



Right To Life Concept Under Indian Legal System: An Overview

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Abstract:

The Individual cannot attain the highest in him unless he is in possession of certain right and liberties which leave him as it were to breathe and expand. Freedom is necessary to man as bread and air. The concept of human rights got lost on its way in the dark and narrow alleys of the middle ages. In the Medieval period of the philosophical and ideal speculation, were replaced by new idea of chivalry, war and others heroic traditions which led to confusion and uncertainty. The right to life guaranteed under Article 21 should therefore be interpreted to incorporate at least the minimal conditions for an autonomous life, including an adequate range of options. Some of these conditions are detailed in Part IV of the Constitution which is necessarily to be read along with Part III or more importantly under Article 21 to make it more meaningful. Those conditions are the instance of collective goods which are the possible foundations of autonomy of individual.

Keywords: Right, Personnel, Freedom, liberty, Livelihood, Existence, Death

Right to Life: General Meaning

The 'right to life' is the immediate gift of God and a right vested by nature in every individual. In common parlance life means animation from birth to death of every living being, but in broad sense life means activeness, liveliness, physical or intellectual force, energy and the vitality etc. or we can say that 'Right to Life' in a relative narrow way is *"the right not to be killed and the right to be rescued from impending death"*, and broader concept is *"right to live decently"* as **Hugo Bedauputs** it, *"... the life to which we now think men are entitled as of right is not (merely) a right at the barest level sufficient to save off an untimely death, rather it is a life sufficient for self-respect, relief from needless*



*drudgery, and opportunity for the release of productive energy"*¹

The Individual cannot attain the highest in him unless he is in possession of certain right and liberties which leave him as it were to breathe and expand. Freedom is necessary to-man as bread and air. Life is beyond price. Freedom and liberties are only for the living. Life and personal freedoms are the prized assets of an individual which are basic or primary.²

The right to life does not merely mean the sanctity of life. It means the fullest opportunity to develop ones personality and potentiality to the highest level possible in the existing stage of our civilization¹⁰ The mere right to exist will have little value, if it is to be bereft of any opportunity to develop or to bring out what is in every man or women. It follows inevitably that the right to life is the right to live decently as a member of a civilized society and have all the freedoms and advantages that would go to make life agreeable and living assured in a reasonable standard of comfort and decency.³

*Francis Coralie Mullin v. Union territory of Delhi*⁴observed:

" *The fundamental right to Life is the most precious human rightand forms the, arc of all other rights.....* "

Sabyasachi Mukherjee, J., as he then was, expressed himself thus in *Ramsharan v. Union of India*.⁵

"It is true that life in its expanded horizons today include all that give meaning to a man's life including his tradition, culture and heritage, and protection of that heritage in its full measure would certainly come with in the encompass of an expanded concept of Article 21 of the constitution."

¹ Hugo Bedau, "The Right to Life", *The Monist* 52, (1968), p.567

²Sunil Deshta and Ki-an Deshta, "Philosophy of Right to life", *Journal of constitutional and parliamentary studies* (January-June 1996), Vol. XXX, Nos. 1-2, p.22

³A note on Fundamental Rights by K.T. Shah in B. Shiva Rao, *Framing of Indian Constitution*, Vol. II, p.41

⁴ AIR 1981 SC746, Para 5

⁵ AIR 1989 SC 549, Para 13



Personal Liberty: Concept and Meaning

The word "liberty," derived from the Latin words *liber* and *liberties*, is defined in Encyclopaedia Britannica as a "state of freedom" which is "specially opposed to political subjection, imprisonment or slavery"⁶ It is also defined as "being free from captivity, imprisonment, slavery or despotic control."⁷ Chamber's Twentieth Century dictionary defines "liberty as "Freedom to do as one pleases, the unrestrained employment of natural rights, power of free chance, privileges, exemption, relaxation of restraint, the bounds within which certain privileges are enjoyed, freedom of speech and action beyond ordinary civility". John Stuart Mill defined liberty as "Protection against the tyranny of the political rulers".⁸ Mill was said to have derived the idea from Jeremy Bentham who attached upon every restriction, not justifiable by some definite and assignable reason of utility, upon the freedom of human existence and the development of human character.⁹ Laski takes the same line and argues that liberty is essentially an absence of restraint.¹⁰ But in his 'Grammar of Politics', he states: Liberty, therefore is a positive thing, it does not merely mean absence of restraint.¹¹

