

# 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”.*

'Everyone has the right to life, liberty and the security of person.' The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense

In the case of **Munn v. State of Illinois**, 94 U.S. 113 (1876) the US Court referred to the observation of Justice Field, wherein he stated that by the term 'life' as here used something more is meant than a mere animal existence. Thus, it embraces within itself not only the physical existence but also the quality of life. It was the first case on the definition of word 'LIFE'.

Fundamental Right under Article 21 of the object personal Liberty except according to procedure established by law is to prevent encroachment on and loss of life. Deprivation of personal liberty or to intrude on another personal life is an act of private individual amounts. Such violation would not fall under Article 21 for set parameters.

Words cannot narrow down the meaning of life and it will be available to every citizen.

### 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 v. Suicide**

In the words of Pipel and Amsel "Contemporary proponents of 'rational suicide' or the 'right to die' usually demand by 'rationality' that the decision to kill oneself be both the autonomous choice of the agent desired by liberals, and 'a best option under the circumstances' choice desired by the stoics or utilitarian, as well as other natural conditions such as the choice being stable, not an impulsive decision, not due to mental illness, achieved after due deliberation, etc.

The history of the legality of right to die in India starts from the case of *State v. Sanjay Kumar Bhatia* where the Delhi High Court criticized section 309 of IPC as an '*anachronism and a paradox*' and then is followed by varied views of different High Courts on section 309 of IPC.

In the case of *Naresh Marotrao Sakhre v. Union of India* the court observed the difference between Euthanasia and suicide. It was discussed that Suicide was an act of self-destruction, to terminate one's own life without the aid or assistance of any other human agency whereas euthanasia being different as it involves the intervention of a human agency to end one's life. This mercy killing is from nowhere covered in section 309 of Indian Penal code which states that;

*“Attempt to commit suicide.—Whoever attempts to commit suicide and does any act towards 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]”*

### **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.

#### **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 embodies 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.