

RIGHT TO DIE: CRITICAL ANALYSIS UNDER ARTICLE 21

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*We live a million lives and die once. Alas! Some are not fortunate enough. They die a million deaths before their souls can rest in peace and body be relieved of agony. Our constitution has provided us with Right to Life and Personal Liberties as one of the fundamental rights. Tracing the development of Indian Judiciary, we find that the concept of Life and Personal Liberties has gone through very many interpretations and its scope has been widened as and when time has demanded to do so. Today a major question arises among that 'Will it be wise to say that Right to Die is also included under Right to Life and Personal Liberties'? Amongst the mist of this question, the **keywords** explaining the aim and the objective of our article are: **Article 21, Personal Liberties, Right to Die, Euthanasia, Forced Life, Critical Analysis.***

WHAT IS ARTICLE 21?

“A great man’s greatest good luck is to die at the right time.”

Eric Hoffer.

Protection of life and personal liberty: No person should be deprived of his life and personal liberty except according to the procedure established by law.

SCOPE OF ARTICLE 21

Article 21, if read literally, is a colorless article and would be satisfied, the moment it is established by the State that there is a law that provides a procedure which has been followed by the impugned action. But the expression ‘procedure established by law’ in article 21 has been has been judicially construed as meaning a procedure that is reasonable, fair and just. If it is read with Article 39A, it would further imply that legal aid being made available to the indigent accused and a prisoner. The concept of fairness, so evolved, has been imported into article 22(3) also, so that a prison regulation which arbitrarily deprives a detenu of opportunity to interview his relatives or friends or a lawyer is invalid. The following cases explain the scope of article 21:

1. **Maneka Gandhi v. Union of India** ¹
2. **Gopalanachari v. Administrator , State of Kerela** ²
3. **Francis Coralie Mullin v. Union Territory of Delhi** ³
4. **Olga Tellis v. Bombay Municipal Corporation** ⁴

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¹ AIR 1978 SC 597

² AIR 1981 SC 674

³ AIR 1981 SC 746

The right to life and right to personal liberty in India have been guaranteed by a constitutional provision, which has received the widest possible interpretation. Under the canopy of Article 21 of the constitution, so many rights have found shelter, growth and nourishment. An intelligent citizen would like to be aware of the developments in this regard, as they have enrolled from judicial decisions. Article 21, lays down that no person shall be deprived of life and personal liberty, except according to the procedure established by law. “Life” under Article 21 is not merely the physical act of breathing; **Samatha v. State of Andhra Pradesh**⁵.

ABOUT ARTICLE 21

Prior to **Maneka Gandhi’s** decision, Article 21 guaranteed the right to life and personal liberty to the citizens only against arbitrary actions of the executive, and not from legislative actions. The state could not interfere with the liberty of the citizens if it could not support its action by a valid law. But after the **Maneka Gandhi’s** decision Article 21 now protects the right of life and personal liberty of the citizens not only from the Executive action but also from the Legislative action. A person can be deprived of his life and personal liberty if two conditions are complied with, first there must be a law and secondly, there must be a procedure prescribed by that law, provided that procedure is just fair and reasonable.

PERSONAL LIBERTY: MEANING AND SCOPE

Prior to **Maneka Gandhi’s** Decision – The meaning of the words “personal liberty came up for consideration of the Supreme Court for the first time in **A.K. Gopalan v. Union of India**⁶. In that case the petitioner, A.K. Gopalan, a communist leader was detained under the Prevention Detention Act, 1950. The petitioner challenged the validity of his detention under the Act on the ground that it is violative of his right to freedom of movement under Art.19 (1) (d) which is the very essence of personal liberty guaranteed by Art.21 of the Constitution. He argued that the words “personal liberty” include the freedom of movement also and therefore the Preventive Detection Act, 1950 must also satisfy the requirement of Art.19 (5). In other words the restrictions imposed by the detention law on the freedom of movement must be reasonable under Art.1 (5) of the Constitution. It was argued that Art. 19 (1) and Art.21 should be read together because Art. 19(1) dealt with substantive rights and Art. 21 dealt with procedural rights. It was said that reference in Art. 21 to “procedure established by law” meant “due process of law” of the American Constitution which includes the principles of natural justice and since the impugned law does not satisfy the requirement of due process it is invalid. Rejecting both the contentions, Supreme Court by the majority held that the ‘personal liberty’ in Art. 21 means nothing more than the liberty of the physical body, that is freedom from arrest and detention without the authority of law. This was the definition of the phrase ‘personal liberty’ given by **Prof. Dicey**, according to whom personal liberty means freedom from physical restraint and coercion which is not authorized by law.

