

**RIGHT TO LIFE UNDER ARTICLE 5(1) OF FEDERAL
CONSTITUTION: THE NEED FOR A DYNAMIC INTERPRETATION**

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ABSTRACT

This legal research is conducted with an aim to study and analyse the meaning and ambit on right to life under Article 5(1)¹ of the Federal Constitution. To this date, no clear determination on the jurisprudence on the scope of this right by the Malaysian Court. Therefore, this work will focus on the deficiency on the interpretation of "life" in Malaysia as compared to the dynamic interpretation in India.

The scope of this legal research is on interpretation on right to life under Article 5(1). To determine the meaning and scope of right to life, it is also vital to understand the principles on rules of interpretation of the constitution. With that, the research too explores the rules on interpretation of the constitution and the attitude adopted by the Malaysian judges when interpreting them.

Further, to ensure that constitutional provision is construed independently and accordingly especially when interpreting provision on fundamental rights, it is essential to make sure that the judiciary body is independent. Thus, this research also involves the analysis on the independence of the Malaysian Judiciary.

¹ According to Article 5(1), no person shall be deprived of his life or personal liberty save in accordance with law.

TABLE OF CONTENTS

ACKNOWLEDGEMENT		1
ABSTRACT		ii
TABLE OF CONTENTS		iii
TABLE OF CASES		vi
TABLE OF STATUTES		vii
CHAPTER 1	INTRODUCTION	1
	1.1 Background of Study	
	1.2 Problem statement	1
	1.3 Objective and scope	
	1.3.1 Objective	2
	1.3.2 Scope	
	1.4 Limitation	2
	1.5 Literature Review	
	1.6 Significance of the research	2
	1.7 Research methodologies	
		3
		3
		4
		5
		5
CHAPTER 2	CONSTITUTIONAL INTERPRETATION	6
	2.1 Introduction	6
	2.2 Principles of Interpretation	6
	2.2.1 General observation	6
	2.2.1.1 Mechanical	7
	2.2.1.2 Organic	7
	2.3 Judicial Creativity	8

2.3.1	Literal v Liberal Approach	2.3.2	Liberal Approach	8
		2.3.2.1	Harmonious	8
		2.3.2.2	Purposive and functional approach	9
	2.4	Constitutional Interpretation in Malaysia		9

8

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CHAPTER 1

INTRODUCTION

1.1 Background of Study

By virtue of Article 4(1) the Federal Constitution is the supreme law of the land. Amongst the important provisions provided by this supreme law is the protection of fundamental rights under Part II, and this includes "right to life" under Article 5(1). What is the meaning of "life"? In general, the meaning of life constitutes a philosophical question relating to the purpose and significance of life or existence in general.¹ Hence, in many instances the term "life" had been construed in so many different ways.

However, in the context of protection under Article 5(1), to what extent "right to life" would be given to a person. It is vital to give an appropriate meaning to this term so that life could be given the fullest meaning and must accustom to the scope of life that is needed now. To achieve this, it is important to ensure that the right approach is adopted in its interpretation. As far as Malaysian is concerned, the movement of human rights in Malaysia is rather stagnant. As stated by Prof Shad Saleem Faruqi:

'Human rights jurisprudence in Malaysia is in its infancy. Far from enforcing human rights in international charters, we are slow to give life to our own charter on human rights in Articles 5-13 of the Federal Constitution.'²

To help the expansion of the human rights development in Malaysia, it is crucial that the judiciary needs to step in to help fasten the process. Relatively, it would be the role of the court to interpret the term "right to life" properly and liberally. Although the term "right to life" had been interpreted liberally in *Tan Tek Seng*, yet the scope is still uncertain as compared to the Indian jurisdiction. Thus, for the purpose of this project, the focus would be on the jurisprudence on the term "right to life" under Article 5(1) and a comparative analysis is made on the jurisprudence in India as Article 21 of the Indian Constitution is similar to our Article 5(1).

¹ http://en.wikipedia.org/wiki/Meaning_of_life Retrieved 1/4/2011

² *Ibid*