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## Right to life: Life itself is not enough to protect life

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### Abstract

This article basically delineates regarding source and scope of Human Rights. The fountainhead of human rights as we know them today is not easily determined rather it is a concept that has been relentlessly developing right through the human past. It has been attached to the laws, civilization and religions all through the times. May be this rights are evolving through the writings of Greek and Roman philosophers until the Renaissance. But the derivation of natural law theory urged a lot to get organized shape of human rights to the medieval periods though there remain in numbers of critics towards natural law theory. Then the positivist ideology was acutely articulated in various instruments<sup>2</sup> that domestically emphasized and augmented for human dignity and justice. So the 19th century and modern times noticed various revolutions and the creations of ILO<sup>3</sup> and League of Nations to soothe and protect the human dignity. But these organizations gained less than expected. Furthermore the atrocity of Second World War caused to rethink for international framework to serve and uphold the human dignity and justice. And that is why UN Charter, UDHR, like other regional instruments<sup>4</sup> made to ensure human dignity and equality of all without any discrimination though aftermath of this we have got two separate document<sup>5</sup>, only the reason of ideology by ignoring the indivisibility and interrelatedness of human rights, to accomplish the aspiration of people. So International Bill of Rights and Other regional Human rights instruments laid downs a lot of rights of which a few number of *grundnorm* rights has been crystallized and these *grundnorms* rights has acquired the status of *jus cogens* from which no derogation is allowed by the states or non-state actors. Among these core rights, right to life shall be deemed to be nucleus of all other rights. Thus, it is matter of intellectual irony that, in spite of the widespread endorsement of the idea of right to life in social and political consciousness of modern society, there is no consensus on the nature and character of its most successful and thematic consideration regarding positive core content, component and multi-

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<sup>2</sup> See the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) and the books of John Locke, Second Treaties of Govt.

<sup>3</sup> International Labour Organization (ILO), 1919.

<sup>4</sup> European Commissions for Human Rights (1950).

<sup>5</sup> ICCPR(1966) and ICESCR(1966).

layered dimensions of right to life i.e. right to adequate standard of living meaning food, shelter, health, education, environment, etc will be justiciable under the lexis of right to life or not. Or just the restrictive meaning of right to life includes the right not to be killed by the states or third parties. The obligation of state parties abstains from killings (respect), refrains others from killings (protect), is sufficient to protect the core content of right to life? Whether the abstention of states from killings preserves whole facets of right to life or covers only one dimension of right to life or further initiation is incumbent on states to fulfill (i.e. to promote, to facilitate, to provide) right to life? If it is then what will be the approach towards fulfilling right to life of judiciary (i.e. systematic and conditional approach)? Or complete justifiability is always expectant from the courts by considering the socio-economic scenario of the country? Or only strong enforcement mechanism amounts to strong rights corresponding entitlements and fulfillment. To look upon the other facets of right to life, it is strongly argued that violation of socio-economic rights entails infringement of civil and political rights too. Civil and political rights cannot be realized without realizing socio-economic rights as all human rights are indivisible and interdependent. For example, the Indian, South-African and even the Bangladeshi Supreme Court has established in many cases that right to life must include right to livelihood as no person can live without the means of living, that is, the means of livelihood. The Courts further held that the right to health must form part of the right to life since health “is the nucleus of all activities of life” and without it “everything crumbles”<sup>6</sup>.

**Key words:** Grundnorms, Jus Cogens, Justifiability or non-justifiability, Right to life: non-derogable and Vertical or Horizontal enforcement mechanism.

## Introductory Remarks

The very content of the right to life is that if there is no life at all so how we will enjoy other rights. So the question automatically arises whether right to life is non-derogable right or not? The answer is that the new trends of world community is to abolish death penalty but the paradoxical view is that majority legal instruments states certain exception when right to life may be taken away i.e. Art. 6(2) of ICCPR..... This death penalty can only be carried out in pursuant to a final judgment rendered by a competent court. Even Art. 2(2) of ECHR allows for certain exception of right to life. It is matter of intellectual irony that, in spite of the widespread

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<sup>6</sup> Khosla M., Making *social rights conditional: Lessons from India*, I•CON (2010), Vol. 8 No. 4, 739–765 doi: 10.1093/icon/mor005 <http://icon.oxfordjournals.org>.

