

## **CONTEMPORARY DEVELOPMENTS: CHANGING DYNAMICS IN CONSTITUTIONAL INTERPRETATION WHETHER RIGHT TO LIFE UNDER ARTICLE 21 MUST INCLUDE RIGHT TO DIE?**

- LAVANYA G.T<sup>1</sup> & SAMKEET SURANA<sup>2</sup>

### **ABSTRACT:**

The paper seeks to analyze and interpret constitutional aspect into a jurisprudential manner. Article 21 of Indian Constitution grants Right to life only. According to Article 21 “No person shall be deprived of his life or liberty except according to procedure established by law”. Right to life under Article 21 does not include Right to die. The paper deals with analyzing the concepts pertaining to Right to Life enshrined under Article 21 and whether it should include Right to die. This paper will consider both from an ethical as well as a legal point of view, how right to life might imply or not a right to die. Right to life is a natural right and right to die is not a natural right and no one has a right to finish their life in a unnatural way. In India, Right to die is seen as voluntary euthanasia or attempted suicide. This right is posing an issue of controversy since 1994, starting from the case of P. Rathinam v. Union of India. This paper gives inferences where it leads to the fact that any termination of life is illegal whether it be euthanasia, assisted suicide or assisted dying. Therefore, this paper brings about a resolution of the conflicts between whether right to life includes right to die or not. This paper has been analyzed in a very short and comprised way wherein, it deals with the philosophy of Salmond, Hohfeld.

**KEYWORDS:** Right to life, Right to Die, Euthanasia

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### **Introduction**

A right has always a corresponding duty. Right like duty is one of the important concepts of law. Right in its wider sense it is identified with the power, privilege and immunity. Every right has two elements i.e., the material element and the formal element. Every right rests on a relative

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<sup>1</sup> Student, 3<sup>rd</sup> Year, Christ (Deemed to be University), Bengaluru

<sup>2</sup> Student, 3<sup>rd</sup> Year, Christ (Deemed to be University), Bengaluru

duty that is to say on a duty lying on a party or parties other than the party in whom the right resides. According to Salmond there can be no right without a corresponding duty, or duty without a corresponding right. According to this view, every duty must be a duty towards some person or persons, in whom, therefore, a correlative right is vested.

Rights are very essential for the full development and expression of one's personality and rights are those external conditions which is necessary for the greatest possible development of the capabilities of an individual. One among such right which is enshrined in Constitution of India is Article 21.

Article 21 of the Indian Constitution reads as follows: No person shall be deprived of his life or personal liberty except according to procedure established by law.

According to Article 21 right to life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. The object of the fundamental right under Article 21 is to prevent any restriction by the State to a person upon his personal liberty and deprivation of life except according to procedure established by law.

The sole question pertains to whether right to life under Article 21 includes right to die or not. In India, the practices regarding death which seem to contradict the law are often discussed openly. The sequence of this particular question had first arisen in the case of State v. Sanjay Kumar<sup>3</sup> where the issue regarding right to die had been examined by the Delhi High Court which further criticized Section 309 and considered it to be 'an anachronism and a paradox'. This decision was followed by two conflicting decisions of the Bombay High Court and the Andhra Pradesh High Court in the cases of Maruti Sripati Dubal v. State of Maharashtra<sup>4</sup> and Chenna Jagadeeswar v. State of Andhra Pradesh<sup>5</sup> respectively.

In the first case, Section 309 was considered violative of Article 21 and in the second case it was held constitutionally valid. In the case of P. Rathinam v. U.O.I.<sup>6</sup> again Section 309 was considered unconstitutional and it was concluded that the penal laws need to be more humane.

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<sup>3</sup>State v. Sanjay Kumar, 1985 Cri. LJ 931 Del.

<sup>4</sup>Maruti Sripati Dubal v. State of Maharashtra (1987) Cr. LJ 743.

<sup>5</sup>Chenna Jagadeeswar v. State of Andhra Pradesh (1983) Cr. LJ 549.

