



ARTICLE 21 AND CONSTITUTIONAL VALIDITY OF RIGHT TO DIE

RIYA SINHA

RESEARCH SCHOLAR OPJS UNIVERSITY CHURU RAJASTHAN

DR. KULDIP SINGH

PROFESSOR OPJS UNIVERSITY CHURU RAJASTHAN

Abstract

Nature has given us its blessings since the beginning of time, and these endowments and assets go about as the foundation of human life. A spotless, solid and agreeable climate is one of the necessities for the genuine pleasure throughout everyday life, and consequently, it shocks no one that our entitlement to live in a contamination free climate is remembered for the broad Right to Life.

The fast development of innovation starting with the Industrial Revolution and developing over the course of the hundreds of years has, in any case, not aided the climate by any means. The foundation of an ever increasing number of ventures and an ascent in the interest for items produced by them has expanded the waste produced by them. Where does this waste go? Lamentably, it winds up in the land, water, and air. A few court decisions have prompted the foundation of our entitlement to a sound climate and the measures to check the contamination of the Earth.

This paper talks about right to life under article 21 of the Constitution of India. The present study will be based on secondary data which includes various articles, documents etc. In this paper the researcher tries to give a brief about various measures regarding article 21 and its constitutional validity.

Keywords: constitution, right, liberty, law.

Introduction:

The Constitution of India gives an extensive rundown of major rights under Part-III. Article 21 of Constitution is one of the significant central rights among those rights. This article 21 of constitution manages Protection of Life and Personal Liberty¹.

As per this article of constitution right to life implies the option to lead significant, complete and noble life. It doesn't have limited significance. The object of the basic right under Article 21 is to forestall any limitation by the State to an individual upon his own freedom and hardship of life besides as per system set up by law².

The significance of the words individual freedom came up for thought of the Supreme Court without precedent for A.K. Gopalan v. Union of India³. The extent of Article 21 was somewhat tight around then. For this situation the Supreme Court held that the word hardship was understood from a limited perspective and it was held that the hardship doesn't confine upon the option to move unreservedly which went under Article 19 (1) (d)⁴. At long last, in Maneka Gandhi v. Union of India⁵, the Supreme Court has overruled Gopalan's case and broadens the extent of the words individual freedom, Which is as per the following: *“The expression personal liberty in Article 21 is of widest in nature and it covers a bundle 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 Article 19”*.

Right to live with human dignity

It isn't sufficient to guarantee that an individual has an Option to Live. A fundamental component of life is one's poise and regard; thusly, every individual has been ensured the option to live with pride – which means approaching the necessities of human existence just as having self-governance over one's very own choices⁶.

In Occupational Health and Safety Association v. Union of India (2014)⁷, the assurance of wellbeing and strength of labourers and their admittance to simply and others conscious states of work were taken as fundamental conditions to live with human respect.

¹“article21of constitution :Fundamental rights are protected under, also valid for foreign citizens”.Available at <https://blog.ipleaders.in> (last visited on 20th January 2020)

²“article/1374-Article-21-and-Constitutional-validity-of-Right-to-Die”,available at <http://www.legalserviceindia.com> (last visited on 3rd September 2020).

³1950 SCR 88:AIR 1950 SC 27: (1950) 51 Cri LJ 1383, Available at <https://www.lawcirca.com> (last visited on 5th October 2020).

⁴Supra note 3.

⁵1978 AIR 597 1978 SCR (2) 621 197, Available at <https://www.blogs.ipleaders.in> (last visited on 4th February 2021).

⁶Supra note 1.

⁷(2014) 3 SC 547 Available at <https://indiankanoon.org> (last visited on 2nd January 1st February 2020).

For this situation, a non-benefit association documented an appeal looking for rules for work related security and medical issue in different ventures, particularly nuclear energy stations. This was considering the different skin sicknesses, lung irregularities, and so forth endured by their labourers because of undesirable working conditions. It likewise called for remuneration to casualties of work related wellbeing problems⁸.

The court perceived the State's obligation to shield labourers from perilous or unhygienic working conditions and remanded the make a difference to different High Courts to check the issue of nuclear energy stations in their particular states⁹.

The Supreme Court, on account of *Navtej Singh Johar v. Union of India*¹⁰ (2018), said that the Right to poise implies the option to "full personhood", and "incorporates the option to convey such capacities and exercises as would establish the significant articulation of the human self." For this situation, a vital part of human nobility was discussed – the command over one's own private relation.

Navtej Singh Johar v. Union of India (2018)¹¹ - Homosexuality

In this case, the petitioner NGO filed a Writ Petition challenging [Section 377](#) of the Indian Penal Code, 1860 as it criminalised sexual acts between LGBT persons, claiming that it was against the Fundamental Rights.

