



Right to Life, Section 309 and Euthanasia

1 Right To Life

1.1 Meaning of Article 21

Article 21 of Indian Constitution provides for “**Protection of Life and Personal Liberty**” and reads as “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*”

The fundamental right under Article 21 is one of the most important rights provided under the Constitution which has been described as the **heart of fundamental rights** by the Apex Court in Unni Krishnans case.

The objective of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to **procedure established by law**. It clearly means that this fundamental right has been provided against the state only. However, the state cannot be defined in a restricted sense. It includes Government Departments, Legislature, Administration, Local Authorities exercising statutory powers and so on so forth, but it does not include non-statutory or private bodies having no statutory powers such as company, autonomous body and others. If an act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person, such violation would not fall under the parameters set for the Article 21. In such a case, the remedy for aggrieved person would be either under Article 226 of the constitution or under general law.

Therefore, the fundamental right guaranteed under Article 21 relates only to the acts of State or acts under the authority of the State, which are not according to procedure established by law. **The main object of Article 21 is that before a person is deprived of his life or personal liberty by the State, the procedure established by law must be strictly followed.**

1.2 Widening the Scope of Article 21 through Judicial Interpretation



Cases Related to the Scope of Article 21

- **Maneka Gandhi vs. Union of India Case**
- **Gopalanachari vs. Administrator, State of Kerala**
- **Francis Coralie Mullin vs. Union Territory of Delhi**
- **Olga Tellis vs. Bombay Municipal Corporation**

- The scope of Article 21 was a bit narrow till 1950s as it was held by the Supreme Court in **A. K. Gopalan vs. State of Madras Case 1950** that there was no guarantee in our Constitution against arbitrary legislation encroaching upon personal liberty. Hence if a competent legislature makes a law providing that a person may be deprived of his liberty in certain circumstances, the validity of law could not be challenged in a court of law on the ground that the law is unreasonable, unjust, and unfair. *Thus, in Gopalan case, the majority at Supreme Court propounded the view that by adopting the expression 'procedure established by law', article 21 has embodied the English concept of personal liberty in preference to that of American 'Due Process'.*
- The majority judgement in Gopalan case was, however, overturned in **Maneka Gandhi v. Union of India Case 1978** that led to the following propositions:
 - Art 19 and 21 are not water-tight compartments. On the other hand, the expression of 'personal liberty' in Art 21 is of the widest amplitude, covering a variety of rights of which some have been included in Art 19 and given additional protection. Hence, there may be some overlapping between Art 19 and 21.
 - Thus, a law coming under Art 21 must also satisfy the requirements of Art 19. In other words, a law made by state, which seeks to deprive a person of his personal liberty, must prescribe a procedure for such deprivation which must not be arbitrary, unfair, or unreasonable.
- This view has been further relied upon in a case of **Francis Coralie Mullin v. Union Territory of Delhi** as follows: Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. And if any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just.
- In another case of **Olga Tellis vs. Bombay Municipal Corporation**, it was further observed: Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform to the norms of justice and fair play.
- The Supreme Court in its several judgements has held that right to life under Art 21 does not have restricted meaning. It is something more than surviving or animal existence. **Right to Life means the right to live meaningful, complete and dignified life.**
- The expanded scope of Article 21 has been explained by the Apex Court in the case of **Unni Krishnan v. State of A.P.** and the Apex Court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are listed below:
 1. The right to go abroad.
 2. The right to privacy.
 3. The right to shelter.
 4. The right to social justice and economic empowerment.
 5. The right against solitary confinement.
 6. The right against hand cuffing.
 7. The right against delayed execution.
 8. The right against custodial death.
 9. The right against public hanging.
 10. Doctors assistance
 11. Protection of cultural heritage.
 12. Right of every child to a full development.
 13. Right to pollution free water and air.

Thus it is clear that the provision of Article 21 was constructed narrowly at the initial stage but the law in respect of life and personal liberty of a person was developed gradually and a liberal interpretation was given to these words. New dimensions have been added to the scope of Article 21 from time to time. It imposed a limitation upon a procedure which prescribed for depriving a person of life and personal liberty by saying that the procedure must be reasonable, fair and such law should not be arbitrary, whimsical and fanciful.