<sup>6</sup>P. Rathinam v. Union of India, AIR 1994 SC 1844.

But soon this decision was overruled in *Smt. Gian Kaur v. State of Punjab*<sup>7</sup> and it was held that Article 21 does not include a right to die. It was further held that right to life is a natural right but suicide being unnatural termination of life is incompatible with it. However, the court appears to have permitted passive euthanasia. The latest decision passed by the Apex Court is – ‘Active euthanasia is illegal. Passive euthanasia is permissible, but it should be done under the supervision of the High Court.’ This decision was passed in the famous *ArunaShaunbag* case and the Supreme Court rejected the plea or petition to allow her mercy killing.

Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be read to be included in the protection of life. At the point when a man submits suicide, he needs to attempt certain positive plain acts and the beginning of those demonstrations can't be followed to or be incorporated inside the security of the privilege to life under Article 21. The critical part of sanctity of life is additionally not being disregarded.

Whatever might be the logic of allowing an individual to smother his life by submitting suicide, the court repeated that it is hard to interpret Article 21 to incorporate or include within it the right to die as a part of fundamental right guaranteed therein. Right to life is a natural right embodied in Part III of constitution, but suicide is an unnatural termination or extinction of life and therefore, incompatible and inconsistent with the concept of right to life and also if it includes right to die then it creates corresponding duty towards some person or persons to enforce the right of the other. If this becomes certain, laws are contradicting it.

One among them is such that of the provisions of Indian Penal Code. If it is said that right to life includes right to die then it may lead to the encroachment upon the provisions relating to murder because if a person is given a right to die then it consequently creates a corresponding duty on the other person to enforce it. The aspect of Right to die totally dismantles the concepts of right to life, as right to life includes the aspect of protection to life and not death. Every human being is desirous to live and enjoy the fruits of life till he dies, but the act of ending his life in an unnatural manner is a sign of abnormality.

In as much as the Supreme Court in *Gian Kaur* specifically stated that Euthanasia and Assisted Suicide are not lawful, it is obvious that so far as Euthanasia and Assisted Suicide are concerned,

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<sup>7</sup>*Gian Kaur v. State of Punjab*, AIR 1996 SC 1257.

they will fall within one or other of penal provisions and continue to be unlawful thus the court did not propose going to Euthanasia and Assisted Suicide. Taking the aspect of Gian Kaur case and applying it to the reality; it is as such understood that assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest and the concern of society. In certain different purviews, despite the fact that assisted attempt to commit suicide is definitely not a reformatory offense, yet the abettor is made culpable; thus, even where the punishment for attempt to commit suicide is not considered desirable, its abetment is made a penal offence.

The inclusion of Right to die under Article 21 contradicts the provision of Indian Penal Code under Sec. 309. As according to Sec. 309 of the IPC “Whoever attempts to commit suicide and does any act toward 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]”. This Section is based on the principle that lives of men are not only valuable to them but also to the state which protects them. By considering both the laws the provision of IPC under Section 309 is contradictory to the fundamental right guaranteed under Article 21 of the Indian Constitution.

Therefore, ‘Right to life’ under Article 21 should not include “right to die” because this provision might increase the rates of suicides in the country and moreover the “Right to life’ is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore incompatible and inconsistent with the concept of “right to life”. Instead of criminalizing people who attempt to commit suicide under Section 309 IPC, they should be provided with Societal and State Support and be offered counselling and other help depending upon their cause of attempt to commit suicide. In Gian Kaur’s case there was a distinction laid between the ‘right to die’ and the ‘right to die with dignity’. The former implies that the death is unnatural whereas the latter implies the right to live with dignity until the natural span of one’s life. Thus ‘right to life’ under Article 21 of Constitution of India does not include ‘right to die’. Sections 306 and 309 of the IPC are in tune with the constitution. If right to life includes right to die it is considered to be a highly immoral act and almost amounts to murder. Therefore, right to life should not include to right to die.