



## Analytical Exposition of 'Right to Life' with Reference to Judicial Decisions in Pakistan and India

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**Abstract:** *The right to life is an integral right which basically is a necessary requisite to enjoy other rights. This paper begins with an overview of the basic and essential right in which the meaning of life is analyzed and then focuses on how the right to life gains importance in every legislative document and world's perspective to enhance its scope and also its application. On the one hand, this paper analyses the inviolable nature of this fundamental right, but on the flip side, it focuses on the non-absoluteness of this right. Moreover, this article discusses landmark cases decided by the Indian and Pakistani judiciary, which encompass such utilities and facilities that naturally a free-born person in a sovereign country is entitled to enjoy, but all such amenities are subjected to the law of their lands.*

**Key Words:** Euthanasia and India, Fundamental Rights, Judicial Activism, Right to Quality of Life, Right to Die

### Introduction

The right to liberty and safeguard to life is one of the primitive or ancient safeguards which are required for growth of the human beings. It's a kind of righteous or natural right that all humans must possess. The traditional name for the right to life and liberty has been "natural right". This has been considered the most salient, essential, and inviolable fundamental right (hereinafter, FR) that entitles human beings to outline their lives according to their interests. (Nath, 2013). The concept of safeguard to life ensures that humans have the right to live their lives with dedication and dignity to accomplish their respective goals. It incorporates everything necessary for humans to spend a standard life that enables them to enjoy every opportunity to make life better and firm. Furthermore, this right contains more added rights like a life with dignity, privacy, standard life, pollution-free air, health, medical assistance, and personal liberty (Shiman, 1993).

Safeguard to life was enumerated in the constitution (hereinafter, Const.) of 1973, under Article (Hereinafter, Art.) 9. At first, it was only incorporated to the extent of a vegetative life for a long time. Though, efforts were made to give it new interpretations in the late '80s. Later on, the judiciary took bold steps to broaden the purview to improve the quality of life of the citizens of Pakistan. On the other hand, the purview of this basic right in India, under article 21, has been made broader in which the right to sleep has also

been added as a prerequisite of this right because sleep is essential to make a healthy balance of health.

### Scope and Parameters of Right to Life under Art. 9 of Pakistan Constitution and Art. 21 of Indian Constitution

All the constitutions worldwide incorporate fundamental rights which are necessary for all the beings living in a society. Among all, this right is the most basic and absolute. Under this right, citizens enjoy all other basic safeguards and liberties as set out and guaranteed by the constitution. Their protection in the constitution is the evidence that the right to life is recognized and protected by every state by way of certain legal mechanisms. Recognition of the right to life not only puts states under the duty to refrain from imposing unnecessary restrictions on the citizens but also guarantees effective protection of the lives of their citizens. Safeguard a person, his life, and liberty have been rendered indispensable human rights under the umbrella of international human rights law that apply to all people, regardless of their status. The right to life is inalienable, but it isn't absolute. Any deprivation of life must be done in a lawful and non-arbitrary manner (Ministry of Human Rights, 2018)

As far as the domestic legal framework of

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Pakistan is concerned, the Constitution of 1973 deals with the provision of the right to life that provides that: "No person shall be deprived of life and liberty save in accordance with law" (Art. 9 of the Const. of Pakistan, 1973). While explaining this Art., it has been held that Article 9 puts a duty to not only protect the life but also the dignity of the citizens as well and make sure that no such infringement happens in this aspect. This article is extensive yet wide and significant also because the privilege to life is called the mother of all things considered, and it incorporates every right connected with and coincidental to carry on with a quality life ([Jawad, 2019](#)).

Additionally, it is now acknowledged that the privilege to life does not restrict to corporeal, vegetative, or animal life. Albeit, the expression 'life' has not been explained in the Const. However, the points of reference set down concerning this right incorporate the right of each individual to carry on human life with dignity, including every important necessity of life. It is additionally acknowledged rule that the stately life is preposterous without education, sound and clean climate to live, and admittance to essential health facilities. Hence, it has been set down during the interpretation of Article 9 that the legislature is compelled to make laws that incorporate all such rights for the citizens. Thus, any individual whose privilege to easement, property, education, or wellbeing is antagonistically influenced may look for a legitimate remedy provided in Art. 9 of the Const. since all rights are a vital part of this basic right, namely "the right to life". Moreover, it has been explained that every facility and convenience of life which a person in a nation is allowed to appreciate with respect and as per the limitations recommended by law is essential for his FR as endorsed under Art. 9 of the Const. ([Jawad, 2019](#)).

