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## RIGHT TO LIFE AND PERSONAL LIBERTY: VIS-A-VIS EUTHANASIA

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### ABSTRACT

Right to live a free and dignified life is one of the most important basic principles of human Rights. Every person is entitled to live a life on their own way with no unfair interference from others. A successful democracy can only be one that guarantees its citizens the right to protect their own life and liberty. In India, the protection of Life and Personal Liberty is a Fundamental Right granted to every citizen under Part III of the Constitution of India. Fundamental Rights represent the foundational values cherished by the people and are granted against actions of the state. It means that no act of any state authority can violate any such right of a citizen except according to the procedure established by law. The relevant provision of the constitution reads under: “No person shall be deprived of his life or personal liberty except according to the procedure established by law” and this is known as the Right to Life and Personal Liberty. The present Article emphasis on the prohibit on or the encroachment upon a person’s right to life and personal liberty against the state. The state refers to all entities having statutory authority like the Government and Parliament at the Central and State level, local authorities etc. So, the violation of the right by private entities is not within its purview. The term ‘life’ and ‘personal liberty’ encompasses a wide variety of rights of the people. which is a result of the evolution in the interpretation of Article 21 of Indian Constitution by the courts. The present paper also examines the various aspects of the present Fundamental Right.

**KEYWORDS:** Life, Personal liberty, Law, deprived, Right, Article21

**INTRODUCTION**-Natural Justice is a great humanizing principle intended to invest law with fairness and to secure justice. Right to life and personal liberty is available to every person, citizens and foreigners alike. The fundamental right provided by *Article 21* is one of the most important rights that the Constitution guarantees. *Article 21* is the Heart of the fundamental Right. The Supreme Court of India has described right to life 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 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 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 for life. 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 interpretations has established that the scope of *Article 21* of Indian constitutions not narrow and restricted.

**MEANING** -The term 'person' in *Article 21* shows that this basic right is granted not only to citizens but also to non-citizens. So, a foreigner can claim this right. Thus, the founding fathers bestowed their attention upon the question of personal liberty and the article was drafted to ensure the right to life and personal liberty to all human beings. *Article 21* applies to natural persons and Artificial persons will not come under the *Article 21*. *Article 21* can be claimed only when a person is deprived of his 'Life' or "Personal Liberty". Violation of the right to personal liberty by a private individual is not within the purview of *Article 21*. Our Constitution lays down that "no person shall be deprived of his life or personal liberty except according to procedure established by Law." Two expressions are important in *Article 21*

1. Life
2. Personal Liberty

### **Position of Right to life and personal Liberty in India**

They are guaranteed and can be affected only by 'procedure established by law.' Prior to Maneka Gandhi Decision, *Article 21* guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive and not form legislative action. The state could interfere with the liberty of citizens if it could support its action by a valid law. But after Maneka Gandhi Decision, *Article 21* now protects the right of life and personal liberty of citizens not only from the Executive action but from the Legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied.

1. First there must be a law and
2. There must be a procedure by that law.

The procedure is just, fair and reasonable.<sup>1</sup> Article 21 is available to citizens as well as non-citizens. The Supreme Court has held that the word law in Article 21 does not mean merely an enacted piece of law but must be just, fair and reasonable law that means that which embodies the principles of natural justice<sup>2</sup>.

**Expanding Horizons of Right to Life and Personal Liberty**- Indian judiciary has played a vital role in the expansion of the right to life and personal liberty. There are various facets of Right to life on the basis of judicial pronouncement. Such as:

### **Right To Live with Human Dignity**

In *Sunil Batra v. Delhi Administration*<sup>3</sup>- The Supreme Court reiterated with the approval the above observations and held that the right to life included the right to lead a healthy life so as to enjoy all faculties of the human body in their prime conditions. It would even include the right to protection of a person's tradition, culture, heritage and all that gives meaning to a mans life. It includes the right to live in peace, to sleep in peace and the right to repose and health.

**Right to Shelter- In Chameli Singh v. State of U.P.**<sup>4</sup>- Where in A Bench of three Judges of Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambits and the right to shelter to make the right to life more meaningful.

**Right to Medical Care- In Parmananda Katara v. Union of India**- The Supreme Court has very specifically clarified that preservation of life is of paramount importance. The Apex Court stated that once life is lost, status quo ante cannot be restored. It was held that it is the professional obligation of all doctors to extent medical aid to the injured immediately to preserve life without legal formalities to be complied with the police. Article 21 casts the obligation on the state to preserve life. It is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. No law or state action can intervene to delay and discharge this paramount obligation of the members of the medical profession.