2 Right to Life and Suicide (Sec 309 of IPC)

Suicide law in India: Under Section 309 of the Indian Penal Code, an attempt to commit suicide is punishable with simple imprisonment up to one year and/or a fine.

The Supreme Court in 1994 not only decriminalised the attempt to suicide but also observed that the 'right to life' includes the 'right to die.' *The court observed that all fundamental rights have positive connotations as well as negative connotations.* Thus,

- the fundamental right to freedom of speech and expression can be said to include the right not to speak.
- freedom of movement and association includes the freedom not to move or join an association.
- freedom to do business includes freedom not to do any business.

However, a five-judge bench headed by Justice J.S. Verma in **Gian Kaur case(1996)** overturned the 1994 decision which brought Section 309 back to life and made 'right to die' unconstitutional. The Court held that the right to life under Article 21 does not include the right to die.

In 2008, the **Law Commission** recommended that the suicide bids be decriminalized. It suggested that the intention to commit suicide should be seen as a manifestation of a diseased condition of mind, requiring care and treatment, not punishment. It also pointed out that only a handful of nations like Pakistan, Bangladesh, Malaysia, Singapore and India have persisted with this undesirable law. On the basis of this recommendation, in 2014, the **Centre called for inputs from states**. 18 states including the state of Tamil Nadu and 4 union territories are in favour of deletion of Section 309. Bihar, MP, Delhi, Punjab and Sikkim however, have expressed reservations citing suicide bombers and agitators fasting pressurise government. Considering the majority, recently government has decided to decriminalize section 309 of IPC. With this decision, the debate whether the 'right to life' also implies 'right to die' has come to the fore.

2.1 Arguments against Decriminalizing Suicide

- It is argued that no individual has complete autonomy with respect to life. His family does have a claim over him. A person may be the sole bread winner of his family and if he commits suicide, his family would certainly be driven to destitution. (This was SC observation in Gian Kaur case).
- But the counter argument is that decriminalization of suicide (Section 309 of IPC) will also decriminalize the abetment to the commission of suicide (Section 306 of IPC). This is more technical as how can abetment of something which is not a crime can be termed as crime. This may enhance the abuse of law after deletion of section 309 of IPC, particularly in cases of dowry death, honour death and by child in case of elderly parents. However, this technical issue can be dealt with by proper amendments.

2.2 Arguments In Favour Of Decriminalizing Suicide

- Section 309 of IPC makes suicide a criminal offence and has a provision of maximum one year of jail or fine or both. It is unfortunate that this is the only law which penalises for not being successful in committing an offence. If the offence (suicide) is successful, he is beyond the reach of law.
- Further, a sound mind commits suicide when he is depressed, hopeless and out of emotional outburst. These conditions may be created because of social, economic, personal, emotional etc factors. Anyone committing suicide certainly needs soft words and wise counselling, not stony dealing by a jailor following harsh treatment meted out by a heartless prosecutor.
- Decriminalising attempt to suicide is one thing and conferring a 'right to die is another'. Right to silence or right not to do business or trade constitutes merely temporary suspension of rights and on any future date a person may exercise these rights. But once a life is extinguished, it is lost forever. The 'right to die' is based on a conservative and individualistic argument whereby suicide is considered a private affair which in no way can cause damage to others. Even by citing examples from mythology of Lord Rama taking Jal Samadhi in the Sarayu to Buddha and Mahavira achieving death by seeking it, suicide could not be termed an irreligious act.

- Again what about those persons who are terminally ill and want to die with dignity? The loss of bodily integrity is traumatic and they should be allowed to sleep without pain, trauma and in peace.

2.3 Conclusion

So, the recent decision of government to decriminalize section 309 of IPC is good for the society, as it will not exaggerate the problems for already overburdened person who just attempted suicide. Thus, better option is not to punish anyone for attempting suicides and decriminalization of section 309 of IPC seems to be right step. Further allowing 'Right to die' only to the terminally ill patient can be thought upon.