The concept of safeguard to life in India has been incorporated in the Indian constitution, 1950, which provides that: "No person except according to procedure established by law shall be deprived of his life or personal liberty" (Art. 21 of the Const. of India, 1950). Under the umbrella of Art. 21, the word 'life' is not limited to breathing only and the bare animal life. This incorporates several other rights like health, livelihood, live with human dignity, and broadly speaking, free air as well. The broad interpretation of Article 21 makes it an umbrella for the development of all other fundamental rights ([Sonajirao, 2013](#)).

In 1961, earlier than its liberal interpretation, the expression 'life' did not include the right to 'livelihood' however, subsequently, Supreme Court (Hereinafter, SC) decided that the right to life incorporates the right to employment too. Many

issues were resolved by giving a moderate explanation to the word 'life' under Art. 21. The order for suspension, except if the departmental inquiry is finished up within a sensible period, influences a government worker harmfully ([Gupta v Union of India, 1987](#)). To increase water supply by burrowing new wells and taking out water from accessible wells, Lakshadweep management developed a strategy in this regard. It was found that exorbitant pulling out water is going to disturb the water balance and direct to saltiness that would limit consumable water. At that point, the apex court declared that the organization could not allow making advances into this central right because sweet water is attributing to the right to life. ([Hussain v Union of India, 1990](#)). The clash between safeguard to life and death sentence came into reality in the '80s. SC held that capital punishment forced as per the methodology set up by law does not come under the infringement of this right. Apex court has more often interpreted life generously and has given a sweeping understanding to the statement 'life'. The SC put together its dependence concerning the description of righteousness in *Munn versus Illinois*: "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 life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg" ([Yagyasen, 2017](#)).

### Judicial Mechanism and Liberal Interpretation Through Precedents

The domestic law of Pakistan also gives protection to human rights generally and the right to life particularly. Fundamental rights have been incorporated in chapter II of the constitution of Pakistan, 1973. Citizens of Pakistan have been given the privilege to enjoy these rights, and in case of their violation, they are legally entitled to get these rights enforced through the court. High courts in Pakistan have been authorized to enforce these rights in case any application is filed either under Art. 184 or 199 of the const. Such jurisdiction can be invoked either by filing an application in the court or by the *suo motu* taken by the competent court. Many cases have been reported and decided by the judiciary when their violation occurs. It has been particularly provided in Art. 9 of the constitution, and the same has been, at times, implemented by courts ([Yagyasen, 2017](#)).

The broad areas of Art. 9 has been elaborated through the SC of Pakistan in a landmark case of "Shehla Zia v Wapda", the SC of Pakistan has elaborated the scope of Article 9 while holding

that: the word 'life' is quite important because it takes into account all features of human way of life. Expression 'life' does not outline within the Const. However, neither it is meant to, nor it is constrained solely to the plants or animals living. Life takes into account all such facilities and services that an individual born in an independent and sovereign country enjoys. But presently, it is sufficient to say that a person is legally empowered to the guarantees provided by the state law to keep him protected from the rays produced by the electromagnetic field produced from a grid station that may pose serious threats to his life. Such protection extends to the property, health and easement as well, where a person is negatively affected by the negative performance of another person, he can seek the protection of the law to get his rights enforced. So, in Pakistan, Article 184 can be invoked to get enforcement of such type of violation, where several people are getting affected due to the installation of grid station in a residential area ([Zia v Wapda, 1994](#)).

In another case, namely "Watan Party and others vs Federation of Pakistan and others," the court has declared that: this is the FR of all individuals residing within the territory of Pakistan to enjoy his life within the reasonable restrictions imposed by the law of the land and is entitled to enjoy all the necessities of life like a pollution-free environment, proper and healthy food items, and if any one of these rights is not available to the citizens than it's a clear cut violation of the right to life. Furthermore, it comes under the obligation of the state to assure these rights notwithstanding the fact as to whether any other special law has been enacted in this regard because the Constitution under Article 9 read with Article 2-A confers these rights upon the citizens ([Party v Federation of Pakistan, 2011](#)).

In another case, the quality of life of the citizens is being protected by the Peshawar HC under the same Art., the learned court ordered the mill owner to close all its activities because that mill was situated in a populated area, and resultantly the activities of the mill were affecting the quality of the life of the people of that area, whereas, Art. 9 of the Const. Provide that safety should be provided to the life of a person. Honorable Lahore High Court held in another constitutional case that polythene bags are causing serious threats to the life of people and affect the areas of society, including its agricultural life, sewerage system, marine life in coastal areas, the health of the public at large, and spread dangerous deceases, thus, it is required that these bags should be disposed of properly. In addition to this, it has been held by the court that in the present era, it is not possible to continue a

dignified life without getting a proper education, so the right to education has also been incorporated within the domain of the safeguard to life under Art. 9 of the const. It comes under the duty of the state to make sure that education at a minimum level is being imparted to all its citizens without any discrimination based on class, creed, or sex ([Yaquasen, 2017](#)).