endorsement of the idea of right to life in social and political consciousness of modern society, there is no consensus on the nature and character of its most successful and thematic consideration regarding positive core content, component and multi-layered dimensions of right to life i.e. right to adequate standard of living meaning food, shelter, health, education, environment, etc will be justiciable under the lexis of right to life or not. Or just the restrictive meaning of right to life includes the right not to be killed by the states or third parties. The obligation of state parties abstains from killings (respect), refrains others from killings (protect), is sufficient to protect the core content of right to life? Whether the abstention of states from killings preserves whole facets of right to life or covers only one dimension of right to life or further initiation is incumbent on states to fulfill (i.e. to promote, to facilitate, to provide) right to life? If it is then what will be the approach towards fulfilling right to life of judiciary (i.e. systematic and conditional approach)? Or complete justifiability is always expectant from the courts by considering the socio-economic scenario of the country? Or only strong enforcement mechanism amounts to strong rights corresponding entitlements and fulfillment. To look upon the other facets of right to life, it is strongly argued that violation of socio-economic rights entails infringement of civil and political rights too. Civil and political rights cannot be realized without realizing socio-economic rights as all human rights are indivisible and interdependent. For example, the Indian, South-African and even the Bangladeshi Supreme Court has established in many cases that right to life must include right to livelihood as no person can live without the means of living, that is, the means of livelihood. The Courts further held that the right to health must form part of the right to life since health “is the nucleus of all activities of life” and without it “everything crumbles”<sup>7</sup>.

### **Right to life and its scope and nature**

This article basically delineates regarding source and scope of Human Rights. The fountainhead of human rights as we know them today is not easily determined rather it is a concept that has been relentlessly developing right through the human past. It has been attached to the laws, civilization and religions all through the times. May be this rights are evolving through the writings of Greek and Roman philosophers until the Renaissance. But the derivation of natural law theory urged a lot to get organized shape of human rights to the medieval periods though there remain in numbers of critics towards natural law theory. Then the

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positivist ideology was acutely articulated in various instruments<sup>8</sup> that domestically emphasized and augmented for human dignity and justice. So the 19th century and modern times noticed various revolutions and the creations of ILO<sup>9</sup> and League of Nations to soothe and protect the human dignity. But these organizations gained less than expected. Furthermore the atrocity of Second World War caused to rethink for international framework to serve and uphold the human dignity and justice. And that is why UN Charter, UDHR, like other regional instruments<sup>10</sup> made to ensure human dignity and equality of all without any discrimination though aftermath of this we have got two separate documents<sup>11</sup>, only the reason of ideology by ignoring the indivisibility and interrelatedness of human rights, to accomplish the aspiration of people. So International Bill of Rights and Other regional Human rights instruments laid downs a lot of rights of which a few number of *grundnorm* rights has been crystallized and these *grundnorms* rights has acquired the status of *jus cogens* from which no derogation is allowed by the states or non-state actors. Among these core rights, right to life shall be deemed to be nucleus of all other rights. Thus, it is matter of intellectual irony that, in spite of the widespread endorsement of the idea of right to life in social and political consciousness of modern society, there is no consensus on the nature and character of its most successful and thematic consideration regarding positive core content, component and multi-layered dimensions of right to life i.e. right to adequate standard of living meaning food, shelter, health, education, environment, etc will be justiciable under the lexis of right to life or not. Or just the restrictive meaning of right to life includes the right not to be killed by the states or third parties. The obligation of state parties abstains from killings (respect), refrains others from killings (protect), is sufficient to protect the core content of right to life? Whether the abstention of states from killings preserves whole facets of right to life or covers only one dimension of right to life or further initiation is incumbent on states to fulfill (i.e. to promote, to facilitate, to provide) right to life? If it is then what will be the approach towards fulfilling right to life of judiciary (i.e. systematic and conditional approach)? Or complete justifiability is always expectant from the courts by considering the socio-economic scenario of the country? Or only strong enforcement mechanism amounts to strong rights corresponding entitlements and fulfillment. To look upon the other facets of right to life, it is strongly argued that

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<sup>9</sup> International Labour Organization (ILO), 1919.

<sup>10</sup> European Commissions for Human Rights (1950).

<sup>11</sup> ICCPR(1966) and ICESCR(1966).

violation of socio-economic rights entails infringement of civil and political rights too. Civil and political rights cannot be realized without realizing socio-economic rights as all human rights are indivisible and interdependent. For example, the Indian, South-African and even the Bangladeshi Supreme Court has established in many cases that right to life must include right to livelihood as no person can live without the means of living, that is, the means of livelihood. The Courts further held that the right to health must form part of the right to life since health “is the nucleus of all activities of life” and without it “everything crumbles”<sup>12</sup>.