The court, applying the principle of human dignity, said that Section 377 was violative of Articles [14](#), [15](#), [19](#), and 21 of the Constitution to the extent that it criminalised consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private. Hence, sexual acts between LGBT adults conducted with the free consent of the parties involved were declared legal.

As can be observed, human dignity is not a straightjacket idea. Rather, it involves all those rights and freedoms which enable a person to live life without encroachment upon his or her self-respect, pride and safety.

Right to livelihood

To endure, an individual expects admittance to monetary and material assets to satisfy his different requirements. The law perceives that each individual, regardless of whether man or lady, has an equivalent right to work so the person may secure the vital assets like food, water, asylum,

⁸*Supra* note 7.

⁹*Ibid* at 7.

¹⁰(2018) 10 SCC 1, Available at <https://www.sconline.com> (last visited on 3rd September 2020).

¹¹(2018) 10 SCC 1, Available at <https://www.sconline.com> (last visited on 3rd September 2020).

garments and that's only the tip of the iceberg. No individual has the right to live in neediness and filth due to being denied of the opportunity to acquire for himself.¹²

Olga Tellis and Ors.v. Bombay Municipal Corporation (1986)¹³ - Right to Livelihood

The solicitors, for this situation, were ghetto and asphalt inhabitants in the city of Bombay. They documented a writ request against a prior choice of the State of Maharashtra and the Bombay Municipal Corporation to coercively remove tenants and oust them, which prompted the destruction of specific homes. They tested these activities in light of the fact that removing an individual from his asphalt staying or ghetto implied denying him of his entitlement to job, which ought to be viewed as a piece of his sacred right to life.

The court inferred that however the ghetto and asphalt inhabitants were denied of their Right to Livelihood, the public authority was advocated in ousting them as they were disclosing utilization of the property for private purposes. Nonetheless, they ought not be considered as intruders as they involved the dingy places out of sheer vulnerability. It was requested that any removals would happen simply after the moving toward rainstorm season and the people who were censused before 1976 would be qualified for resettlement.

While the case neglected to carry effective resettlement to the tenants and, truth be told, is at times referred to as avocation for removal of individuals by the State, it had its influence in building up the Right to Livelihood as a feature of the Fundamental Right to Life¹⁴.

Right to die

The Right to Life gives upon the individual the option to carry on with a full life and directs that the State can't meddle in this privilege besides through strategy set up by law. Yet, imagine a scenario in which an individual decides to take his own life. Would he be able to meddle in his own Right to Life?

Section 309 of the Indian Penal Code, 1860 condemns endeavour to self destruction, with the indicted individual looking as long as two years of detainment, or a fine, or both¹⁵.

Section 306, in the interim, condemns the abetment to self destruction i.e., the help given by an individual during the time spent the responsibility of self destruction by another¹⁶.

Such a view is heartless in light of the fact that an individual, particularly one who is discouraged or disappointed to the point of needing to pass on, ought not be condemned for endeavouring self

¹²*Supra* note 5.

¹³1985 SCC (3) 545, Available at <https://www.escri-net.org> (last visited on 30th June 2020).

¹⁴Available at <https://lawtimesjournal.com> (last visited on 21st February 2021).

¹⁵Indian Penal Code, 1860 bare act.

¹⁶Indian Penal Code, 1860 bare act.

destruction. An individual has the Privilege to Life which ought to normally suggest the Right to take his life as well¹⁷.

Such a view was taken by the court in the case of *P. Rathinam v. Union of India*¹⁸ (1994) –

For this situation, two petitions were documented testing Section 309 of the IPC because it remained infringing upon Articles 14 and 21 of the Constitution.

Keeping Article 21 just as the standards of characteristic equity as a main priority, the two-judge seat decided that Right to Life likewise incorporated the option to not carry on with a constrained life. Along these lines, Section 309 of the Indian Penal Code was pronounced void¹⁹.

Euthanasia

The term euthanasia comes from two Greek words – eu signifying 'great' and thantos signifying 'passing'. In this way, it basically signifies 'great passing'. It is the act of finishing the existence of an individual experiencing a hopeless illness yet breathing, accordingly going through extraordinary misery and pain. It encourages that person experience a delicate and effortless passing all things being equal, by either a demonstration or exclusion upon their body. It is, in this manner, otherwise called "benevolence murdering" or "helped self destruction".²⁰

There may be two types of euthanasia- active and passive.²¹

Active Euthanasia includes planning something for a patient to end their life, with their assent. For eg.giving an infusion.

