



## RIGHT TO LIFE AS A FUNDAMENTAL RIGHT; A LEGAL ANALYSIS ON SRI LANKAN CONSTITUTION

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### INTRODUCTION

The most important principle of inherent rights is the right to life for mankind. This has been unanimously accepted by all schools of thought.<sup>1</sup> Every Constitution in the world includes fundamental rules and principles that are essential for its society and its citizens. The right to life, which is an absolute right of every human being, is at the heart of these rights and freedoms. By virtue of the right to life, individuals enjoy all the other rights and freedoms as stipulated and warranted by the fundamental law.<sup>2</sup> The enshrinement of a right in a constitution is itself proof of the fact that the said rights are guaranteed and protected by the supreme law of the country. But it is a fact that the Sri Lankan Constitution still does not include the right to life as a fundamental right in Sri Lanka.

The right to life is defined as "prerogatives conferred by domestic law and recognized by international law to each individual in his relations with the community and the state"<sup>3</sup>. Thus, human rights are a constant concern for the international community, which has materialised in numerous legal instruments. adapted both at a global and regional level over the years. The right to life is a human right, which is inalienable and imprescriptible and is inherent to all human beings. The right to life belongs to the category of fundamental rights and, from a historical perspective, it is one of the first rights proclaimed and enshrined in international law. By virtue of the right to life, any human being enjoys all other rights prescribed and guaranteed by the Constitution and by international documents. In analysing the importance of the right to life as a fundamental right, the researcher would achieve the following objectives. They are to identify the importance of the right to life, internationally and domestically, to investigate the existing law in Sri Lanka relating to fundamental rights and to analyse countries where the right to life is enshrined in the Constitution.

Therefore, the research will be based on the importance of including a clear provision for the right to life in the current Sri Lankan Constitution of Sri Lanka. This research will be based on the constitutional coverage of the right to life in Sri Lanka, though it is not expressly accepted in our Constitution. Thus, judicial activism too will be discussed. By raising the issue at hand in Sri Lanka, the researcher finally makes recommendations to incorporate the right to life in the present Sri Lankan Constitution by taking lessons from two foreign Asian jurisdictions i.e., India and Pakistan.

### METHODOLOGY

In order to carry out this research the researcher has followed up qualitative methods by gathering primary and secondary data. While analysing and critically evaluating those sources the researcher will fulfil research objectives. The Constitution of Sri Lanka 1978, legislations of India and Pakistan will be referred as Primary sources and the secondary data will be collected from, scholarly articles, journal articles, research papers, and also relevant judicial decisions in domestic and international level.

### International perspective on right to life as a fundamental right

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<sup>1</sup> Ullah Aman and Tahir Malik, *Expanding Literature on the Human Right to Life in Pakistan*, P.1.

<sup>2</sup> Luminita and Teodora Christina, *The Right to Life- A Fundamental Human Right, Social Economic Debates*, Vol 2, No 2, 2013 P.1

<sup>3</sup> Adrian Natase, *Human Rights, the Religion of the End of The Century*, I.R.D.O., Bucharest, (1992) P.2



Internationally, this right is considered as the most important since it has been included in the Universal Declaration of Human Rights<sup>4</sup>, the most important document adapted by the General Assembly of the United Nations shortly after the end of the Second World War. It stipulates: "Everyone has the right to life, liberty and security of person". (Article 3) Also, it proclaims that all human beings are born free and equal in dignity and rights (Article 1) it thus establishes a common ideal that is to be accomplished by all the states in the world. The Universal Declaration of Human Rights gives a new sense, and a particular force to human rights, and moreover to their legal protection. The Universal Declaration of Human Rights speaks of a common conception, a common ideal. The Universal Declaration of Human Rights has rallied and engaged the international community for a long time. By means of this Declaration, the proclamation and guarantee of human liberties emerge from the narrow frontiers of the state and become a problem of the international community, a problem for the world.<sup>5</sup>

The International Covenant on Civil and political Rights<sup>6</sup> contains provisions with regard to the right to life, prohibition of torture, slavery, the right to freedom and personal security as well as other rights and liberties. The United Nations General Assembly adapted in 1989, the second optional protocol to the International Covenant on Civil and Political Rights assuming at the abolition of death penalty, considering that these provisions would "contribute to enhancement of human dignity and progressive development of human rights" .the other international documents meant to enshrine and ensure the protection of the right to life were adapted by the states, which is to be mentioned is Convention on the Prevention and Punishment of the Crime of Genocide, adapted by the UN General Assembly on December 1948 and which entered in force on 12 January 1951. Another instrument which bears an utmost importance is the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which was adapted by the UN General Assembly on 10 December 1984.

At a European Level one of the most important documents adopted is the European Convention on Human Rights and Fundamental freedoms<sup>7</sup>, a treaty by virtue of which the signatory states intended to protect the fundamental rights and liberties enshrined in the UDHR (Universal Declaration of Human Rights) as approved by the United Nations General assembly. According to Article 2 paragraph 1 of the European Convention, the right to life of everyone is protected by law.

