

‘Livelihood’ or ‘Liberty’? - Empowering Fundamental Human Needs through Locus standii

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Abstract: *The right statute has consistently bared the individuals who are denied of their fundamental human needs to accomplish even the absolute minimum that qualifies them to be called as people. Rights assume the presence of competent people who have available to them adequate intends to achieve their privileges by unsettling for it under the watchful eye of the courtrooms. Such an arrangement of law appears to be content by giving only the instrument to coercive consistence through the court's requests, totally neglecting the limit of a person to prompt such consistence. This detached mentality has the impact of making the equity conveyance framework biased for the individuals who are denied of their essential human needs.*

Incorporating the above proclamation it is very clear that the "Principal Rights" ensured by the Constitution of India has stayed a prodding suggestion even in its 60th year of its beginning for the individuals who doesn't have the imperative assets available to them that would do the trick for the satisfaction of their essential needs. For instance one can't expect an individual dying of the starvation to utilize his central right of making plan of action to the Supreme Court of India under Article 32 of the Constitution disturbing her 'entitlement to life' ensured to her by Article 21 of the Constitution which is getting disregarded in view of his current situation with starvation. In this specific occurrence the major privileges of 'right to life' and the privilege of redressal of complaints by the Supreme Court for the penetrate of central rights ('right to life' for this situation) appears to be extremely ludicrous yet the equity agreement framework appears to be content simply by giving a fanciful structure to the assurance of crucial rights which exists just in the letters of our composed Constitution. These portrayals have the impact of removing our Constitution a long way from being a 'Living Constitution', a fantasy which the designers of our Constitution had seen.

In this paper an endeavor is made to address the changing established vision of rights and to display the division that exists among rights and needs keeping Part-III of the Constitution of India in the unique circumstance and the requirement for activity in regard of necessities and the defense for the equivalent.

Here, the instance of contention between the two and measures proposed by the Constitution as answers for such circumstances will be examined. At this very point the pretended by the legal executive in India while tending to the reason for essential human needs and the imaginative methodology that it has taken in order to address this issue is additionally examined with its benefits and negative marks.

Keywords: *Locus standii, due process, basic needs, right to life.*

1. INTRODUCTION:

India got autonomy after a significantly long and exceptionally hard-took on conflict with the British and consequently when rules of India were given over to the individuals of India, they indicated an exuberant disposition in issues managing singular freedom and opportunity. Accordingly Part-III of the Constitution of India ensured 'Essential Right' to the individuals of India. These key rights endeavored to make a person's holiness sacred from the leviathan may of State accepting that State is an element from which individuals of India must be secured. Subsequently, there were no coupling positive commitments forced upon State by the Constitution of India¹. Regarding restricting commitments, just a negative commitment of non-obstruction with singular issues was forced upon the State, accepting that all people are skilled enough of dealing with their own issues and they just need assurance against State to monitor their freedom. Article 32 of the Constitution of India explicitly ensured such insurance by making the privilege to response against the infringement of any of the crucial rights a key right in itself². One can pose an unsettled inquiry here — What if the basic right given under article 32 is disregarded? Where is the assurance for the equivalent? Since

¹ Directive Principles of State Policy embodied in Part-IV of our Constitution imposes positive obligations upon State but article 37 in Part-IV expressly declares that the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

² **Article 32:** Remedies for enforcement of rights conferred by this Part.—(1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part (Part-III) is guaranteed.

ensure under article 32 is there for basic rights other than one which is referenced in article 32? In this way, the arrangement which ensures essential right is itself not ensured. Appears to be unexpected however this is the hard actuality. This maybe additionally helps us to remember the way that acknowledgment of a privilege by accommodating a system for requirement of the equivalent in the official courtroom isn't generally feasible for the absence of skill among people for making plan of action for such authorization. In such a circumstance what the law can do is to perceive the correct first however it can't stay content with it and it needs to go farther than simply accommodating a structure for making it justiciable in an official courtroom. It should likewise guarantee such response in the courtroom. Along these lines, apparently the established vision of rights when the Constitution came into power was prejudiced³.