3 Right to Life and Euthanasia

“Death solves all problems...no man, no problem.”**Joseph Stalin**

“I will give no deadly medicine to any one if asked, not suggest any such counsel.”.....**Hippocrates**

“Right to life is an inalienable and inherent right of every human being.”.....**Thomas Jefferson**

3.1 Introduction

The word ‘euthanasia’, which originated in Greece, literary means a good death but in this context it means mercy killing. Euthanasia encompasses various dimensions, from **active** (introducing something to cause death) to **passive** (withholding treatment or supportive measures); **voluntary** (consent) to **involuntary** (consent from guardian) and **physician assisted** (where physician’s prescribe the medicine and patient or the **third party administers** the medication to cause death).

Request for premature ending of life has contributed to the debate about the role of such practices in contemporary health care. This debate cuts across complex and dynamic aspects such as **legal, ethical, human rights, religious, economic, social and cultural aspects** of the civilised society. In our day to day life, we often come across terminally ill patients that are bedridden and are totally dependent on others. It actually hurts their sentiments. Looking at them we would say that death will be a better option for them rather than living such a painful life. But if on the other hand we look at the *Netherlands* where euthanasia is made legal, we will see that how it is abused there. So following its example no one wants euthanasia to be legalized in India. But the question that lies before us is which will be a better option.

In the above light, let’s argue this complex issue from both the supporters and opponents’ perspectives, and also attempt to present the plight of the sufferers and their caregivers. The objective is to discuss the subject of euthanasia from the medical and human rights perspective given the background of **Aruna Shanbaug vs. Union of India** case as decided on 7 March, 2011.

Assisted Dying Vs. Euthanasia

- Assisted dying involves a doctor prescribing a life-ending dose of medication to a mentally competent, terminally ill adult at his request. It is the patient who administers the medication to himself. *The State of Oregon in the U.S. was the first in world to legislate assisted dying way back in 1997. Washington State emulated Oregon and voted for assisted dying in 2008. Three countries — Belgium, Luxembourg, and the Netherlands have legislated assisted dying.*
- In the case of euthanasia, the life ending medication is administered to the patient by a third party, usually a doctor (Active Euthanasia) or Life support is withdrawn (Passive Euthanasia).

3.2 International Position on Euthanasia

Country	Euthanasia	Physician Assisted Suicide
Netherlands, Belgium	Legal	Legal
Germany	Illegal	Legal
Australia, Canada, Israel, Italy, India	Illegal	Illegal

3.3 Arguments Against Euthanasia

1. **Constitution of India:** 'Right to life' is a *natural right embodied in Article 21* but euthanasia/suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of 'right to life'. It is the duty of the State to protect life and the physician's duty to provide care and not to harm patients. Supreme Court in **Gian Kaur Case 1996** has held that the *right to life under Article 21 does not include the right to die*.
2. **Neglect of Healthcare by State:** If euthanasia is legalised, then there is a grave apprehension that the State may refuse to invest in health (working towards Right to life). *Legalised euthanasia has led to a severe decline in the quality of care for terminally-ill patients in Holland*.
3. **Malafide Intention:** In the era of declining morality and justice, there is a possibility of *misusing euthanasia by family members or relatives for inheriting the property of the patient*. The Supreme Court has also raised this issue in the *Aruna Shabaug judgement*.
4. **Commercialisation Of Health Care:** Passive euthanasia occurs in majority of the hospitals across the country, where poor patients and their family members refuse or withdraw treatment because of the huge cost involved in keeping them alive. If euthanasia is legalised, then commercial health sector will serve death sentence to many disabled and elderly citizens of India for meagre amount of money. This has been highlighted in the *Aruna Shabaug Judgement*.
5. **Palliative Care Supporters:** The practice of palliative care counters the view of euthanasia, as palliative care would provide relief from distressing symptoms and pain, and support to the patient as well as the care giver. Research has revealed that many terminally ill patients requesting euthanasia, have major depression, and that the desire for death in terminal patients is correlated with the depression. They need palliative and rehabilitative care. Whenever, there is no cure, the society and medical professionals become frustrated and the fellow citizens take extreme measures such as suicide, euthanasia or substance use. In such situations, palliative and rehabilitative care comes to the rescue of the patient and the family.