**Right to Education**-The right to education Flows directly from the right to Life, and the right to education being concomitant to the fundamental rights, the state is under a Constitutional mandate to provide educational institutions at all levels for the benefits of the citizens. In *Mohini Jain v. State of Karnataka*<sup>5</sup>, The Supreme Court of India case occurred when the Government of Karnatak issued a notification that permitted the private medical colleges in the State of Karnatak to charge the exorbitant tuition fees from the students admitted other than the Government seat quota . The Supreme Court of India observed that mention of life and personal liberty in Article- 21 of the Constitution of India automatically implies some other rights those are necessary for the full development of the personality by which they are not

<sup>1</sup>. Maneka Gandhi v. Union of India, AIR 1978 SC. 597

<sup>2</sup>. AIR 1978 SC 594

<sup>3</sup>. AIR 1978 SC 1675

<sup>4</sup>. (1996)2SCC 549

<sup>5</sup>. (1992)3 SCC 666.

enumerated in Part III of the Constitution. In our country India Education is one such factor responsible for overall development of an individual and right to education is integrated in Article 21 of the Constitution of India.

**In *Uni Krishnan v. State of A. P.***<sup>6</sup>The supreme court was asked to examine the correctness of the decision given by the court in Mohini Jain case. The petitioners running Medical and Engineering Colleges in the state of Andhra Pradesh, Karnataka, Maharashtra, and Tamil Nadu contended that if Mohini Jain decision is correct and followed by the respective State Government, they will have to close their colleges. The five-judge bench by 3-2 majority partly agreed with the Mohini Jain decision and held that right to education is a fundamental right under Article 21 of the Constitution as it directly flows from right to life.

**Right to Free Legal Aid & Right to Appeal-**In *M. H. Hoskot v. State of Maharashtra*<sup>7</sup> the Supreme Court said while holding free legal aid is as an integral part of fair procedure of the Court explained that the two important ingredients of the right of appeal is service of a copy of a judgement to the prisoner in time to enable him to file an appeal and other provision of free legal service to the prisoners who is indigent or otherwise not able from securing legal assistance. The right to free legal aid is the duty of the government of the related state and is an implicit aspect of Article 21 of the Constitution in ensuring fairness and reasonableness this cannot be termed as government charity.

In other words an accused person at least where the charge is of an offense punishable with imprisonment is entitled to be offered legal aid and if he is poor and not to afford counsel for his/her case. Counsel for the accused must be given sufficient time and facility for preparing his defense for his case. Breach of all these mandates of a fair trial would invalidate the trial and conviction of an offence.

### **Right to Speedy Trial**

**In *Hussainara Khatoon v. Home Secretary, State of Bihar*,**<sup>8</sup> it was brought to the notice of the Supreme Court that an alarming situation in the jail where a large number of men, women, and children were kept in prisons for many years awaiting trial in courts of law. The Court take a serious and frequent note of the situation and observed that it was carrying a shame on the judicial system that permitted the incarceration of men and women for such long time without trials in the prison. The Court held that detention of under-trial prisoners in jail for a period longer than what they would have been sentenced if convicted was illegal as being in violation of Article of 21 of the constitution. The Court thus ordered that the release from jail of all those who was under-trial prisoners who had been in jail for a longer period than what they could have been sentenced had they been convicted.

<sup>6</sup>. (1993) 1 SCC 645.

<sup>7</sup>. AIR 1978 SC 1548.

<sup>8</sup>. AIR 1979 SC 1360; followed in *Kadra Pahadiya v. State of Bihar*, AIR 1982 SC 1167.

**DELAY IN SPEEDY JUSTICE VIOLATES ARTICLE -21**

**In *Moses Wilson v. Karturba***<sup>9</sup>The supreme court expressed concern in delay in disposal of cases and directed the concerned authorities to do needful in the matter urgently before the situation goes totally out of control. In present case a suit was filed in 1947 for a sum of Rs. 7000/- and continued for 60 years and had not been disposed of until now. Thus, the court expressed deep concern at the delay in disposing of cases in our courts. Because of delay in disposal of cases people in this country are fast losing faith in the judiciary. This situation should be set right as soon as possible the court directed a concerned authorities to do needful in the matter.