According to Lord Denning, "Liberty" means freedom of every law abiding citizens to think, what he will, to say that he will and to go where he will on his lawful occasion without let or hindrance from any other person. The freedom must be matched with social security that is the peace and good order of the community in which he lives.¹² Whatever, "liberty" may mean today, the liberty guaranteed by our Bills of Rights, said Dean Roscoe Pound, "is a reservation to the individual of certain fundamental reasonable expectations involved in life in civilized society and a freedom from arbitrary and unreasonable exercise of the power and authority of those who are designated or chosen in a politically organized society to adjust relation and order conduct, and so are able to

⁶Encyclopaedia Britannica (1966), Vol. 13, p.1029

⁷ J. Coulson et.al.(ed), Oxford Illustrated Dictionary, (1962), p. 472

⁸ J. S. Mill, Liberty Representative Govt. the Subjection of Women. Three Essays (1971),p.5

⁹A. V. Dicey, Lectures on Relationship between Law and Public Opinion in England, (1963),p.149

¹⁰ Harold J. Laski, Liberty in the Modern State, (1954), p.48

¹¹Harold J. Laski, Grammar of Politics, (4thEdn.), p.142

¹² Lord Elferd Denning, Freedom Under the Law, (1949), p.49



apply the force of that society to individuals".¹³

"The right to personal freedom is a liberty to such personal freedom as is not taken away by law. It asserts the principal of legality, that everything is legal that is not illegal The right to personal freedom asserts that a man may not be deprived of this freedom for doing any act unless in so doing he offends against the law"

According to Blackstone¹⁴ *"Personal liberty consists in the power of locomotion, of changing situation or moving one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due process of law"*. The nature of liberties, in general, under the English Constitution is explained in Halsbury's Law of England in the following words:¹⁵

"The so-called liberties of the subject was really implications drawn from the two principles that the subjects may say or do what he pleases, provided he does not transgress the substantive law, or infringe the legal rights of others, whereas public authorities (including the Crown) may do nothing but what they are authorized to do by some rule of Common Law or Statute. Where public authorities are not authorized to interfere with the subject, he has liberties..."

Concept of Right to Life and Personal Liberty

Concept of Right to Life and Personal Liberty: Ancient India

The concepts of "Right to Life" and "Personal; Liberty" are as old as man kind. The nature creates the life and right to it is essentially natural. In pre-legal stage man was living more or less like an animal and the jungle law applied which meant "might is right". The survival of the stronger was the order of the society but in legal stage when the process of civilization began, a human being become conscious of his rights, particularly his right to exit. The most important fact, of the society is the interdependence of men. In the present day society man exists by its membership of the society each man cannot manufacture and procure the necessities of life himself. The realization of

¹³Dean Roscoe Pound, The Development of Constitutional Guarantee of Liberty, (1963), p.63

¹⁴ Black Stone, Commentaries on the Laws of England, (1966), Vol. I, p.134

¹⁵Lord Simends ed.(Halsbury's laws of England, (1954), vol. 7, para. 416, p. 195-196



interdependence culminated in to his living as a responsible member of the group of human beings called society.¹⁶

The legal philosophy of life and personal liberty in India had its basis in metaphysics which attributed four dimensions in the form of Artha (desire), Kama interest), Dharma (ethical value) and Moksha (absolute liberation i.e. annihilations of all limitations).

The legal philosophy embodied these dimension in the law codes of ancient India.¹⁷ These aims of life also affected the social system, the political system and consequently, the judicial system. Dharma regulated the civil and political rights Dharma was not religion in the technical sense but a code of conduct which regulated the whole expression of life.

