. ARTICLE 21: TEXTUAL INTERPRETATION AND SIGNIFICANCE

Article 21 enunciates various terms such as 'person', 'life', 'personal liberty' and 'procedure established by law'. As these words play a pivotal role in interpretation of the Article thus the meaning of these terms and their scope is one of the important aspects to be looked upon. The interpretation of these words has led to expansion of the Article and various rights have been carved out. This paper aims to study those unenumerated rights.<sup>15</sup> This aspect will be further dealt in chapter IV of the dissertation where the rights which are unenumerated under article but yet carved out are discussed. Here only to explain the meaning of the words used under Article 21 few cases has been explained.

##### Person

The term 'person' as provided under Article 21 includes both citizens as well as non citizens. The only rights which any non citizen can claim are given under Articles 20 to 22 of the constitution of India. Article 21 has no application to corporate bodies, but only to natural persons.

##### Life

The right to live is one of the most fundamental right but it is very difficult to define it. The initial interpretation given to this article by the Supreme Court was that it should not be mere animal existence; right to life shall include right to live with dignity. Then the term expanded and various other rights were incorporated in that article.

In 1961 the word life does not incorporated in itself the right to 'livelihood'<sup>16</sup> but later on it was held by the Supreme Court that right to life include right to livelihood as well. Income is the foundation of many fundamental rights and when work is sole source of income the right to work becomes as much fundamental.<sup>17</sup>

The word life has a much wider meaning. The order of suspension unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously.<sup>18</sup> The Lakshadweep administration evolved a scheme to augment water supply by digging new wells and drawing water from existing wells. It was discovered that excessive withdrawal of water would upset the water equilibrium and lead to salinity and minimize potable water. Then Supreme Court held that sweet water is attributing of the

right of life and the administration cannot be permitted to make inroads into this fundamental right.<sup>19</sup>

The conflict between the death penalty and right to life came into existence in 80's. It was held by Supreme Court then that death sentence imposed in accordance with the procedure established by law is not violative of right to life.<sup>20</sup>

##### Supreme Court defining 'life'

The court has most of the time interpreted the word life liberally and has been giving an expansive interpretation to word 'life'. The court has based its reliance on the observation of Justice Field in *Munn vs Illinois*<sup>21</sup>:

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 the life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg.

In *Francis Coralie vs Delhi*<sup>22</sup>, Supreme Court has held that 'life' under Article 21 includes the right to live with human dignity and not just animal existence. Which means that it may also include right to have adequate nutrition, clothing, shelter over their head. Hence the term life was expanded and its scope was also enlarged. There were various rights which were given shelter under Article 21. The proper definition of the right to life was not provided but the Supreme Court through its various judgement explained that what all is coupled with the right to life.

The definition of 'life' has been provided in *P Rathinam vs Union of India*<sup>23</sup> as follows:

The right to live with human dignity and the same does not connote continued drudgery. It takes within its fold some of the fine graces of civilization which makes life worth living and that expanded concept of life would mean the tradition, culture and heritage of the person concerned.

What all has been included under the word 'life' is being discussed later in other chapter of this dissertation.<sup>24</sup>

##### Personal Liberty

Personal liberty is antithesis to the word 'restraint' or 'coercion'. It is the right of the individual to be free from restriction or encroachments on his person whether those restrictions are directly imposed or indirectly brought about by calculated means.<sup>25</sup>

The right to safety of a person's limb is one of the birth rights of any individual. These kinds of rights are inherent in the individual and they can't be taken from him. 'Personal liberty'

<sup>14</sup> T. K. Tope, *Constitutional Law of India* (Eastern Book Company, 3<sup>rd</sup> edition, 2010).

<sup>15</sup> The elaborate discussion on the unenumerated rights is being dealt under chapter IV of this dissertation.

<sup>16</sup> 1960 3 SCR 490

<sup>17</sup> *Delhi Transport Corporation vs DTC Mazdoor Congress*, AIR 1991 SC 101

<sup>18</sup> *O P Gupta vs Union of India and others*, AIR 1987 SC 2257.

<sup>19</sup> *F K Hussain vs Union of India and others*, AIR 1990 Kerala 321.

<sup>20</sup> *Jagmohan Singh vs The State of UP*, AIR 1973 SC 947

<sup>21</sup> 94 US 113 (1877).

<sup>22</sup> AIR 1981 SC 746.

<sup>23</sup> AIR 1994 SC 1844.

<sup>24</sup> Chapter number IV of the dissertation includes the various cases where the Supreme Court has expanded the scope of the term and has included various other rights such as 'right to livelihood', right to shelter, and various other safeguards in the Criminal Justice system.