### Right to Life in International Instruments

While the Universal Declaration of Human Rights (UDHR)<sup>13</sup> and the American Declaration of the Rights and Duties of Man (ADRDM)<sup>14</sup>, are the first initiative by the international community to introduce right to life though many years ago this right to life actually firstly enacted in various national legislation i.e. constitutions and various declarations of independence.<sup>15</sup> It is the ECHR<sup>16</sup> that came into force in 1953 collectively enforce this right to life and other human rights<sup>17</sup>. Then ICCPR<sup>18</sup> Art.6.1<sup>19</sup> clearly defines right to life but a little bit different way from ECHR. Further the American Convention on Human Rights (ACHR)<sup>20</sup> says regarding right to life but it solves a problem as to conception of life from when it begins. This convention clearly states that this right shall be protected by law and, in general, from the moment of conception. Furthermore, African Charter on Human and Peoples’ Rights<sup>21</sup> Art. 4

<sup>12</sup> Khosla M., *Making social rights conditional: Lessons from India*, *J•CON* (2010), Vol. 8 No. 4, 739–765 doi: 10.1093/icon/mor005 <http://icon.oxfordjournals.org>.

<sup>13</sup> Res 217 A(III); A/810 91 (1948).

<sup>14</sup> OAS Res 30, OEA/Ser.L.V/II 6 rev.1 at 17; (1949) 43 AJIL Supp 133, 1948

<sup>15</sup> United States Declaration of Independence, 4th July, 1776, Declaration of the Rights of Man and of the Citizen, 1793.

<sup>16</sup> 1950, ETS 5.

<sup>17</sup> European Commission for Human Rights (ECHR), Art. 2- ‘Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally . . .

<sup>18</sup> The International Covenant on Civil and Political Rights, 1966, 999 UNTS 171.

<sup>19</sup> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.’ The remainder of the lengthy Article details the permissible limitations of this right with particular emphasis upon the circumstances surrounding a legitimate imposition of the death penalty.

<sup>20</sup> 1969, Art. 4.1, Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>21</sup> Art.4, 1986.

delineate regarding right to life<sup>22</sup> and an Art 5<sup>23</sup> stress upon the human dignity .Both these articles profoundly protects the inalienable right to life. This approach is reinforced in two more recent human rights instrument<sup>24</sup> i.e. Asian Human Rights Charter and African Charter on Human Rights. The right to life is described here identical with ICCPR, but Art. 38 of Arab Charter states more regarding an adequate standard of living, which effectively ensures human dignity. At last the very pragmatic scenario is that preambles of above charters irresistibly portrayed to preserve human dignity which is to be ensured only when all the arena of human needs is to be fulfilled with progressive manner<sup>25</sup>.

### Scope and Nature

The fundamental rights themselves have no fixed content most of them are empty vessels into which each generation must pour its content in the light of its experience<sup>26</sup>.that is why its content constantly being enriched and broadened. The Apex Court of the country has taken elaborate explanation to embrace every sphere of life to mean human life without dignity is worthless and just animal existence. As a result, the Constitutional Court of the land expanded and broadened fruitfully constitutional provisions in this way<sup>27</sup> “A Constitution cannot be morbid at all. The language used by the framers of the Constitution must be given a meaningful interpretation with the evolution and growth of our society. An obligation is cast on the Constitutional Court which is the apex Court of the country to interpret the Constitution in a manner in which social, economic and political justice can be advanced for the welfare of the State and its citizens”. In course of time, the Higher Judiciary indicates that with the passage of time jurisprudence of fundamental right to life is to change, extend and enrich<sup>28</sup>.Further the Supreme Court of Bangladesh held in another case<sup>29</sup> that the word life does not mean nor it can be restricted only to the vegetative life or mere existence from conception to death and includes all

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<sup>22</sup> See Art. 4 ‘Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity’ of his person. No one may be arbitrarily deprived of this right.

<sup>23</sup> Supra note 9.

<sup>24</sup> Article 3.2 of the Asian Human Rights Charter (1998) and Art. 5 Arab Charter on Human Rights (2008).

<sup>25</sup> ESCR General Comments 3.

<sup>26</sup> *Bharati vs. Kerala*; 1973, SCR 1.

<sup>27</sup> *Professor Nurul Islam v. Bangladesh*, 52 DLR 2000 (High Court Division) 413.

<sup>28</sup> *The Employee of the Pakistan Law Commission vs. Ministry of Works*, 1994, Supreme Court, 693.