⁴ AIR 1986 SC 180

⁵ AIR 1997 SC 3297

⁶ AIR 1978 SC 597

The word liberty is a very comprehensive word and if interpreted it is capable of including the rights mentioned in Art. 19. But by qualifying the word 'liberty' the court said, the import of the word 'personal liberty' was narrowed down to the meaning given in English Law to the expression 'liberty of the person'. The majority took the view that the Art. 19 and 21 deal with different aspects of 'liberty'. Art. 21 is guarantee against deprivation (total loss) of personal liberty while Art. 19 afford protection against unreasonable restrictions (which is only partial control) on the right of movement. Freedom guaranteed by Art. 19 can be enjoyed by a citizen only when he is a free man and not if his personal liberties are deprived under the valid law.

In **Gopalan** the Supreme Court interpreted the 'law' as "state made law" and rejected the plea that by the term 'law' in Art. 21 meant not the state made law but jus natural or the principles of natural justice. **Fazal Ali, J.**, however, in his dissenting judgment held that the Act was liable to be challenged as violating the provisions of Art. 19. He gave a wide and comprehensive meaning to the words 'personal liberty' as consisting of freedom of movement and locomotion. Therefore any law which deprives a person of his personal liberty must satisfy the requirements of Art.19 and 21 both.

But this restrictive interpretation of the expression 'personal liberty' in **Gopalan's** case has not been followed by the Supreme Court in its later decisions. In **Kharak Singh v State of U.P.**⁷, it was held that 'personal liberty' was not only limited to bodily restraint or confinement to prisons only, but was used as a compendious term including within itself all varieties of rights which go to make up personal liberty of a man other than those dealt with in Art. 19(1). In other words, while Art. 19(1) deals with particular species or attributes of that freedom. Personal liberty in Article 21 takes in and comprises the residue.

Finally, in **Maneka Gandhi v Union of India**⁸, the Supreme Court has not only overruled **Gopalan's** case but has widen the scope of the words 'personal liberty' considerably. **Bhagwati, J.** observed :

"The expression 'personal liberty' in Art.21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under 19".

The court lays down great stress on the on the procedural safe guards. The procedure must satisfy the requirement of natural justice, i.e. it must be just, fair and reasonable.

In **Sanwat Singh v. Assistant Passport Officer, New Delhi**,⁹ the Supreme Court further extended the scope of this Article and held that the "right to travel abroad" was a part of a person's 'personal liberty' within the meaning of Art.21 of the Constitution. In the light of these decisions coined by the Supreme Court itself, raises a question in our mind, as to

⁷ AIR 1963 SC 1295

⁸ AIR 1978 SC 597

⁹ AIR 1967 SC 1836

‘whether Right to Die can become essentially a part of Right to Life and Personal Liberties under Art.21 of our constitution?’

WHAT IS RIGHT TO DIE

The Right to die is an ethical or institutional entitlement of any individual to commit suicide or to undergo voluntary euthanasia. Possession of this right is often understood to mean that a person with a terminal illness should be allowed to commit suicide or assisted suicide or to decline life-prolonging treatment, where a disease would otherwise prolong their suffering to an identical result. The question of who, if anyone, should be empowered to make these decisions is often central to debate. The right to die is sometimes associated with the idea that one's body and one's life are one's own, to dispose of as one sees fit. However, a legitimate state interest in preventing irrational suicides is sometimes argued.

RIGHT TO DIE UNDER ARTICLE 21

The question whether the right to die is included is included in Art. 21 of the constitution came for consideration for the first time before the **Bombay High Court in State of Maharashtra v Maruty Sripati Dubal**.¹⁰ The Bombay High Court held that the right of life guaranteed by Art. 21 includes a right to die, and consequently the court struck down Section 309IPC which provides punishment for attempt to commit suicide by a person as unconstitutional. The judges felt that the desire to die is not unnatural but merely abnormal and uncommon. They listed several circumstances in which people may wish to end their lives, including disease, cruel or unbearable condition of life, a sense of shame or disenchantment with life. They held that everyone should have the freedom to dispose of his life as and when he desires. In this case a **Bombay Police Constable** who was mentally deranged was refused permission to set up a shop and earn a living. Out of frustration he tried to set himself on fire in corporation's office room.