The Polarity between Fundamental Rights and Fundamental Human Needs

It is clear that both major rights and essential needs are central or fundamental standards or least center of administration. This base center mirrors the parts of the correct which fulfill the "fundamental needs" of the rights-holders, as opposed to any beneficial, elective, or more eager degree of interests. This kind of request promptly arranges the "center" of the privilege to the basic and negligibly mediocre degrees of food, wellbeing, lodging, and training. Be that as it may, with regards to justiciability essential rights have been given need recognizing it by method of its more pointed accentuation on human respect, uniformity, and opportunity. It is additionally to be borne as a primary concern that issues of essential needs were considered as issues falling in Directive Principles of State Policy (DPSP), subsequently key in the administration of the nation however not mandatory for the State when the Constitution became effective and during its underlying years. Along these lines, the base center of administration has got two divisions⁴ –

Firstly, Requisites: food, wellbeing, lodging and training and **secondly**, Merits: poise, uniformity and opportunity.

The above classification likewise shows that the center substance of right has a bad situation for the need-based center; however the equivalent doesn't imply that need-based rights are not rights, yet unquestionably not key rights as it doesn't frame some portion of the center substance of rights. This arrangement has sustained this confidence in open memory that DPSPs are compliant to an essential right and any instance of contention between the two must be settled for basic rights. In the absolute first year of becoming effective of our Constitution, it was understood that the crucial right to correspondence and opportunity of procuring, holding and discarding property is coming in the method of acknowledgment of the bigger objective of social and financial equity. To do away this trouble the Legislature in the year 1951 came out with the Constitution (First Amendment) Act, 1951, consequently adding article 31A and 31B to the Constitution weakening the essential right to equity under article 14 and opportunity of obtaining, holding and discarding a property under Article 19 (1) (f). Articles 31A and 31B were principally added to guarantee that the State's activity as for the securing of private domains for open purposes and State laws accommodating agrarian changes are not be pronounced unlawful by the courtrooms for the infringement of central rights revered under article 14 and 19 (1) (f) as these measures were viewed as essential in the bigger open intrigue. Thus, the Constitution's first brush with the goal of the contention between two least centers of life-dependent on need and worth were glaring in its first year of beginning just and the decision was agreeable to the need-based center of life i. e. essential needs. In spite of the fact that it can't be said that this giving of need was not conceived by the designers of our Constitution, since they had made arrangement for weakening of the major right to property in article 31 itself which encapsulated the central right to property. Be that as it may, they couldn't have visualized a circumstance wherein, weakening of the essential right to property would have prompted the infringement of the major rights cherished under article 14 and 19 (1) (f)⁵. Along these lines, the expansion of article 31A and 31B was to fix this slip-up which the designers of the Constitution had done by neglecting to visualize such a circumstance. Along these lines, one can at present contend, however not convincingly, that the base center of significant worth was not spurned for the base center of need considerably after the principal protected alteration.

In any case, the fantasy of offering priority to the worth based least center over the need-based least center in all instances of contention between the two was at long last detonated by the Constitution (Twenty-fifth Amendment) Act, 1971, which added article 31C to the Constitution of India offering priority to the law made so as to offer impact to the approach of the State making sure about the standards set down in articles 39 (b) and 39 (c) of the Constitution,

³Prejudiced vision of Constitution by stating that the "procedure established by law" which subjects a person's "right to life and personal liberty" must be read as a procedure established by the codified law. If the same does not provide for principles of natural justice it cannot be declared unconstitutional because of the fact that Indian Constitution does not envisage a system of "due process" of law ; Supreme Court in *A. K. Gopalan v. The State of Madras*, AIR 1950 SC 27.

⁴ Katharine G. Young, "The Minimum Core of Economic and Social Rights: A Concept in Search of Content" 33 *Yale J. Int'l L.* 113 at 126.

⁵ Omitted by the Constitution (Forty-fourth Amendment) Act, 1978.

over the rights presented by article 14 or 19⁶ of the Constitution. The Supreme Court in *Kesavanand Bharti v. the State of Kerala*⁷ agreed its endorsement for the equivalent with this admonition that the court can investigate the veracity of such presentation which affirms to offer impact to the standards of article 39 (b) and (c) while making a law and thus that much segment of article 31C⁸ was pronounced ultra vires the Constitution⁹. This obviously builds up the way that on the off chance that it is demonstrated that any law made really offers impact to the standards of article 39¹⁰ (b) and 39 (c), the equivalent can't be proclaimed illegal regardless of whether it is violative of Article 14 or 19¹¹. Be that as it may, the Constitution (Forty-second Amendment) Act, 1976 which attempted to make rights under article 14 and 19 compliant to the laws made so as to offer impact to the standards of whole Part IV was pronounced unlawful by the Supreme Court in *Minerva Mills v. Association of India*¹². This implies the arrangements under article 39 (b) and 30 (c)¹³ have been given need over article 14 and 19 yet different arrangements of Part IV keep on running compliant to all principal right¹⁴. Presently the inquiry that can be raised here is that would we be able to state that articles 39 (b) and 39 (c) are thorough of those standards by which individuals can fulfill their essential needs; to state that fundamental needs have been given need over central rights? In the event that the response to this inquiry is in negative, at that point that would mean the nearness of a chain of command inside essential needs – one which has got need over crucial rights and other running compliant to it. However, this inquiry won't be of much significance in the event that one glances at the future turn of events, particularly the expansion of the ambit of article 21 by the Supreme Court to incorporate inside it the minimum essentials of human life.

