

# Constitutional Law

## Right to Life & Personal Liberty

According to **Article 21**:

*“Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

- This fundamental right is available to every person, citizens and foreigners alike.
- Article 21 provides two rights:
  - Right to life
  - Right to personal liberty
- The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees.
- The Supreme Court of India has described this right as the ‘**Heart of Fundamental Rights**’.
- The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc.
- Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law.
- The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.
- The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law.

### Judicial Interpretation of Article 21

Judicial interpretations has ensured that the scope of Article 21 is not narrow and restricted. It has been widening by several landmark judgements.

#### Important cases concerned with Article 21:

1. ***AK Gopalan v. State of Madras AIR 1950 SC 27***: Until the 1950s, Article 21 had a bit of a narrow scope. In this case, the SC held that the expression ‘procedure established by law’, the Constitution has embodied the British concept of personal liberty rather than the American ‘due process’.
2. ***Maneka Gandhi v. Union of India Case AIR 1978 SC 597***: This case overturned the Gopalan case judgement. Here, the SC said that Articles 19 and 21 are not watertight compartments. The idea of personal liberty in Article 21 has a wide scope including many rights, some of which are embodied under Article 19, thus giving them ‘additional protection’. The court also held that a law that comes under Article 21 must satisfy the requirements under Article 19 as well. That means any procedure under law for the deprivation of life or liberty of a person must not be unfair, unreasonable or arbitrary.

3. ***Francis Coralie Mullin v. Union Territory of Delhi AIR 1981 SC 746:*** In this case, the court held that any procedure for the deprivation of life or liberty of a person must be reasonable, fair and just and not arbitrary, whimsical or fanciful.
4. ***Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180:*** This case reiterated the stand taken earlier that any procedure that would deprive a person's fundamental rights should conform to the norms of fair play and justice.
5. ***Unni Krishnan v. State of Andhra Pradesh AIR 1993 SC 2178:*** In this case, the SC upheld the expanded interpretation of the right to life. The Court gave a list of rights that Article 21 covers based on earlier judgements. Some of them are:
  1. Right to privacy
  2. Right to go abroad
  3. Right to shelter
  4. Right against solitary confinement
  5. Right to social justice and economic empowerment
  6. Right against handcuffing
  7. Right against custodial death
  8. Right against delayed execution
  9. Doctors' assistance
  10. Right against public hanging
  11. Protection of cultural heritage
  12. Right to pollution-free water and air
  13. Right of every child to a full development
  14. Right to health and medical aid
  15. Right to education
  16. Protection of under-trials

### **Right to Life and Suicide**

Section 309 of the Indian Penal Code (IPC) makes attempted suicide a criminal offence which is punishable with imprisonment and fine.

- There were many debates on whether this should continue since mental health experts have argued that people who attempt suicide need adequate counselling and not punishment.
- The Mental Healthcare Act, 2017 was passed by the Parliament and the law came into force in 2018. This Act is meant to provide “for mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services.”
- **This law decriminalises suicide in India.**
- The law states, “*Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code*”.

#### **Arguments against decriminalising suicide:**

1. No person has a complete autonomy with respect to his/her life. He/she has a duty with respect to his family. In many cases, a person's suicide could lead to a family being destitute.

2. Decriminalising suicide might lead to decriminalising the **abetment to suicide**. The counterargument to this point is that suicide alone can be decriminalised by having the necessary amendments or legal provisions to cover abetment to suicide.

### **Arguments in favour of decriminalising suicide:**

1. This is the only case where an attempt to a crime is punishable and not the crime itself (because a person becomes beyond the reach of law if suicide is complete).
2. Suicide is committed/attempted by people who are depressed and under severe stress. People who attempt suicide need counselling and medical help, not a jail warden's severe authority.
3. Decriminalising an attempt to suicide is different from conferring the '*right to die*'.