Concept of Right to Life and Personal Liberty: Muslim Era

The concept of human rights got lost on its way in the dark and narrow alleys of the middle ages. In the Medieval period of the philosophical and ideal speculation, were replaced by new idea of chivalry, war and others heroic traditions which led to confusion and uncertainty. With the invasion of India by the Muslim created new situation where in Muslims rulers or Sultans followed a policy of discrimination against the Hindus. So the significance of Muslim rule in India was counter productive to harmony, justice and equality.¹⁸

The operational ramifications of the Islamic norms can be gleaned from the Mughal History of India. M. K. Nawaz is objective enough to qualify his conclusion with the observation that "Islamic law, atleast in its traditional interpretation, considers certain human beings as more equal than others. Muslim rulers or Sultans followed a policy of discrimination against the Hindus. There was one law for the Muslims (faithful) and another for Hindus (Kafirs), and the principle of equality was not given much importance. The state was basically a theocracy deriving legal strength from the fundamental law of Shariat as laid down by the Holy Koran. Hindus were rarely treated on par with Muslims. To

¹⁶SunilDeshta and KiranDeshta, Fundamental Human rights: The Right to Life and Personal Liberty, (2003), p. 19

¹⁷ S.D. Sharma, The Concept of Personal Liberty in Ancient India Legal Theory: Its Relevance in Modern Times, (1978), p. 97-98

¹⁸Supra Note 57.



be true, rulers like Allauddin Khilji was most despotic and autocratic who did not bother for religious laws and Quazi justice. He said, "law is what I say not what Koran says".¹⁹

Concept of Right to Life and Personal Liberty: British Era

With the passage of time, the Britishers who entered Indian through East India Company for the purpose of trading later transformed themselves into political interests.

Major development was the drafting of Mrs. Annie Besant's common wealth of India Bill, 1925. This Bill contained seven fundamental Rights. The prominent place and the role accorded to right to life is a self-explanatory one which has been incorporated not only in positive legal orders but as well in various international documents like United Nations Charter, UDHR and Covenant on Civil and Political Rights.

Different Facets of Right to Life

The courts in various decision, have given an extended connotation to the 'right to life'. The different facets of this rights are discussed below.

Right to live with human dignity

In *Francis Coralie v. Union Territory of Delhi*²⁰, Supreme Court struckdown section 3 of the *Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974*, as violation of Articles 14 and 21. The impugned section 3 provided that a detenu could have interview with his legal advisor only one time in a month and that too only after obtaining prior permission of the District Magistrate, Delhi and the interview had to take place in the presence of Customs Officer. Explaining the scope of the "right to life" enshrined in Article 21, the court observed:

The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing one self in diverse forms, freely moving about and mixing

¹⁹Ibid.

²⁰AIR 1981 SC 746

and commingling with fellow human beings.

Right to livelihood and Right to Work

Article 21 had fail to focus the attention of the judiciary and the right to earn livelihood remained unnoticed till,²¹ in *Olga Tellis v. Bombay Municipal Corporation*,²² it was held that the "right to life" included the right to livelihood. However, the Court said that no person could claim the right to livelihood by the pursuit of an opprobrious occupation or a nefarious trade or business, like toutism, gambling or living on the gains of prostitution. In this case, which is popularly known as *the slum dwellers case*, the question related to the eviction of the pavement dwellers, who were censured in 1976 and were given identity cards, from footpaths, pavements or any other place reserved for a public purpose. The Supreme court, though upheld the validity of the impugned provisions of the *Bombay Municipal Corporation Act, 1888* and eviction thereunder, of the petitioners from the payments, however, directed the State to provide them alternative sites for their resettlement and to earn livelihood. The court, explaining the scope of the "right to life", laid down:

The right to life includes the right to livelihood.... If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Deprive a person of his right to livelihood you shall have deprived him of his life.

Right to Shelter

In *Samatha v. State of Andra Pradesh*,²³ Justice Ramaswamy curtly observed that right to life enshrined in Art 21 means something more than mere survival or animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life.

²¹See In re Sant Ram, AIR 1963 SC 932

²² AIR 1986 SC 180

²³(1977) 2 SCJ 539

Similarly in *Chameli Singh v. State of U.P.*,²⁴ it has been held that the right to shelter is a fundamental right under Article 21 of the constitution. In any organized society, the right to live as a human being is not only insured by meeting only the animal needs of man. It is secured only when is assured of all facilities to benefit himself. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are the basic human rights known to any civilized society..... Shelter for human being.