Broadening skyline of article 21 and essential human needs

In *Maneka Gandhi v. Association of India* the Supreme Court of India held that the articulation "method built up by law" in article 21 must be a system which is simply, reasonable and sensible and it can't only be a strategy set up by the arranged law regardless of whether the equivalent isn't reasonable and sensible. Along these lines, the Apex Court by this choice impliedly imported the idea of "fair treatment" in the Indian Constitution overruling *A. K. Gopalan* case¹⁵. This choice by the Court enormously added to widening the significance which is given to the expression "right to life" in article 21, along these lines perusing essential necessities as a vital part of it. The Supreme Court began this development by expressing that the privilege to life doesn't mean a simple creature presence; it implies an option to live with human pride. Presently a stately life is unfathomable if the equivalent is without essential needs, for example, food,

⁶ In *Kameshwar Singh v. State of Bihar*, AIR 1951 Pat 91, Patna High Court declared the Bihar Land Reforms Act, unconstitutional on the ground that it is violative of Article 14 and 19 (1) (f).

⁷ (1973) 4 SCC 225.

⁸ **31C. Saving of laws giving effect to certain directive principles.**—Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19; *and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy*:(The part of the provision in italics was declared unconstitutional by the Supreme Court in *Kesavanand Bharti v. State of Kerala*, (1973) 4 SCC 225)

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

⁹ Article 31(2) as at originally stood read as follows – No property shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

¹⁰ **39. Certain principles of policy to be followed by the State.**—The State shall, in particular, direct its policy towards securing—

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

¹¹ See, *Supra* note 7.

¹² AIR 1980 SC 1789.

¹³ that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

¹⁴ Article 31(2) as at originally stood read as follows – No property shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

¹⁵ AIR 1978 SC 597.

great wellbeing and safe house¹⁶. Presently, this would imply that the base center of right very well typifies the base center of need. The fundamental need of an individual is vital for her life if that life must be a stately life in light of the fact that the worth based least center of life would be futile if the need-based least center is denied to her. This carries us to a point wherein, there is a need to re-arrange our discussion – it is not any more, *Fundamental rights v. DPSPs*¹⁷ rather it has become a journey between the privilege to life of one who is denied of her essential human needs v. the uniformity right of fit people. At present, the privilege to life guarantee of people denied of their essential human needs remains at a higher platform when contrasted with the privilege to equity of skilled people¹⁸. Making further coherent strides in the duration of this development the Supreme Court has engaged petitions requesting clinical¹⁹ consideration, drinking water²⁰, essential instruction²¹, haven²² and food²³ under article 32.