Passive Euthanasia includes pulling out clinical benefits with the expectation to take the patient's life. At the end of the day, it implies not planning something for a patient, which whenever done would have saved their life. For eg.quit taking care of the patient.

In *Smt. GianKaur v. State of Punjab*²², the court saw that killing could be made legal simply by enactment. The thinking behind this was to forestall deceitful activities by sick intentioned individuals.

The milestone case in this matter, in any case, was *Common Cause (A Regd. Society) v. Union of India* (2018)²³, which made inactive wilful extermination legitimate.

¹⁷*Supra* note 14.

¹⁸1994 AIR 1844, 1994 SCC (3) 394 Available at <https://indianlawportal.co.in> (last visited on 3rd January 2021).

¹⁹*Ibid* at 18.

²⁰Available at <https://www.casemine.com> (last visited on 3rd October 2020).

²¹Available at <https://www.scobserver.in> (last visited on 6th January 2021).

²²1996 AIR 946, 1996 SCC (2) 648, Available at <https://intolegalworld.com> (last visited on 2nd June 2020).

Common Cause (A Regd. Society) v. Union of India²⁴ (2018)

For this situation, a NGO recorded a Public Interest Litigation in the Supreme Court to sanction living will and detached killing. It battled that an individual's entitlement to life incorporated the option to have an honourable demise also, yet current innovation empowered the superfluous drawing out of a serious patient's life, just making torment and enduring him and his family. Hence, living will by the patient could approve the family and the medical clinic to end his misery.

A five-judge Constitution seat decided that Right to Life additionally incorporates an individual's Right to Die with nobility, and along these lines permitted inactive wilful extermination for example the desire of patients to pull out clinical help in the event of slipping into an irreversible condition of trance like state²⁵.

In this manner, presently, euthanasia is illegal in India, similarly as in most different nations. Then again, inactive wilful extermination is lawful in our nation, subject to certain severe rules²⁶.

Constitutional validity of Right to Die

Presently, the inquiry emerges whether right to life under Article 21 incorporates option to kick the bucket or not. This inquiry came for thought for first time under the steady gaze of the High Court of Bombay in *State of Maharashtra v. MarutiSripatiDubal*²⁷. For this situation the Bombay High Court held that the privilege to life ensured under Article 21 incorporates option to bite the dust, and the hon'ble High Court struck down area 309 IPC which gives discipline to endeavour to end it all by an individual as unlawful.

In *P Rathinam v. Union of India*²⁸ a Division Bench of the Supreme Court supporting the choice of the High Court of Bombay in *MarutiSripatiDubal* case²⁹ held that under Article 21 right to life likewise incorporate option to kick the bucket and set out that part 309 of Indian Penal Court which manages 'endeavour to end it all is a punitive offense' unlawful.

This issue again brought under the steady gaze of the court up in *GianKaur v. Territory of Punjab*³⁰. For this situation a five adjudicator Constitutional Bench of the Supreme Court overruled the P. Rathinam's case and held that Right to Life under Article 21 of the Constitution

²³1996 AIR 1619 1996 SCC (4) 33 JT 1996 (4) 701 1996 SCALE (4) 127, Available at <https://indiankanoon.org> (last visited on 17th July 2020).

²⁴1996 AIR 1619 1996 SCC (4) 33 JT 1996 (4) 701 1996 SCALE (4) 127, Available at <https://indiankanoon.org> (last visited on 17th July 2020).

²⁵*Supra* note 24.

²⁶*Ibid* at 24.

²⁷1987 Cri. LJ 743, Available at <https://lawinsider.com> (last visited on 4th august 2020).

²⁸1994 AIR 1844, 1994 SCC (3) 394 Available at <https://indianlawportal.co.in> (last visited on 3rd January 2021).

²⁹1987 Cri. LJ 743, Available at <https://lawinsider.com> (last visited on 4th august 2020).

³⁰ 1996 AIR 946, 1996 SCC (2) 648, Available at <https://intolegalworld.com> (last visited on 2nd June 2020).

does exclude Right to bite the dust or Right to be executed and there is no ground to hold that the part 309, IPC is intrinsically invalid³¹.

Conclusion :

To genuine significance of the word 'life' in Article 21 methods existence with human respect. Any part of life which makes life noble might be remember for it yet not that which stifles it. The 'Option to Die' assuming any, is naturally conflicting with the Right to Life as is demise with Life. An inquiry may emerge, if there should be an occurrence of a withering man, who is, genuinely sick or has been experiencing harmful and hopeless type of sickness

he might be allowed to end it by an untimely eradication of his life in those conditions. This class of cases may fall inside the ambit of 'Right'.³²

³¹*Supra* note 29.

³²Available at <http://www.legalservicesindia.com> (last visited on 7th June 2020).