**Right to Reputation**

Reputation is an important part of ones life. It is one of the finer graces of human civilization that makes life worth living. The Supreme Court referring to D.F. Marion v. Minnie Davis in *Smt. Kiran Bedi v. Committee of Inquiry*<sup>10</sup> held that good reputation was an element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life, liberty, and property. The court affirmed that the right to enjoyment of life, liberty, and property. The court affirmed that the right to enjoyment of private reputation was of ancient origin and was necessary to human society.

**Right Against Sexual Harassment at Workplace**

Article 21 of the constitution guarantees the right to life right to life with dignity. The court in this context has observed that the meaning and content of fundamental right guaranteed in the constitution of India are of sufficient amplitude to encompass all facts of gender equality including prevention of sexual harassment or abuse. Sexual Harassment of women at working place has been held by the Supreme Court. It is violative of the most cherished and heart of the fundamental rights the Right to Life which is contained in Article- 21of the Indian constitution.

In *Vishakha v. State of Rajasthan*<sup>11</sup> the Supreme Court has declared sexual harassment of a working woman at her work as amounting to the violation of rights of gender equality and rights to life and personal liberty which is a clear violation of the Articles 14, 15 and 21 of the Indian Constitution. In the landmark judgment the Supreme Court to provide for effective enforcement of basic human rights which is really need of the present time. Gender equality and guarantee against sexual harassment laid down the following guidelines-

1. All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:
2. Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

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<sup>9</sup>. AIR 2008 SC 379.

<sup>10</sup>. AIR 1989 714, SCR (1) 20

<sup>11</sup>. AIR 1997 SC 3011

3. The Rules and Regulations of Government sector and Public Sector bodies relating to conduct and discipline should include rules and regulations prohibiting sexual harassment and provide for appropriate penalties against the offender.

4. As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act 1946.

5. Appropriate work conditions should be provided in respect of work, leisure, health, and hygiene. And to further ensure that there is no hostile environment towards women at workplaces.

### **Right to live with human dignity and free from exploitation**

**In *Bandhua Mukti Morcha v. Union of India***<sup>12</sup> the Supreme Court held that Article 21 of the Indian constitution assured that the right to live with human dignity and free from exploitation. The State is under a constitutional obligation to see that there is no violation of fundamental rights of his people specially when he belongs to a weaker or poor section of the society. The Government is bound to assured observance of social welfare.

**Various facets of Right to Personal liberty**-Liberty of the person is one of the oldest concepts to be protected by national and International courts. Since from the year 1215 B. C, the English Magna Carta provided that No man shall be taken or imprisoned who never spoiled any law. The Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint. It observed that liberty encompasses those rights and privileges that have been long time recognized as being essential to the orderly pursuit of happiness by free men.

**In *Kharak Singh v. State of Uttar Pradesh***<sup>13</sup> -It was held that the expression life was not limited to bodily restraint or confinement to person only but something more than mere animal existence. Approval of Field, J observation in *Munn v. Illinois* the Court quoted and held that the term life as here used something more is meant than animal existence. It means right to life with human dignity. It further extended scope of personal liberty<sup>14</sup>

### **RIGHT TO LIFE VIS-A-VIS 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 which is frequently a hot topic in the news and many newspaper of the country. Many countries has given consent to the euthanasia like the Netherlands, Belgium, Colombia etc. Euthanasia is a type of the practice of intentionally ending their life. Which is mainly in order to relieve suffering from pain which is not bearable by the victim of the offence/ disease. We also called it mercy killing in simple legal or medical language.

There are various types of euthanasia Such as: **Passive Euthanasia:** Passive euthanasia is sometimes described as withholding or limiting life sustaining treatments so that a person passes more quickly. A doctor may also prescribe increasingly high doses of pain -killing medication. Overtime the dose may be toxic. This is where

<sup>12</sup>. AIR 1984 SC 802

<sup>13</sup>. AIR 1963 SC 1295

<sup>14</sup>. Admin Lawnn "Constitutional Law: Article 21 of Indian Constitution (Right to life in Indian Constitution) (UPDATED)"<http://lawnn.com/article-21-Indian-constitution-right-life-Indian-constitution>

treatment for the terminally-ill person is withdrawn, i.e., conditions necessary for the continuance of life are withdrawn. **Active Euthanasia:** where a doctor intentionally intervenes to end someone's life with the use of lethal substances. This is known as active euthanasia. 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:-** Voluntary euthanasia is carried out with the patient's consent. If someone makes a conscious decision to seek help with ending their life it is considered voluntary euthanasia. The person must give their full consent and demonstrate that they fully understand what will happen. **Non-voluntary euthanasia:-** Non-voluntary euthanasia patients are unable to give consent due to coma or severely brain-damaged and another. Another Person takes this decision on behalf of the patient. Euthanasia is done against the will of the patient and this is considered murder. This includes cases a. The person is in a coma b. The person is too young c. The person is senile and d. The person is mentally retarded to a last stage of severe.