The absolute initial step for the authorization of a lawful or protected right in the event of its infringement is to guarantee access of abused people to the courtrooms for the redressal of their complaints, which means guaranteeing access to equity. For people who can't get their essential needs fulfilled, it is absurd for the Constitution to expect that they will be going to the courts for the authorization of their case. Along these lines, for such an individual, the privilege to life would stay a far off dream since she doesn't have the way to get to equity. Subsequently, adding essential needs to article 21 would have gotten repetitive for every reasonable reason. To make it a living reality the Supreme Court of India came out with an extraordinary and novel thought of changing the standard of *locus standi* and subsequently permitting the open energetic people to thump the entryways of the court in the interest of the underestimated masses that have no entrance to courts²⁴. The Supreme Court deciphered the articulation 'suitable procedures' in article 32 to incorporate such a procedure wherein, a fit open lively individual is permitted to foment the privileges of the individuals who are denied of their fundamental human needs. This has the impact of understanding the basic right of access to court having a place with the denied areas of the general public somewhat. These cases are prominently alluded to as "Public Interest Litigation²⁵". Open intrigue prosecution is in a manner a special case to our equity allotment framework, so far as the technique utilized in equity administration is concerned. Our legitimate framework is basically 'ill-disposed' yet open intrigue prosecution carries with it an idea of 'inquisitorial' arrangement of law, wherein, the appointed authority is accomplishing something other than sitting in the court as an impartial umpire. Here, the appointed authority takes a functioning enthusiasm for the redressal of the complaints of those whose cause is disturbed before him, accordingly dispersing the ill-disposed idea of equity agreement. Be that as it may, with regards to the authorization of the correct which is encroached, for which access to equity in an imaginative way is permitted, open intrigue cases have additionally been discovered needing in the vast majority of the cases. In the bigger setting, the issue isn't with the methodology of the legal executive rather it is a result of the way that the idea of the case is to such an extent that it requires the accessibility of assets at the removal of the Government. This was the explanation that the designers of our Constitution decided to place claims concerning essential needs in Part IV of the Constitution and not in Part III. "*The tension of the Court is to see that poor people and down and out and the more fragile areas of the general public don't experience the ill effects of appetite and starvation. The counteraction of the equivalent is the prime obligation of the Government whether Central or State. How this is to be guaranteed would involve strategy which is best left to the Government*²⁶".

Judicial Tendencies in obligating the 'Rights of Needs'

There is a need to comprehend the above-cited proclamation in the correct sincere. The guarantee made by our Constitution regarding the acknowledgment of rights referenced in Part III is definitely not a serious guarantee in light of the fact that there is a component for the authorization of these rights under article 32 and 226²⁷. In such a case that that is the situation then the Government would do nothing aside from providing impact to the sets of the Supreme Court and High Court went in cases managing encroachment of crucial rights. The guarantee given under Part III isn't a guarantee just from the side of the legal executive rather it is a guarantee given by the State, the instrumentality of which is the Government which incorporates alongside the legal executive, the leader and the assembly additionally, who are

¹⁶ Katharine G. Young, "The Minimum Core of Economic and Social Rights: A Concept in Search of Content" 33 *Yale J. Int'l L.* 113 at 126.

¹⁷ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

¹⁸ Article 19 (1) (f) has been omitted by the Constitution (Forty-fourth Amendment Act), 1978.

¹⁹ *Vincent Panikurlangera v. Union of India*, (1987) 2 SCC 165.

²⁰ *A. P. Pollution Control Board v. Dr. Naidu*, (2001) 2 SCC 62.

²¹ *Unnikrisnan v. State*, (1993) 1 SCC 62.

²² *U.P Avas Awam Vikas Parishad v. Friendship Co-operative Housing Society Ltd.*, AIR 1996 SC 114

²³ *Kishan Patnayak v. State of Orissa*, AIR 1998 SC 677.

²⁴ See, Bhagwati J. in *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802

²⁵ Prof. Upendra Baxi prefers the name "Social Action Litigation" for these cases.

²⁶ Orders of Supreme Court of India, Right to Food (2004). Human Rights Law Network, at 40-41

²⁷ Under Article 226 of the Constitution a petition can be filed before a High Court in case of violation of fundamental rights but the same is not a fundamental right as is the case with article 32.

similarly limited by the guarantee of Part III similar to the case with the legal executive. For instance 'right to life' in article 21 doesn't just ensure a privilege of activity under the steady gaze of the official courtroom for its encroachment; rather in any case it ensures an option to each individual that their 'entitlement to life' will consistently be secured. This additionally demonstrates the way that a privilege is correct not just in view of the way that a component for implementation of the equivalent is set up yet it is likewise adequate for an enthusiasm to be treated as right on the off chance that it gives occasion to feel qualms about a comparing obligation some other substance for its assurance. Along these lines, as far as fundamental human needs, one can just say that despite the fact that the equivalent has been impliedly made a vital part of 'right to life' under article 21 however the onus for its insurance lies more with the lawmaking body and the chief than the legal executive. This is a direct result of the curious character of the need-based least center which consistently is reliant upon the accessibility of assets, which isn't the situation with esteem based least center, henceforth the legal executive's job as a remedial foundation turns out to be significant in assurance of significant worth based least centre.

LITERATURE REVIEW: An attempt is made in this research to review available literature on A Historical Study of fundamental rights with special reference to Right to life and liberty, with a view to examine the different formatted points and views adopted by the various thinkers and political scientists . However the relevant contribution is briefly present.