Provisions of Article 21 occupy a unique place in the Indian constitution. This essential FR incorporates many other rights within its purview, and in case of its violation, the jurisdiction of the courts can be invoked for its implementation.

Personal freedom and safeguard to life have been given protection under the const. of India, 1950 correspondingly, under Art. 226 issued by Higher Courts of India (Sonajirao, 2013). As far as Art. 21 of the Indian const. is concerned, it has also been given liberal interpretation by the judicial precedents in India. Before Article 21, it was only restricted to arbitrary freedom and safeguarded to life and did not guarantee legislative action. In Maneka Gandhi's case, citizen's rights were given protection in the lawmaking process as well. Moreover, it has been held that to make an individual deprived of his independence and life, it must be treated according to the law, and secondly, only a fair and reasonable method should be adopted, which is prescribed by the law (Sonajirao, 2013).

Subsequently, the right to life was given much wider meaning in the upcoming cases after Maneka Gandhi's case. Supreme Court in Francis Coralie vs Delhi has given a liberal interpretation to the word life by declaring that 'life' includes an individual right to live with respect and not just animal or vegetative existence. This is further elaborated to include sufficient nourishment, clothes, and a safe haven. Consequently, the phrase life's scope was broadened. Many other rights were also given shelter under the umbrella of Article 21 after its broad interpretation. Though proper definition was not given, but Supreme Court, by setting many precedents, explained all the essential features that are supposed to be covered under this right. The description of 'life' has been laid down in *P Rathinam vs Union*; in these words, the right associated with human respect does not predict constant hard work. It covers some of the good graces of development that establish valuable life that extended the idea of human life, which would signify the rituals, civilization, and custom of the person concerned (*Rathinam v Union, 1994*).

While giving a broader interpretation, the SC of India established that Human existence is valuable. The SC has adopted an exhaustive modified view. Whilst choosing legitimacy of

Sec.309 of I.P.C, in *Gian Kaur v. Territory of Punjab*, the Court rule out the previous analysis which was taken in *P. Rathinam's* case and declared that safeguard to life does eliminate the right to die and the elimination of life as well from the protection of life, hence, provisions sentencing attempting to commit suicide does not come under the ambit of the violation of Art. 21 of the Const. Nevertheless, during a milestone judgment, SC overrules prior analysis and affirms euthanasia, and endorse safeguard to die with self-esteem, SC grants making of a will when a person is alive that will allow people to rule against non-natural life support (Rawipracash, 2018).

## Conclusion

The drafters of the Constitution of Pakistan had never expected the current liberal form of Art. 9 that judicial activism would extend to cover many problems and aspects of human life. Considering human life as equivalent to animal or vegetative life has been perceived as a negative right for a long time. Various other negative rights were likewise ensured, under the International Charters and Covenants, concerning common freedoms. Instead, positive common human rights were either overlooked or, even if they were given the recognition than that recognition was not subject to the cosmetic protection under the ambit of 'Principles of Policy', which could not be judicially enforced and were accessible only subject to the economic resources. Their affirmation, however weakness, regarding execution, driven the successive governments of Pakistan to stay neglectful toward the beautifully given human rights except for the right to obligatory education at a later stage (Malik &Ullah, 2021).

Judicial activism for the right to life under Article 9 is extended over from a negative right to managerial, criminal, civil, and family and tortuous

rights. Aside from the spread of new rights, Art. 9 supported numerous other common rights, too, secured under the constitution inchoately. Reiterating the case law, it is clear that legal activism has reinforced the rule of law, advanced a populist society, and turned into a beam of expectation when no government, law, or court could help the down trampled masses of Pakistan (Malik & Ullah, 2021).

As far as the Indian Constitution is concerned, it peruses the 'right to life in the sure bearing of protecting human life. Therefore, there is a dire call for the persuasion of commitment of 'Right to life' by providing foodstuff, clean water, and health facilities, but on the other hand, the state doesn't have power over advancing, securing, and rewarding the economic rights like food, water, medical care, which are primary elements of the right to life ([Math & Chaturvedi, 2012](#)).

Art. 21 is a living provision in India's constitution that evolves like a living organism and inherits the features of dynamism that meet the requirements of society. Through various court proclamations and legislative directives, the scope and parameters of the right to life and individual freedom continue to expand and will continue to do so in the future. Based on logic, nonarbitrariness, and natural justice principles that are integrated under the umbrella of Art. 21, many other essential rights have evolved till date by the Hon'ble SC's interpretations in their judgments that includes many other rights like the clean environment, prisoners rights, speedy and fair trial, against sexual harassment, against handcuffing, medical facilities, foodstuff, against undemourishment, against violence, bonded labour violation, legal Aid, right against solitary confinement, against bar fetters, drinking water, reputation, and dignity, etc. ([Kulkarni, 2019](#)).

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