### **Right to life in India**

The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees. "Protection of life and personal liberty; No person shall be deprived of his life or personal liberty except according to procedure established by law". This fundamental right is available to every person, citizens and foreigners also. Article 21 provides two rights;

1. right to life
2. right to personal liberty

The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees. The supreme court of India has described this right as the heart of fundamental rights. The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the government, but also government departments, local bodies, the legislature etc...Also the right to life is not just about the right to survive. It also entails being able to live a complete and meaningful life of dignity.

<sup>4</sup> The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948

<sup>5</sup> I. Muraru, *The Topical Interest of The Universal Declaration of Human Rights*, in Human Rights Quarterly, I.R.D.O., Year IV, no. 4/1994

<sup>6</sup>The Covenant was adopted by the UN General Assembly on 16 December 1966 and it entered into force on 23 March 1976

<sup>7</sup> Adopted in Rome, in the year 1950 and September 1953, the convention was elaborated by the council of Europe, ratified by all member states and establish a control mechanism on human rights for the signatory states, over the years, it was completed with 13 additional protocols and it became a part of the legal system of most of the state's party to the convention.



### Interpretation of Article 21

The interpretation of Article 21 is not narrow and restricted. The Indian Supreme Court has widely interpreted the right to life and its value to a human being. The court has provided a list of other rights which are covered by Article 21. Right to privacy, right to shelter, right to social justice and economic empowerment, right to doctor's assistance, right against public hanging, right to pollution-free water and air, right to health and medical aid and right to education are only a few of them. Anyway, this is not an absolute right. The state can impose restrictions on the right to life and liberty, but it should be fair, reasonable and just as per the procedure established by law.

“Protection of Life and Personal Liberty; No person shall be deprived of his life or personal liberty except according to procedure established by law.” This fundamental human right is available in the Indian Constitution to every person, citizens and foreigners alike. The judicial intervention has ensured that the scope of Article 21 is not narrow and restricted. It has been widened by several landmark judgements.

*Maneka Gandhi v Union of India*<sup>8</sup> is a landmark Supreme Court judgment in India, which significantly expanded the interpretation of Article 21 of the Indian Constitution. This judgment widened Article 21's scope immensely and realized the goal of making India a welfare state, as assured in the Preamble. It was held that the 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.

By expanding the horizons of Article 21, in *Francis Coralie Mullin v The Administrator, Union Territory of Delhi and others*<sup>9</sup> it was held that the right to live includes the right to live with human dignity with the bare necessities of life such as: adequate nutrition, clothing, and shelter over one's head and facilities for: reading, writing, and expressing oneself in diverse forms.<sup>10</sup>

In *Sunil Batra v. Delhi Administration*<sup>11</sup>, the Supreme Court reiterated with approval the above observations and held that the right to life included the right to lead a healthy life so as to enjoy all the faculties of the human body in its 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.<sup>12</sup>

Therefore, it is extremely visible that India has used Article 21, right to life in a very expansive mode and in wide amplitude, covering a variety of rights which are aligned with “life”.

### Right to life in Pakistan

The Right to life was incorporated in the Constitution of the Islamic Republic of Pakistan in 1973, under Article 9. Therefore, the government of Pakistan also has a constitutional obligation to take appropriate measures to safeguard life. Initially, it was limited to being interpreted as a vegetative life for a long time. However, a progressive approach was adopted to give it new meaning in the late 80's. Gradually, the judiciary stepped forward and started to widen the scope and vires of the right to life, improving its quality.<sup>13</sup> By focusing on the right to life, the Pakistani judiciary has addressed several other rights such as the right to shelter, the right to a livelihood, the right to health, and so on. Thus, Pakistan's Supreme Court has enhanced the actual meaning of the right to life in many landmark cases decided. In, *Shehla Zia v WAPDA*<sup>14</sup> the Supreme Court has held that the right to environmental protection has been included within the right to life. This case expanded the fundamental rights to life and dignity, interpreting these rights to encompass the right to a healthy environment. This decision is particularly significant in the Pakistani Constitution regarding environmental protection.

<sup>8</sup> 1978 SC 597

<sup>9</sup> 1981 AIR 746

<sup>10</sup> *Shivangi Sinha discusses, “Article 21, Right to life and Personal Liberty”.*

<sup>11</sup> 1978 4 SCC 409

<sup>12</sup> Alefiyakurabarwala, *Article 21 of the Constitution of India- Right to life and Personal Liberty* P.1-2

<sup>13</sup> Ullah Aman, Tahir Malik, *Expanding Literature of Human Right to Life in Pakistan*, P.1

<sup>14</sup> PLD 1994 SC 693



*Mohtarma Benazir Bhutto and Ors v. President of Pakistan and Ors*,<sup>15</sup> is another significant case which expanded the interpretation given to the right to life. The Court referred to Article 9 of the Constitution which states that a person would not be deprived of their life except as provided under the law. In this regard, it was held that “life” included the right to be protected from encroachment on privacy. Thus, phone tapping and eavesdropping techniques not only infringe on the right to privacy but also on the right to life and liberty.<sup>16</sup> In Pakistan also, it is evident that case law has been widened to include new dimensions of right to life, as it is expressly included in the Constitution.