Right to Education

Today, education is perhaps the most important function of the State of the Local Government. It is the very foundation of good citizenship. It helps in promoting and understanding various human rights. Today, it is a principle instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.²⁵ Article 45²⁶ of the Constitution expected the State to provide free and compulsory education for all children until they attained the age of fourteen years. But this mandate of the Constitution has remained mostly a dead letter and millions of children are denied basic human right to education. The judiciary in India has shown its deep concern for providing free and compulsory education to all children below the age of fourteen years."

In *Mohini Jain v. State of Karnataka*,²⁷ the Supreme Court once again showed its judicial activism and held that "right to education" is yet another unenumerated right which is concomitant to fundamental rights. The court drew inspiration from the preamble and the directive principles and held that without education the fundamental freedoms in Article 19 of the Constitution cannot be fully enjoyed nor can the dignity of the individual under Article 21 of the Constitution be assure. The court observed:

²⁴(1966) 2 SCC 549

²⁵ See *Brown v. Board of Education*, 98L Ed. 873

²⁶Now this Article has been amended and Right to Education is made a Fundamental Right under Article 21-A.

²⁷ (1992) 3 SCC 666



'Right to life' is the compendious expression for all those n'ghts which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to peruse. The right to life in the Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.²⁸

Right to Health and Timely Medical aid

It has been noted that the word 'life' does not mean mere animal existence. It has to mean a life befitting human dignity. Right to livelihood is also a part of this article. How can man earn livelihood if he is not healthy? So, the health of person more particularly of a worker, would become a integral facet of his right to life. Article 25(2) of the Universal Declaration of Human Rights, 1948 assures that the every one has a right to a standard of living adequate for the health and well-being of himself and his family including medical care, sickness and disability. Article 7(b) of the International Convention of Economic, Social and Cultural Rights, 1966 recognises the right of every one to the enjoyment of just and favourable conditions of work which ensure in particular, safe and healthy working conditions. Article 39(e) of our constitution enjoins upon the State to direct its policies to secure the health and strength of the workers.

*Vincent v. Union of India,*²⁹ very nearly accepted right to health as a part of fundamental right, which would be apparent from what has been stated in paragraph 16 of the judgement, the court observed:

"A healthy body is the very foundation of all human activities. This is why the adage 'Sariramadyam Khalu Dharma Sadhanam'. In a welfare state, therefore, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health.

Right to live in Healthy Environment

²⁸ Ibid, p.679-80.

²⁹ AIR 1987 SC 990

The Indian Constitution is perhaps one of the rare Constitutions of world which reflects the Human Rights approach to environment protection through various constitutional mandates.³⁰ In India the concern for environment protection has not only been raised to the status of fundamental law of the land, but it is also wedded with the Human Rights approach and it is now well settled that it is the basic human right of every individual to live in pollution free environment with full human dignity. The Constitution of India obligates the "State" as well as "Citizens" to "protect" and "improve" the environment.

R.L. and E. Kendra v. State of L/P.,³¹ is a landmark case which demonstrates the activist role of the Supreme Court with regard to environmental issues. In this case, the Supreme Court entertained environmental complaints alleging that the operation of lime-stone quarries in the Himalayan range of Mussoorie resulted in degradation of the environment affecting ecological balance. The Supreme Court entertained the writ petition under Article 32 regarding the environmental issues and ordered the closure of some of these quarries on the ground that their operation was upsetting the ecological balance. In other words, the Supreme Court read, and rightly so, Article 48-A into Article 21 of the Constitution and regarded the right to live in a healthy environment as a part of life and personal liberty of the people.

Conclusion

The right to life guaranteed under Article 21 should therefore be interpreted to incorporate at least the minimal conditions for an autonomous life, including an adequate range of options. Some of these conditions are detailed in Part IV of the Constitution which is necessarily to be read along with Part III or more importantly under Article 21 to make it more meaningful. Those conditions are the instance of collective goods which are the possible foundations of autonomy of individual. That all about the research wo

³⁰ See articles 14, 21, 47, 48-A and 51-A(g) of the Constitution of India.

³¹ AIR 1985 SC 652