On the other hand, the Andhra Pradesh High Court in **Chenna Jagadeeswar v. State of A.P.**¹¹, held that the right to die is not a fundamental right within the meaning of Art. 21 and hence Section 309, IPC is not unconstitutional.

In **P. Rathinam v. Union of India**,¹² a two judge bench of the Supreme Court took cognizance of relationship/contradiction between Section 309 of IPC and Art. 21. The court ruled that the right to life embodied in Art.21 also embodied in it a “right not to live” a forced life, to his detriment, disadvantage or disliking.

This view constituted an authority for the proposition that an individual has the right to do as he pleases with his life and to end it if he so pleases. “*A person cannot be forced to enjoy right to life to his detriment, disadvantage or disliking.*” The Court argued that the word ‘life’

¹⁰ AIR 1990 SC 752

¹¹ 1987 Cr LJ 549

¹² AIR 1994 SC 1844 : (1994) 3 SCC 394

in Art 21 means right to live with human dignity and “**the same does not merely connote continued drudger.**” Thus the court concluded that the “**right to live of which Art. 21 speaks of can be said to bring in its trial the right not live a forced life.**”

The Bench even called for the deletion of Section 309 IPC, labeling it as cruel, irrational which results actually in punishing an individual twice. Section 309 IPC, according to the court, violates Art.21 and therefore void. This is necessary to humanize the law. In the opinion of the Court, attempted suicides are a medical and social problem and are best dealt with by non – customary measures. The Court emphasized that attempt to commit suicide is in reality a cry for help and not for punishment.¹³

The above was a radical view and could not last for long. The **Rathinam** ruling came to be reviewed by a full bench of the Court in **Gian Kaur v. State of Punjab**¹⁴. The question arose that if attempt to commit suicide is not regarded as penal then what happens to someone who abets suicide.

Abetment to commit suicide is made punishable in Section 306 of IPC. But then, if the principal offence of attempting to commit suicide is void as being unconstitutional vis-à-vis Art. 21, then how abetment thereof could be punishable logically speaking.

The faculty setting in **Gian Kaur** was as follows: Gian Kaur and her husband were convicted under Section 306, IPC for abetting the commission of suicide by Kulwant, their daughter in-law. It was argued that Section 306, IPC was unconstitutional as Section 309 of IPC had already been declared unconstitutional in case of **P. Rathinam**. *It was argued that the ‘right to die’ having been included in Art. 21 (Rathinam), and Section 309 having been declared unconstitutional, any person abetting the commission of suicide by another is merely assisting in the enforcement of his Fundamental Right under Art. 21. This argument led to the reconsideration of the Rathinam ruling and its eventual overruling.*

The Court has ruled in **Gian Kaur** that Art. 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read to be included in “protection of life.” The court has observed further:¹⁵

“Right to Life is a natural right embodied in Art. 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of Right to Life. ”

The court thus has ruled that Section 309 of IPC is not unconstitutional. Accordingly, Section 306, IPC has also been held to be constitutional.

The Constitution Bench of the Supreme Court has upheld the constitutional validity of Section 309, IPC in **Lokendra Singh v. State of Madhya Pradesh**.¹⁶ This provision does not

¹³ The Law Commission in its 42nd Report (1971) has recommended deletion of Section 309 of IPC

¹⁴ AIR 1996 SC 946 : (1996) 2 SCC 648

¹⁵ AIR 1996 SC at 952

offend Art.14 because there is inbuilt flexibility therein. It gives discretion to the Court to award suitable punishment commensurate with the gravity of offence against compulsion of giving disproportionately harsh punishment in all cases of offence of attempt to commit suicide. This flexibility protects Section 309, IPC from the vice of being unconscionably harsh. In an appropriate case, the court can even impose fine.

In **Gian Kaur**, the Supreme Court has distinguished between euthanasia and attempt to commit suicide. Euthanasia is termination of life of a person who is terminally ill, or in a persistent vegetative state. In such a case, death due to termination of natural life is certain and imminent. The process of natural death has commenced; it is only reducing the period of suffering during the process of natural death. This is not a case of extinguishing life but only of accelerating conclusion of the process of natural death which has already begun. This may fall within the concept of right to live with human dignity upto the end of natural life. This may include the right of a dying man to die with dignity when his life is ebbing out. But this cannot be equated with the right to die an unnatural death curtailing the natural span of life.