### **Sri Lankan perspective**

In comparison Sri Lanka with India and Pakistan, Sri Lanka does not explicitly recognize the right to life, though it has been held that Article 11 of the Constitution of 1978 of Sri Lanka recognizes, by necessary implications, the right to life. Though Sri Lanka is not a country where the right to life is considered to be included in the Constitution, it has been revealed that Article 11 read with Article 13 (4) interprets the consequences of the right to life. The court has advanced this argument, stating that the Constitution is a "living document" and should not be construed in a "narrow and pedantic manner".<sup>17</sup> The court referred to the values embodied in the Constitution, one of which is the dignity and wellbeing of the people as well as Sri Lanka's obligations under various international treaties in reinforcing the right to life.

The Sri Lankan Supreme Court has recognized in many situations, the importance of right to life cases. In the landmark case of *Ratnayake Tharanga Lakmali v Niroshan Abeykoon*,<sup>18</sup> the Supreme Court of Sri Lanka held that the extrajudicial killing of a suspect in police custody violated the right to life. The most well-known case is the *Eppawala*<sup>19</sup> judgement, in which the right to livelihood was included in Article 14(1) g of Sri Lanka's Constitution. The connection between EIA (Environmental Impact Assessment) law and human rights was portrayed while upholding the right to life. In *Jayawardane v Dharani Wijayathilake, secretary, Ministry of Justice and Constitutional Affairs and others*<sup>20</sup>, it was held that a denial of natural justice prior to the cancellation of the petitioner's appointment was a violation of the Constitution.

Moreover, in *Jayamuni Anuradha Nilmini Vijesekara v Sumedha Thushanga and Others*<sup>21</sup>, the suspect was assaulted severely in the police custody. JMO (Judicial Medical Officer) report proved that the body was subjected to torture and that the death had occurred due to brutal torture. The Supreme Court observed that the right to life and the fundamental rights had been violated due to cruel and inhumane treatment and granted one million rupees as compensation.

When considering all the judgements delivered in Sri Lanka interpreting the right to life, it is being observed that the absence of an explicit right to life in the Constitution of Sri Lanka creates a huge gap. One should wait for a judicial interpretation to prove that his or her right to life has been violated. A person can only wait for a broad interpretation through judicial activism. Unlike Sri Lanka, India and Pakistan have allowed their people to receive easy access to fight for the right to life by the inclusion of “life as a right” via the Constitutions themselves. Thus, that express inclusion of the right to life itself has opened many pathways for the judiciary to enhance their interpretations for the sake of human beings.

<sup>15</sup> PLD 19998 SC 388

<sup>16</sup> <https://privacylibrary.ccnlud.org/case/mohtarma-benazir-bhutto-and-ors-vs-president-of-pakistan-and-ors>

<sup>17</sup> Christina Teodora, Luminita Dragne, *The Right to Life-a Fundamental Human Right, Social Economic Debates*, vol. 2, No. 2 of December 2013

<sup>18</sup> SC FR/577/2010

<sup>19</sup> *Bulankulama v Secretary, Ministry of Industrial Development*, [2000] 3 Sri LR 243

<sup>20</sup> SC/FR 186/95



## RESULTS AND DISCUSSION

When engaging in a comparative legal analysis of the Constitution of Sri Lanka with two other jurisdictions, India and Pakistan, it is clearly identified that the inclusion of the right to life into their own Constitutions made them go far beyond while interpreting “life” as a fundamental human right. More opportunities have been created for people in those two countries to reach justice when their right to life and other rights related to life are being violated. Meanwhile, in Sri Lanka, people should wait until a positive interpretation is declared by the court when an infringement of a right related to life is identified. People should depend only on the judiciary due to lack of an express right to life in Sri Lanka. Therefore, Sri Lanka is in some uncertainty about guaranteeing the most important human right to a human being, which is to preserve social order and stability.

## CONCLUSIONS/RECOMMENDATIONS

The pinnacle of human rights remains the right to life. It is also visible in the above discussion that the right to life has got a special position in foreign jurisdictions by express inclusion into their respective Constitutions. In the present scenario, Sri Lanka is undergoing severe social, political and economic instability. In such a situation, people’s right to life is being violated in many visible and disguised ways. People are in quest of guaranteeing their life as a fundamental right. Therefore, more than ever in the history of Sri Lanka, the necessity of preserving people’s right to life should be guaranteed. Unless the express inclusion of the right to life is preserved it is hard to protect and guarantee so many other rights relating to “life”. It has become high time to amend the Constitution of Sri Lanka (1978) while placing express recognition of the right to life in Chapter III of the Constitution. Therefore, it is strongly recommended by this research for the speedy enshrinement of the right to life in the present Constitution as a constitutional amendment, in order to protect the core fundamental human rights.

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