

RIGHT TO LIFE

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Our Constitution has to be Interpreted In the background of our own past, the history of freedom struggle and the aspirations of the people fighting for freedom. The struggle was not only for a political freedom a freedom from the British Yoke, but also it was a struggle for freedom from all sorts of bandages and slaveries. The aspiration for freedom of body, mind and spirit was best expressed by Gurudev Rabindra Nath Tagore when he burst out:

"Where the mind is without fear and the head is held high.
Where knowledge is free;
Where the world has not been broken-up
Into fragments by narrow domestic walls;
Where the words come out from the depth of truth:
Where tireless striving stretches its arms towards perfection:
Where the clear stream of reason has not lost its way
Into the dreary desert sand of dead habit
Where the mind is led forward by thee into ever widening and action
Into that heaven of freedom, my Father, let my country awake."

The noble aspirations for freedom were sought to be enshrined also in our Constitution, even though our people, whose spirits were crushed by the foreign rulers for centuries, were not mentally prepared to have these high aspirations. Our leaders who had seen liberty, fraternity and equality, having their full sway in the western society tried to embody these spirits In the Constitution Itself, which was the fundamental law of the land. There was absolutely nothing new in all these shibboleths but subjugation of the whole Indian race for the last 900 years had made us a nation of absolute slaves, in thought and action both. However, the lead was again taken by our leaders who were inspired by the old Upanishadic thought and the Modern Western egalitarian society as they had seen equality, fraternity and liberty in action from a close quarter. When the framers of our Constitution sat to frame the Constitution then they made certain ideals as fundamental. This meant that no law or decree could abridge or violate them Legislative, Executive or Judicial. Among other Articles discovering the Fundamental Rights of the Indian people, the "Right to life" came on the forefront. If we go through the debates of the Constituent Assembly we find that the only controversy in this regard was to have the phrase "due process of law" or "to a procedure established by law". Pandit Govind Ballabh Pant was apprehensive that if the words "due process of law" were there, then they were

quite ambiguous and were capable of divergent Interpretations, and their retention might mean that the future of the country was to be determined not by the collective wisdom of the representatives of the people, but by the whims and vagaries of lawyers elevated to the Judiciary. With this fear in mind the words "according to procedure established by law" was retained In the Article 21 of the Constitution which now reads as below:

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

The retention of the phrase "except according to procedure established by law" was thus done with a view that whatever the Legislature provided was alone sacrosanct. Prior to the decision of Menka Gandhi's case (AIR 1978 SC 597) Art. 21 was construed in a very narrow sense. It was only supposed to be a guarantee against the executive action unsupported by law, but Menka Gandhi's case opened a new dimension and also laid down certain limitations on the framing of the laws as well. It held that while the law prescribed a procedure it had to be reasonable, fair and Just. Now, as apprehended by Govind Ballabh Pant, the Judiciary is allowed to Interpret as to whether the limitations laid down by the Legislature were reasonable, fair and just. Earlier as was laid down In Gopalan's case' 1950 SC R. 88, Art. 21 was attracted only in cases of deprivation and not on the restriction upon the right to move freely. But now the old concept has undergone a great change and it appears that now "Right to life" enshrined In Art. 21 means something more than survival or animal existence (AIR 1983 SC 803) .Everything connected with human dignity will be associated with the "Right to Live". It is difficult to categorise all the Incidences of life which are In conformity with the 'Right to Live". The only test, which appears to me, is that any limitation placed upon any citizen which puts any sort of Indignity upon him or any restraint of any kind would be against the .'Right to live" and contravenes Article 21 of the Constitution of India. The only exception to this omnipotent and omnipresent right would be when it comes In conflict with the "Right to Live" of another citizen and also when the very existence of the country is apprehended to be put Into Jeopardy. Now the Hon'ble Supreme Court In some cases has tried to find as to whether a certain legislative or executive action violated the "right to live". For instance now the unbonded labour, fair conditions of labour, the right of bonded labour to rehabilitation after release, right to livelihood by means which are not illegal, Immoral or opposed to public policy and so on and so forth have been held to be In conformity with the 'right to live'. The execution by public hanging was held to be offending Article 21 of the Constitution of India (AIR 1986 SC 467). By the expansion of the effect of Article 21 of the Constitution of India, we can bring in each and every aspect of life which is conducive to a healthy human existence. Even a prisoner has a 'Right to Live' and has to be treated like a human being.

The question arose in 1976, before the Supreme Court as to whether Article 21 of the Constitution was the repository of the right to live. Earlier before the pronouncement In AIR 1976 SC 1207 the view of the Supreme Court was that the right to live did not flow only from Article 21 of the Constitution, but It was independent of Article 21 of the Constitution of India which merely defined the existing fundamental right i.e. Right to live'. In para 127 of AIR 1976 SC 1207 (A.D.M. Jabalpur v. S. Shukla) the Supreme Court gave its majority view as follows:

"First. In view of the Presidential Order dated 27th June, 1975 under clause (1) of Article 359 of our Constitution no person has locus standi to move any writ petition under Article 226 before High Court for habeas corpus or any other writ or order or direction to enforce any right to personal liberty of a person detained under the Act on the grounds that the order 'Of detention or the continued detention Is for reason not under or In compliance with the Act or is illegal or malafide.

Second. Article 21 is the sole repository of rights to life and personal liberty against the State. Any claim to a writ of habeas corpus is enforcement of Article 21 and, is, therefore, barred by the Presidential Order."

However, Justice Khanna gave his minority view In para 220, which reiterated the old view of the Supreme Court that right to live was not an outcome of Article 21 of the Constitution. "

In order to nullify the effect of the judgment, the 44th Constitution Amendment Act was brought in. In Article 359 of the Constitution It Incorporated the following words:-

"Except Articles 20 & 21". It is well known that Article 359 deals with the provision for the suspension of fundamental rights by an order of the President In the event of the imposition of Emergency. So, the right to live fortunately cannot be suspended even by the President of India during the Imposition of Emergency.

After such a long struggle, Constitutional, Judicial and Parliamentary, we have recognized for ever the great ideal of "Right to Life". Our Saints of ancient time had gone even further. The 'Right to life' meant to them the Right not to be even bound by our material illusory world. We, according to them, have to free ourselves even from all the material illusions and have to live in the great bliss of the Absolute Self 'BRAHMA', which does not know any bondage of any sort.

My only desire is that the concept of "Right to Life" may percolate the heart & spirit of every fellow citizen. When any citizen who is afflicted by any governmental action affecting his 'Right to Life' enters a Lawyer's Chamber then he may say to the lawyer that his Right to life was disturbed in a certain manner and the High Court may Intervene and give back to him his right, and

not after a lot of study the lawyer fishes out from the file of the citizen that his particular right had been Infringed. Let every citizen may be aware in a very positive manner what are his fundamental rights and particularly his Right to live.

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