CONCLUSION

Every person shall have the right to die with dignity; this right shall include the right to choose the time of one's death and to receive medical and pharmaceutical assistance to die painlessly. No physician, nurse or pharmacist shall be held criminally or civilly liable for assisting a person in the free exercise of this right."¹⁷ Many patients on respirators are not conscious and so cannot say whether they want to live or die.

Almost everyone would agree that life is the most precious gift that human beings have been given. Just the chance to be alive on this earth and play a part in the grand scheme of God's eternal plan is a privilege indeed.

Yet, despite this, there are times when life becomes so difficult or unbearable that many have, at one time or another wished they were dead or had never been born. For some, these feelings linger—and if they linger long enough, suicide seems to be the only escape. Under jurisdiction of living world the right to life is regarded as most prominent right among all the basic rights. India is not exception to it. Under the Indian constitution right to life is regarded as most important fundamental right that no derogation from it is permitted even in the time when the country is suffering from emergency.¹⁸ It is equally true that howsoever important the right to life may be it is the death which is the end of the process. One cannot ignore this fact. Therefore the question arises that 'Does the right to life include the right to die'? If the death is an integral part of life, should the individual's decision to die, its time and manner, be protected from state intrusion? This question is still unsettled despite a long term debate and discussion on this issue, going on at the judicial and extra judicial review regime.

¹⁶ (1996) 2 SCC 648 : AIR 1996 SC 946 and 1257

¹⁷ International Herald Tribune

¹⁸ Part XVIII of Indian Constitution (Art. 352 to 360)

The issue of 'right to die' first came before a two judge bench of the Supreme Court of India in the case of **P. Rathinam v. Union of India**.¹⁹ In this case, section 309 IPC which penalizes attempt to suicide was held to be unconstitutional and violative of Article 21. In P.Rathinam's case, the scope of life was broadened. It was held that 'right to life and liberty' under Article 21 also includes 'right to die'. However, the debates over the issues didn't stop. The question again came up for consideration before the Supreme Court in the case of **Gian Kaur v. State of Punjab**.

According to Vedantic philosophy, the Parma Brahma created the human being. God is present in the soul of the human being. God is the material cause and instrumentality of all joys, happiness, woes, sorrows, deeds and karmas of humanity. Just as he gave life to us, he takes it away from us as well. He is the creator as well as the doer and the destroyer of this body. Committing suicide one never gained anything in life. Committing suicide was an offence as per Bhagavad Gita. Our soul atman after death of mortal body in present life (resulted from committing suicide) again manifests a lower life form than present. What of sin incurred by committing suicide? By committing suicide we again suffered in life as our soul atman would manifest a lower form of life in next manifestation.

Section 309 of IPC deserves to be effaced from the Statute book to humanize our penal laws. It is a cruel and irrational provision and it may result in punishing a person again who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Hon'ble Supreme Court has also expressed similar view in **Aruna Ramchandra Shanbaug v. Union of India & Ors.**²⁰ An act of suicide cannot be said to be against religion. Morality or public policy, and an act of attempted suicide have no baneful effect on society. Further, suicide or attempt to commit suicide causes no harm to others; therefore the state's interference with the personal liberty of the concerned persons is not called for. Thus section 309 violates Article 21, and so void.

If a person has right to live Article 21 of the Constitution, the question is whether he has a right not to live. Logically, it must follow that the right to live will include the right not to live, say, the right to die or to terminate one's life, Right to live of which art 21 speaks of can be said to bring in its trail the right not to live a forced life. If a person, because of family discord, distraction, loss of a dear relation or other cause of a like nature overcomes the instinct of self-preservation and decides to take his life, he should not be held for an attempt to suicide. In such case the unfortunate man deserves indulgence, sympathy and consolation instead of punishment.²¹

Morality has no define boundary and it would be too hazardous to make a bold and bald statement that commission of suicide is per se an immoral act. *"If the purpose of the prescribed punishment is to prevent the prospective suicides by deterrence, it is difficult to*