<sup>25</sup> *Satwant Singh Sawhney vs D Ramarathnam, Assistant*, AIR 1967 SC 1836

does not only means liberty of the person but it means liberty of the rights attached with the person (*juspersonam*).<sup>26</sup> Personal liberty may be compendiously summed up as the right to do as one pleases within the law, because liberty is not unbridled license.<sup>27</sup>

There are enormous types of personal liberty which could be brought in the ambit of article 21 but amongst them education is certainly the foremost.<sup>28</sup> But it cannot be said that refusal of admission to a medical college impugns the personal liberty of any individual.<sup>29</sup> An unauthorized intrusion into a person's home and the disturbance caused to him thereby amount to a violation of his personal liberty. Clause (b) of Regulation 236 of the U.P. police regulation enabling the police to make domiciliary visits to the house of a person to be kept under surveillance is plainly violative of article 21, there being no law within the meaning of article on which the same could be justified.<sup>30</sup> Article 21 includes various rights for the prisoners and it is also one of the condition of article 21 that when a bail order is passed then he should be released on bail and he should not be kept further in custody after that.<sup>31</sup>

The right to travel abroad is one of the fundamental right of an individual under article 21 within the word 'personal liberty'. The denial of such right of an individual will lead to the violation of article 21 and also article 14.<sup>32</sup> Hence the word is not just confined to physical restraint, coercion and all but it also includes that the person shall be allowed to travel abroad and that there shall not be too much intrusion on a person on apprehension that he has caused some offence is also violative of article 21. Then there are various rights of prisoners which are protected by the present article. Then there is controversy regarding the proceedings of granting passport to an individual and it is found that there is no law enacted to grant or refusal of passports. It is left to the absolute discretion of the authorities. Thus article 21 may come into picture where it is found that the passport was not granted and the proceedings of not granting were arbitrary.<sup>33</sup>

#### **Procedure established by law**

The term 'due process' was deliberately ignore and 'procedure established by law' was incorporated, as the legislative history of article suggests. It has been interpreted by Supreme Court in various cases.

The expression in the article 'procedure established by law' does not just qualify personal liberty but also life.<sup>34</sup> The words 'procedure established by law' seems to be borrowed from Article 31 of Japanese Constitution.<sup>35</sup> There are four points of distinction between 'procedure established by law' and 'due process'; in US constitution the word 'liberty' is used as simply but in Indian constitution this word is qualified by the word personal, then in US constitution the same protection is given

to property also but it is not same for the Indian constitution. The word due has been omitted from the Indian constitution completely and deliberately and the last point of difference is Article 21 uses the word 'established' and it is a limited procedure.<sup>36</sup>

The law which is supposed to deprive the life and personal liberty of individual shall be made by a competent legislature. It has been held in one of the judgment of the Supreme Court that a law must satisfy two tests before it can be a valid law, namely, (a) that the appropriate legislature has the competency to make law and (b) that it does not takes away any of the fundamental rights mentioned in part III of the constitution of India.<sup>37</sup>

There are many rights of the accused which are being taken into consideration by article 21 itself. The word 'procedure established by law' hence includes various rights of the accused, such as fair trial and the burden of proving that the procedure of deprivation of life and personal liberty of any individual is not arbitrary. There has been discussion in cases about these points and it has been held in one case that fairness of the trial shall be maintained and any prosecution whether by state or private person must abide by the letter of law or take the risk of prosecution failing on the ground of limitation.<sup>38</sup> In the other case it has been held that wherever there is deprivation of life, the burden must rest on state to establish that the procedure prescribed for such deprivation was not arbitrary.<sup>39</sup>

Article 21 even has incorporated the concept of compensation as well. Where a person comes with the complaint that he has been arrested and imprisoned with mischievous and or malicious intent, the mischief or malice may not be washed away merely setting him free. In appropriate cases, the Supreme Court has the jurisdiction to award him suitable monetary compensations as well.<sup>40</sup>

#### **V. CONCLUSION**

The word has been interpreted in different cases and now it even includes various socio economic rights and various other rights. The word 'right to life' has been expanded by judiciary by various cases. The rights thus enumerated by the courts are called as 'unenumerated rights'; which means the rights which are not specifically mentioned but incorporated by way of interpretation.

<sup>26</sup> *A K Gopalan vs State of Madras*, 1950 SCJ 174.

<sup>27</sup> *Ibid.*

<sup>28</sup> AIR 1986 Ker 119.

<sup>29</sup> *State of Andhra Pradesh vs Lavu*, AIR 1971 SC 2560.

<sup>30</sup> *Kharak Singh v. State of Uttar Pradesh*, 1964 2 SCJ 107.

<sup>31</sup> AIR 1956 Mad. 639

<sup>32</sup> *Satwant Singh Sawhney vs D Ramarathnam, Assistant*, AIR 1967 SC 1836.

<sup>33</sup> *A.G. Kazi And Ors. vs C.V. Jethwani*, AIR 1967 Bom. 235.

<sup>34</sup> AIR 1967 Goa 40: 1967 Cr. L J 463

<sup>35</sup> *A K Gopalan vs The state of Madras*, AIR 1950 SC 27

<sup>36</sup> *Ibid.*

<sup>37</sup> *Kavalappara Kottarathil Kochuni vs The State Of Madras And Others* AIR ( 1960) SC 1080.

<sup>38</sup> *State of Punjab vs Sarwan Singh*, AIR 1981 SC 1054.

<sup>39</sup> *Bachan Singh etc etc vs State of Punjab*, AIR 1982 SC 1325.

<sup>40</sup> *Bhim Singh vs State of J and K*, AIR 1986 SC 494.