### **Right to Life and Euthanasia**

There are many debates on whether the right to life also extends to the right to die, especially to die with dignity. Euthanasia is a topic that is frequently seen in the news. Many countries have legalised euthanasia (the Netherlands, Belgium, Colombia, Luxembourg).

Euthanasia is the practice of intentionally ending life in order to relieve suffering and pain. It is also called 'mercy killing'.

There are various types of euthanasia: Passive and Active.

**Passive Euthanasia:** This is where treatment for the terminally-ill person is withdrawn, i.e., conditions necessary for the continuance of life are withdrawn.

**Active Euthanasia:** This is where a doctor intentionally intervenes to end someone's life with the use of lethal substances.

This is different from **physician-assisted suicide** where the patient himself administers the lethal drugs to himself. In active euthanasia, it is a doctor who administers the drugs.

**Voluntary euthanasia:** Under this, euthanasia is carried out with the patient's consent.

**Non-voluntary euthanasia:** Under this, patients are unable to give consent (coma or severely brain-damaged), and another person takes this decision on behalf of the patient.

**Involuntary euthanasia:** Euthanasia is done against the will of the patient, and this is considered murder.

### **International Position on Euthanasia:**

In the Netherlands and Belgium, both euthanasia and physician-assisted suicide are legal.

In Germany, euthanasia is illegal while physician-assisted suicide is legal.

Both euthanasia and physician-assisted suicide are illegal in India, Australia, Israel, Canada and Italy.

### **Euthanasia in India**

This question came for consideration for the first time before the High Court of Bombay in *State of Maharashtra v. Maruti Sripati Dubal*. In this case, the Bombay High Court held that the right to life guaranteed under Article 21 includes right to die, and the Hon'ble High

Court struck down Section 309 of the IPC that provides punishment for an attempt to commit suicide by a person as unconstitutional.

In *P. Rathinam v. Union of India AIR 1994 SC 1844*, a two-judge Division Bench of the Supreme Court, took cognizance of the relationship/contradiction between Sec. 309, I.P.C., and Art. 21. The Court supported the decision of the High Court of Bombay in *Maruti Sripati Dubal's Case* held 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.

The court argued that the word life in Art. 21 means right to live with human dignity and the same does not merely connote continued drudgery. Thus the court concluded that the 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. The court further emphasized that “*attempt to commit suicide is in reality a cry for help and not for punishment.*”

The *Rathinam ruling* came to be reviewed by a full Bench of the Court in *Gian Kaur v. State of Punjab AIR 1996 SC 946*. The question before the court was that if the principal offense of attempting to commit suicide is void as being unconstitutional vis-à-vis Art.21, then how abetment can thereof be punishable under Sec. 306, I.P.C., 1860. It was argued that ‘the right to die’ having been included in Art.21 (*Rathinam ruling*), and Sec. 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.

#### **Passive euthanasia has been made legal in India.**

- In 2018, *Common Cause v. Union of India, 2018 5 SCC 1*, the SC legalised passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state.
- This decision was made as a part of the verdict in the famous case involving Aruna Shanbaug, who had been living in a vegetative state for more than 4 decades until her death in 2015.
- The court rejected active euthanasia by means of lethal injection. **Active euthanasia is illegal in India.**
- As there is no law regulating euthanasia in the country, the court stated that its decision becomes the law of the land until the Indian parliament enacts a suitable law.
- Passive euthanasia is legal under strict guidelines.
- For this, patients must give consent through a living will, and should either be in a vegetative state or terminally ill.
  - Living Will: It is a legal document in which a person specifies what actions should be taken for their health if they are no longer able to make such decisions for themselves due to illness or incapacity.
- When the executor (of the living will) becomes terminally ill with no hope of a recovery, the doctor will set up a hospital medical board after informing the patient and/or his guardians.

This is how, since, 1951 the scope of Right to Life & Personal Liberty was expanded by Supreme Court keeping in mind the changing dimensions of the society. Law is never static it is always evolving with the changing aspirations of the society.