¹⁹(1994) 3 SCC 394

²⁰(2011) 4 SCC 454

²¹DwarkaPoonja v. Emperor (1912) 14 Bom L.R 146

understand how the same can be achieved by punishing those who have made the attempts. Those who make the suicide attempt on account of mental disorder requires psychiatric treatment and not confinement in the prison cells where their condition is bound to be worsen leading to further mental derangement. Those on the other hand, who makes a suicide attempt on account of actual physical ailments, incurable disease, torture (broken down by illness), and deceit physical state induced by old age or disablement, need nursing home and not prison to prevent them from making the attempts again. No deterrence is going to hold back those who want to die for a special or political cause or to leave the world either because of the loss of interest in life or for self- deliverance. Thus in no case does the punishment serve the purpose and in some cases it is bound to prove self-defeating and counterproductive.”²²

The question is whether the scope of Article 21 also includes the right to die? When a man commits suicide, he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to or be included within the protection of the right to life under Article 21. The significant aspect of sanctity of life is also not being overlooked. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read to be included in the protection of life. Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, the court reiterated that it is difficult to construe Article 21 to include within it the right to die as a part of fundamental right guaranteed therein. Right to life is a natural right embodied in Part III of constitution, but suicide is an unnatural termination or extinction of life and therefore, incompatible and inconsistent with the concept of right to life. Section 306 enacts a distinct offence, which is capable of existence independent of section 309 IPC. Section 306 prescribes punishment for abetment to suicide, while section 309 punishes attempt to commit suicide. Abetment of attempt to commit suicide is outside the preview of section 306 and is punishable only under section 309 read with section 107, IPC., In certain other jurisdictions, even though attempt to commit suicide is not a penal offence, yet the abettor is made punishable. The provision there provides for the punishment of abetment of suicide as well as abetment of attempt to commit suicide. Thus, even where the punishment for attempt to commit suicide is not considered desirable, its abetment is made a penal offence. In other words, assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society.

The Indian constitution under Article 21 confers the right to Life as the fundamental right of every citizen. The Right to Life enriched in Article 21 have been liberally interpreted so as to mean something more than mere survival and mere animal existence. The Supreme Court has asserted that Article 21 is the heart of the fundamental Rights provided under part III of the constitution.²³ The Supreme Court has clearly stated that in order to treat a right as a fundamental it is not mandatory that it should be expressly stated as a fundamental right.²⁴

²²**P.B. Sawant J.** in *MarutiShripati Dubai v. State of Maharashtra*, 1987 Cr. LJ 743 (Bom.)

²³*Unni Krishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178

²⁴*Maneka Gandhi v. Union of India* AIR 1978 SC 597

‘The right to life’ under Article 21 of the Constitution has received the widest possible interpretation under the able hands of the judiciary and rightly so. On the grounds as mentioned, Article 21 does not have a restrictive meaning and needs to be interpreted broadly. This affirms that if Article 21 confers on a person the right to live a dignified life, it should bestows the “Right to Die” also, but the inclusion of Right to die under Article 21 contradict the provision of Indian Penal Code under Section 309. As according to Section 309 of the Indian Penal Code ‘Whoever attempts to commit suicide and does any act toward the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year (or with fine, or with both)’. This section is based on the principle that lives of men are not only valuable to them but also to the state which protects them. By considering both the laws the provision of IPC under section 309 is contradictory to the fundamental right guaranteed under Article 21 of the Indian Constitution. The state’s power under section 309, IPC to punish a man for attempt to commit a suicide is questioned not only on the grounds of morality, but also on the constitutionality of the said provision. A lot of conflicting opinions have been given on desirability of retaining or abolishing section 309 of Indian Penal Code because of some contrasting judgement given by various courts.

So for the applicability of Section 309 as this issue is concerned, the Law Commission of India has given opinion that once a competent patient decides not to take medicines and allows the nature to take its own course, the doctor has to obey the instructions of the patients, since this omission of this doctor is based on the patients direction, therefore, it is not an offence under Section 306 of IPC.

On the basis of above discussion it can be inferred that since the withholding or withdrawal of life supporting equipment (which amounts to euthanasia) has been permitted by the Court in cases where a patient is in persistent vegetative state, doing so is neither illegal criminal in India.

Motive of laws are to facilitate and regulate the life on planet. Laws are made for the people and it should be change to meet the aims and aspiration of the changing society. Legislation is duty bound to walk with the society.