- **V.K.Puri, Sunita Puri; Indian Government and Politics and Political Theory; 2012.**
So far as this venture is concerned, it elucidates that there is a chapter on fundamental rights in which the right to life is the most important right. In it mention was also made that the democracy had always helped the upliftment of the rights of an individual and as a society as a whole.
- **A.P. Awasti; Indian Political System; 2009.**
This study tells about all that, which is about the fundamental rights, provides the historical background of the constitution of Free India. It also gives the information regarding the basic rights like the right to life and liberty and their role in the constitution of India.
- **B.L.Fedia; Indian Government and Politics**
In this mention may be made that the rights are very important in the Indian part of view. In this it was also discussed that what is the constitution of India its importance and relevance in with that of the foreign states.
- **M.V. Pylee; Indian constitution;**
this mentions that the constitution of India contains the various rights and duties, particularly the rights like right to life and liberty. In it there is all about the working and the organization of fundamental rights which are mentioned in the proper way under chapter third and fourth of the constitution of India.
- **Hans Raj; Indian Political System; 2003.**
In it the whole summary was mentioned on the political system of India and in it the fundamental rights were discussed and the main thrust was given on the right to life and the like.
- **N. Shrinivas; Democratic Government in India.**
This important venture elucidates that in India there is a government of ideals and the democracy had always supported the rights of the people as a whole, that is why the people from Indian origin always used to give proper support to the government in order to get the rights be in a flexible way and in a good manner for the betterment of the Indian People.
- **L.M.Singhvi ; Union State Relation in India 2001.**
In mentions that there is close contact between the two that is centre as well as state and mention ,ay be made that it is all due to the same kind of fundamental rights such as the life and liberty.

METHOD:

The research methodology for this work is doctrinal method of research based on primary and secondary source of legal research. The primary sources here means original sources such as, Acts, Commission reports, cases and other official documents. The secondary resource here means the books, articles in journals, articles in news paper and internet materials.

CONCLUSION:

Constitution producers didn't think about a disharmony between the arrangements of the Constitution. In any case, the dynamic walk of the Constitutional law has carried us to a point wherein, at certain events there would be inescapable clash between the arrangements of the Constitution. In a perfect world fulfilment of essential human needs ought not come at the expense of basic rights, and the Government's undertaking ought to consistently be coordinated towards accomplishing that state. In any case, when a contention between the two can't be maintained a strategic distance from the choice must be given for the measure that is intended for tending to the reason for essential human needs. One can't take this contention that by permitting such a compromise for essential needs the Government is engaged with unguided prudence, which in the attire of doing a represent the reason for achieving the essential human needs may decrease the whole key rights to a dead letter. In any case, there is a system to guarantee that such attentiveness isn't abused and that is the reason the Supreme Court in Kesavanand Bharti case proclaimed that, the piece of article 31C which expressed that, no law containing a revelation that it is for offering impact to the approaches exemplified in article 39 (b) and 39 (c) will be brought being referred to in any court on the ground that it doesn't offer impact to such strategy, as illegal. One can even now say that this shield is deficient. In any case, at that point the inquiry would be that how long we can really shield the individuals of India from its own Government. India is a vote based system and henceforth that much trust must be gave to the Government that it won't sell out the individuals for whom it is remains by the subjective exercise of attentiveness. Contending in any case would mean returning to when Constitution appeared, when the whole Part III of the Constitution was just considered as a shield against the State's activity forcing no coupling positive commitments upon State.

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2. **Article 32:** Remedies for enforcement of rights conferred by this Part.—(1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part (Part-III) is guaranteed.
3. Prejudiced vision of Constitution by stating that the “procedure established by law” which subjects a person’s “right to life and personal liberty” must be read as a procedure established by the codified law. If the same does not provide for principles of natural justice it cannot be declared unconstitutional because of the fact that Indian Constitution does not envisage a system of “due process” of law ; Supreme Court in *A. K. Gopalan v. The State of Madras*, AIR 1950 SC 27,
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(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

12. See, *Supra* note 7.
13. AIR 1980 SC 1789.
14. that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
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25. See, Bhagwati J. in *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802
26. Prof. Upendra Baxi prefers the name “Social Action Litigation” for these cases.
27. Orders of Supreme Court of India, Right to Food (2004). Human Rights Law Network, at 40-41
28. Under Article 226 of the Constitution a petition can be filed before a High Court in case of violation of fundamental rights but the same is not a fundamental right as is the case with article 32.

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