<sup>29</sup> *BELA vs. Bangladesh and others*, 7MLR (HC), (2002).

such amenities and facilities which a person born in a free country is entitled to enjoy<sup>30</sup>.

Furthermore in the case<sup>31</sup> “it is held that.....constitutional guarantees ... should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The Courts should be anxious to enlarge the scope and width of the fundamental rights by bringing within their sweep every authority which is an instrumentality or agency of the Government<sup>32</sup>. Even the court went on saying that the expression life delineated in Art.32 of Bangladeshi Constitution embraces everything which is necessary to make it meaningful and a life worth living .....not only a right to life but a meaningful life is an inalienable fundamental right<sup>33</sup>.

Thus the jurisprudence of right to life is being multifaceted and multi-dimensional and its content are constantly being enriched and enhanced and this concept is connected to with all matters of Human rights. So the right to life as enunciated in various international instruments and national constitutions in non-derogable way and denying this right is interpreted very strictly and narrowly<sup>34</sup> So the fundamental right cannot be taken away except extreme cases with the due authority of law and with the procedure established by law and this must be fair, just, and reasonable not any processual barbarity<sup>35</sup>. Even the Supreme Court held in a case<sup>36</sup> that even in the absence of Art. 21<sup>37</sup> of Indian Constitution the state have no authority to deprive a person of his fundamental rights or liberty without the authority of law. This is the basic assumption of the rule of law and men in all civilized nations .And without such distinction between a lawless society and one governed by laws would cease to have any meaning.

The right to life is the supreme right, because without it, no other rights can be enjoyed. International law recognizes the right to life as a fundamental and non-derogable right. The death penalty is an exception to the right to life and, like any exception; it must be interpreted restrictively

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<sup>30</sup> Further held in supra note 21.

<sup>31</sup> Ms. Shehla Zia and others vs. WAPDA, PLD1994, Supreme Court,693.

<sup>32</sup> Supra Note 18.

<sup>33</sup> Supra Note 22.

<sup>34</sup> Rahman M.,”Right to life as a fundamental Right “, The Dhaka University Studies, Part-F, Vol. XVII (1): pp 143-178, June , 2006.

<sup>35</sup> Pratul Kumar Sinha vs.State of West Bengal ; AIR1969 SC,1273.

<sup>36</sup> A.D.M Jabalpour vs. Shivakanta Shukla; 1976 2 SCC 523.

<sup>37</sup> Indian Constitution. art. 21 reads as follows: “Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.

and carried out with the most scrupulous attention to fundamental principles of non-discrimination, fair trial standards and equal protection before the law<sup>38</sup>. There is no right to capital punishment, and while Governments have the right to enact penal laws, these laws must conform to basic principles of international human rights law<sup>39</sup>. The supremacy of the right to life and the exceptional character of the death penalty are enshrined in several international instruments. Article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights (ICCPR) provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life<sup>40</sup>.

Although the death penalty is not yet prohibited under international law, the desirability of its abolition has been strongly reaffirmed on different occasions by United Nations organs and bodies in the field of human rights, inter alia by the Security Council, the Human Rights Committee, the General Assembly and the Economic and Social Council. Another recent indication of the increasing trend towards abolition of the death penalty can be seen in Commission on Human Rights resolution 1997/12 on the question of the death penalty. For the first time, the Commission on Human Rights adopted a resolution on capital punishment in which it called upon all States "that have not yet abolished the death penalty progressively to restrict the number of offences for which the death penalty may be imposed". It further called on States to consider suspending executions, with a view to abolishing the death penalty<sup>41</sup>. The following rights are held to be covered under Article 21 given judgment by Indian constitutional Court<sup>42</sup>.

The right to go abroad<sup>43</sup>, The right to privacy<sup>44</sup>, The Right against solitary confinement<sup>45</sup>, The Right against bar fetters<sup>46</sup>, The Right to legal aid<sup>47</sup>, The

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<sup>38</sup> See Sub-Com. On the Promotion and Protection of Human Rights, Preliminary Report Submitted by Barbara Frey, Special Rapporteur in Accordance with Sub-Commission Resolution 2002/25 at para. 21, E/CN.4/Sub.2/2003/29 (June 25, 2003).

<sup>39</sup> COMMISSION ON HUMAN RIGHTS, Fifty fourth sessions, Item 10 of the provisional agenda, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission resolution 1997/61. 2ibid; paragraph 11, 12., 3 ibid; paragraph 13, 14.

<sup>40</sup> See Supra note 31.

<sup>41</sup> See Supra note 32.