Suicide Vs. Euthanasia

There has also been a confusion regarding the difference between suicide and euthanasia. It has been clearly differentiated in the case *Naresh Marotrao Sakhre v. Union of India*. Justice Lodha clearly said in this case, "Suicide by its very nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency. Euthanasia on the other hand means the intervention of other human agency to end the life. It is thus not suicide and an attempt at mercy killing is not covered by the provisions of Sec 309. The two concepts are both factually and legally distinct. Euthanasia is nothing but homicide whatever the circumstances in which it is effected."

3.4 Arguments In Favour Of Euthanasia

1. **Right To Die With Dignity:** 'Right-to-die' supporters argue that people who have an incurable, degenerative, disabling or debilitating condition should be allowed to die with dignity.
2. **Care-givers Burden:** The caregiver's burden is huge and cuts across various domains such as financial, emotional, temporal, physical, mental and social.
3. **Refusing Care:** *Right to refuse medical treatment is well recognised in law*, including medical treatment that sustains or prolongs life. For example,

- a. a patient suffering from blood cancer can refuse treatment or deny feeds through naso-gastric tube. Recognition of right to refuse treatment gives a way for passive euthanasia.
 - b. Many do argue that *allowing medical termination of pregnancy before 16 weeks* is also a form of active involuntary euthanasia. This issue of mercy killing of deformed babies has already been in discussion in Holland.
4. **Encouraging Organ Transplantation:** Euthanasia in terminally ill patients provides an opportunity to advocate for organ donation. This in turn will help many patients with organ failure waiting for transplantation. *Not only euthanasia gives 'Right to die' for the terminally ill, but also 'Right to life' for the organ needy patients.*

3.5 Supreme Court Judgment on Euthanasia

SC turned down a friend's plea for mercy killing of vegetative **Aruna Shanbaug** saying that only hospital could make such a request. The judgment of SC is based on the following logic:

1. If we leave it solely to friends and relatives, there is always a chance that this may be misused by some unscrupulous elements who wish to inherit or grab patients' property.
2. If euthanasia is legalised, then commercial health sector will serve death sentence to many disabled and elderly citizens of India for meagre amount of money.

3.6 Conclusion

The Constitution of India reads 'right to life' in a positive direction of protecting life. Hence, there is an urgent need to fulfil this obligation of 'Right to life' by providing 'food, safe drinking water and health care'. On the contrary, most of the States till date have not done anything to support the terminally ill people by providing for hospital care. If the State takes the responsibility of providing reasonable degree of health care, then majority of the euthanasia supporters will definitely reconsider their argument. ***We should endorse the Supreme Court Judgement that our contemporary society and public health system is not matured enough to handle this sensitive issue; hence it needs to be withheld.***

However, this issue needs to be re-examined again after few years depending upon the evolution of the society with regard to providing health care to the disabled and that of the public health sector with regard to providing health care to poor people. The Supreme Court judgement to withhold decision on this sensitive issue is the first step towards a new era of health care in terminally ill patients. ***The Judgment laid down is to preserve harmony within a society, when faced with a complex medical, social and legal dilemma. There is a need to enact a legislation to protect terminally ill patients and also medical practitioners caring for them as per the recommendation of Law Commission Report.*** However, certain measures should be taken before legalizing euthanasia in India:

1. Be convinced that the request was voluntary, well considered and lasting.
2. Be convinced that the patient was facing unremitting and unbearable suffering.
3. Have informed the patient about his situation and prospects.
4. Have reached the firm conclusion with the patient that there is no reasonable alternative solution.
5. Have consulted at least one other independent physician who has examined the patient and formed a judgment about the patient stated above.
6. Terminate life in a medically appropriate fashion.

There is also an urgent need to invest in our health care system, so that poor people suffering from ill health can access free health care. Investment in health care is not a charity; 'Right to Health' is bestowed under 'Right to Life' of our constitution.

Copyright © by Vision IAS

All rights are reserved. No part of this document may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission of Vision IAS.