**Present position of Euthanasia in India -In Aruna Shanbaug v. Union of India<sup>15</sup>**-Where On 27 November 1973 the then 25 year old Aruna shanbaug a lady was sexually assaulted by a sweeper on contract at the King Edward Memorial Hospital Mumbai. she was strangled and sodomized by her staff member Sohanlal valmiki a sweeper in that hospital. During the attack she was strangled with a chain and due to the lack of oxygen which carry in the brain has left her in a vegetative state ever since that day. She has been treated at King Edward Memorial Hospital since the incident and was kept alive by feeding tubes in the hospital. On the behalf of Aruna her near friend Pinki Virani a who was a social activist filed a petition on the behalf of Aruna in the Supreme Court of India arguing that the continued existence of Aruna was a violation of her right to live with dignity. The Supreme Court made its decision on 7 March 2011 After 36 years of immobility a fresh hope of death in 2009. The court rejected the plea to discontinue Aruna life support but issued a set of broad guidelines for legalising passive euthanasia in India. The Supreme Court in its decision to reject the discontinuation of Aruna life support was based on the fact that the hospital staff who treats and take care of her did not support euthanizing her. She died from pneumonia on 18 May 2015 after being a long time battle in coma after period of 42 years. **In P. Rathinam v. Union of India<sup>16</sup>** a two-judge Division Bench of the Supreme Court of India took cognizance of the relationship and contradiction between Section- 309 of IPC and Article- 21 of the constitution. The Court supported the decision of the High Court of Bombay in **Maruti Sripati Dubal v. State of Maharashtra Case<sup>17</sup>** held that the right to life embodies in Article- 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 Article- 21 means right to live with human dignity and the same does not merely connote continued drudgery. So the court concluded that the right to live which provide by Article- 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.

<sup>15</sup>. (2011)4 SCC 454

<sup>16</sup>. AIR 1994 SC 1844

<sup>17</sup>. 1987(1)Bom CR 499, 1986 (88) BOMLR 589

**Right to life is a natural right embodied in Article 21-**In *Gian Kaur v. State of Punjab*<sup>18</sup>. Where the question before the court was that if the principal offense of attempting to commit suicide is void as being unconstitutional Article-21 then how abetment can thereof be punishable under Section- 306 IPC. It was argued that the right to die having been included in Article-21 Rathinam ruling and Section- 309 having been declared unconstitutional any person abetting the commission of suicide by another person is merely assisting in the enforcement of his fundamental right under Article- 21 of the constitution. Passive euthanasia has been made legal in India.

**In *Common Cause v. Union of India*,**<sup>19</sup> 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.

**The Concept of 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 depravity of any health condition. When the executor of the living will becomes terminally ill with no hope of a recovery in that situation the doctor will set up a hospital medical board for the decision after informing the patient and his/her guardians. Since 1951 the scope of Right to Life & Personal Liberty was expanded by Supreme Court of India keeping in mind the changing dimensions of the society. Law is never static it is always changing with the needs of the society and time.

**CONCLUSION-** In view of the position explained above it is concluded that right to life and personal liberty is a very wide dimension right. This right has expanded in the form of right to speedy trial, rights against harassment at working place, right to free legal aid and right to appeal, right to education and right to reputation etc are given by the Article 21 of the Indian Constitution. Life and Personal Liberty in the present Article prohibits the encroachment upon a person's right to life and personal liberty against the state. There are large debates on whether the right to life also extends to the right to die specially to die with dignity. The issue of Euthanasia is a burning topic which is frequently in the news and many newspaper of the country. Many countries has given consent to the euthanasia. Euthanasia is a type of the practice of intentionally ending their life, which is mainly in order to relieve suffering from pain which is not bearable by the victim of the offence/ disease. We also called it mercy killing in simple legal or medical language. In the end, it can be concluded that Right to life does not include the right to die.

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<sup>18</sup>. AIR 1996 SC 946

<sup>19</sup>. AIR 1979 SC 1360; followed in *Kadra Pahadiya v. State of Bihar*,



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