<sup>42</sup> Unni Krishnan, J.P. And Ors. Etc. ... vs. State Of Andhra Pradesh and Ors. ... On 4 February, 1993=1993 AIR 2178, 1993 SCR (1) 594.

<sup>43</sup> Satwant Singh v. A.P. O. New Delhi [1967] 3 SCR page 525.

<sup>44</sup> Govinda v. State of U.P., [1975] 3 SCR 946 701, In this case reliance was placed on the American decision in Griswold v. Connecticut, 381 US 479 at 510.



Right to speedy trial<sup>48</sup>, The Right against Handcuffing<sup>49</sup> The Right against delayed execution<sup>50</sup>,The Right against custodial violence<sup>51</sup>,The Right against public hanging<sup>52</sup>, Doctor's Assistance<sup>53</sup>, Shelter<sup>54</sup>.

According to the authors note the jurisprudence of the Committee, the European Court of Human Rights and the Inter-American Court of Human Rights that States parties have an obligation deriving from the right to life, combined with the right to an effective remedy, to take positive measures to protect the right to life, including implementation of appropriate procedural safeguards that encompass investigation and prosecution of alleged State killings<sup>55</sup>. The absence of such safeguards can constitute a violation of the right to life even if there is insufficient evidence to hold the State responsible for the actual death<sup>56</sup>.

So now it is very much comprehensible that right to life shall include every thing as we need to survive and this legal theme is constantly reiterated by judicial activism of apex judiciary.

## Wrapping up

Right to life is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation. Therefore, the factual actuality is that in course of time ,the right to life is one of the non-derogable rights that has taken such healthy shape ,we can perceive ,that this right has got a web of rights which are unbroken in fabric. Even we can realize that economic, social and cultural rights are

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<sup>45</sup> Sunil Batra v. Delhi Administration, [1978] 4 SCC 494 at 545.

<sup>46</sup> Charles Sobraj v. Sup(. Central fail, [1979] 1 SCR III.

<sup>47</sup> Hoskot v. State of Maharashtra, [1979] 1 SCR 192.

<sup>48</sup> Hussainuia Katoon v. State of Bihar, [1979] 3 SCR 169.

<sup>49</sup> Prem Shankar v. Delhi Administration [1080] 3 SCR 855.

<sup>50</sup> TV. Vatheeswaran v. State of Tamil Nadu, AIR 1983 SC 361.

<sup>51</sup> See supra note 37.

<sup>52</sup> A.G. of India v. Lachmadevi AIR 1986 SC 467.

<sup>53</sup> Parantananda Katra v. UOI, [1989] 4 SCC 286.

<sup>54</sup> Santistar Builder v. N.KI. Totame, [1990] 1 SCC 520.

<sup>55</sup> General comment No. 6 (1982) on article 6, para. 3; communication No. 612/1995, Chaparro v. Colombia, Views adopted on 29 July 1997; communication Nos. 146 and 148-154/1983, Baboeram-Adhin v. Suriname, Views adopted on 4 April 1985; communication No. 161/1983, Herrera Rubio v. Colombia, Views adopted on 2 November 1987; Velasquez Rodriguez v. Honduras (Series C) No. 4 (1988), para. 188; Edwards v. United Kingdom (2002) 35 EHRR 19, para. 69; McCann v. United Kingdom (1996) 21 EHRR 97, para. 161; and Kaya v. Turkey (1999) 28 EHRR 1, para. 86.

<sup>56</sup> Ibid,(supra note 8).

given a new dimension by the apex courts. This innovative dimensions and thought renders extending scope of right to life through the progressive judgments and holistic approach given by the courts. And the approach of this paper regarding right to life is that all rights that are congenial to preserve right to life are justiciable in so far as the right implies a duty to respect and protect. But it should be in mind that this justifiability does not amount to enforceability like domestic levels through the courts of law rather such justifiability always lies horizontally in international level not vertically but the minimum core content of all rights is strictly non-derogable. Further, The Indian Supreme Court, even Our Apex Court to some extent, have infused the contents of right to life into the fabric of fluid concept which shall be interpreted context to context differently. In the long run, it can alarmingly be stated that such sweeping scope and content of right to life may sometimes be less capable to protect the very core content of life that whatever you are incapable to give, you cannot take away. That is why John Locke vehemently stated in his 'Two Treaties of Civil Government' (1690) that "nobody can transfer to another more power than he has in himself, nobody has an absolute arbitrary power over himself or over any other ,to destroy his own life or take away the life or property of another". So every person is inviolable. The human life is unalienable and right to life is non-derogable.