

Unraveling the legal conundrum of Right to Die

Rishika Srivastava

1. Research Methodology

Right to life vis-à-vis right is a relevant topic in today's society keeping in mind the debates that are going around the world and in our country itself regarding the right to die, euthanasia and suicide. The author has used the doctrinal and the empirical methodology to ponder over the different dimensions of Article 21 of the Constitution regarding its implication as to whether this Article also includes right not to live? The author has also used various secondary sources such as books, research papers, and e - journals amongst various internet sources. The author tried to answer the question whether right to die should be included in the interpretation of Article 21 by using relevant arguments and various jurisprudential theories. This paper is an analytical one and the author has used the method of citation prescribed by the bluebook 19th ed.

1. Introduction

The Constitution of India guarantees certain fundamental rights which includes Right to Life to each and every person, and lays down that:

No person shall be deprived of his life and personal liberty except according to the procedure established by law. (The Constitution of India, 1950)

There have been various and different interpretations of the Article 21 laid down by the Hon'ble Supreme Court in the different cases where there were questions of constitutionality. With the ever changing and diversifying environment the scope for wider interpretation of Article 21 is much needed. Article 21 is one of the most essential fundamental rights as it deals with the life and various aspects of it of the person. There has been a lot of development in regards to the interpretation of the Art. 21 after the historic Maneka Gandhi case (Maneka Gandhi v. Union of India, 1978). One of such interpretation of the Art.21after this case was:

"The expression personal liberty in the Art.21 is of the widest amplitude and it covers a variety of rights which go to constitute a personal liberty of a man and some of them have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19." (The Constitution of India, 1950)

After all these interpretations, one of the very essential questions was left to answer regarding the right to life which was *"Does Right to life include Right not to Life."* Which would mean whether a person who is guaranteed right to life, does he also have right to die.

If right to die is included in the interpretation of Article 21 then Section 309 of the Indian Penal Code which lays down the punishment for attempt to suicide, Section 309 would be considered contradictory to the same.

Section 309 talks about criminalising Attempt to commit suicide which reads as follows.—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 1[or with fine, or with both]. (Indian Penal Code, 1860)

When we read such provisions with article 21 of the constitution the ambiguity is clearly visible. It is basically a debate about importance of preservice of life versus the morality, the right thing to do. When a person is in extreme pain due to some incurable disease or is merely disheartened by the world which has been cruel to him and when he just wants to die, that's when this debate comes. Importance of preservice of life v. letting a person be free from his pain.

2. Jurisprudential Study

The debate regarding including right to die under right to life has been going on since time immemorial. This touches the most important part of every person's life. It touches their morality, their spiritually and their conscience.

According to Plato, Socrates believed that if any individual is suffering from pain and agony from diseases and extreme sufferings will be considered reasons enough to end their life and not to cling to their painful life. Even in those times there were conflicting views. On one hand Socrates believed in suicide on the other hand Aristotle didn't approve of the same. He was of the view that committing suicide is an offence against the state.

To the Stoic philosophers, suicide was a reasonable thing to do when a person's body doesn't support them and causes immense pain to everyone around. It was considered to be an expression of freedom which every individual deserves.

In 19th century, Immanuel Kant, a German philosopher and the person who re-wrote the modern and critical philosophy said that there are certain moral tenets are postulate, they are rationally necessary, unconditional and absolute and they must not depend on any ulterior motive or approval, they form a part of universal law (Britannica) .In today's era human right are considered to the unalienable right of any human being. Immanuel Kant was also of the view that "so act as to treat humanity, whether in your own person or in another, always as an end and not as means". He talks about treating every individual with humanity. Humanity would include not causing pain to someone who is already in pain. When a person commits suicide it is obvious that the individual is going through some sort of pain, be it mental or physical. Dragging the person who is already in pain through the long and tiresome process of a trial and then sending him to jail and treating him just like other criminals is no where justified. This is not treating the individual with humanity about. To treat this person with humanity would mean helping him through the tough part of life which forced him to commit suicide not putting him behind the bars. A person's right to choose should not be taken away. It is an essential right which marks individuality of any person, taking what makes a person, who he is, is not justified. It doesn't mean letting a person die just like that, it would mean helping him with counseling, understanding the situation not just putting them behind the bars.

A fundamental right has both the aspects negative as well as positive. If we take an example, freedom of speech and expression implies freedom not to speak as well and going with this analogy it is only logical that right to life implies right not to live i.e. right to die. Article 21 talks about right to life with dignity and personal liberty. When a person is not able to live his life with dignity because of various reasons he should be able to exercise his personal liberty to take his own to end his life.

3. Analysis of Indian Legal Provisions

In the 210th report of the law commission it was recommended that attempt to suicide which is still seen as

a crime should be deleted from the IPC as it is simply inhuman.

Mental Healthcare Bill is a bill that wants to decriminalize section 309 of IPC and provide good healthcare to the people who are suffering from mental illness and to treat people who attempt to commit suicide as persons who have some mental problem and to treat them as same rather than treating them as criminals. This bill was passed by Rajya Sabha in 2016 (admin). For the time being any person who attempts suicide is still prosecuted under section 309 of IPC.

Constitutionality of this particular section has been time and again questioned in the Supreme Court of India and there has been various interpretation of Art. 21 with regards to the 'right to die' and the validity of section 309.

In case of *State of Maharashtra v. Mauti Sripati Dubal(1987)* (Maruti Shripati Dubal v. State of Maharashtra, , 1987) it was held that right to life guaranteed under article 21 of the Constitution of India also includes right not to live i.e. right to die, and consequently section 309 if Indian Penal code was declared unconstitutional and court recommended to struck down the particular section.

In *P. Rathinam v. Union Of India* (P. Rathinam v. Union of India, 1994) supreme court was in line with the judgment of Maruti Sripati Dubal's case and held that right to life within itself includes right to die and also stated that section 309 of IPC that is attempt to suicide should not be considered a penal offence as it assists you in fulfilling of one's fundamental right that is right to die under article 21. In this case a differentiation was made between Euthanasia and Suicide and Justice Hansaria was of the view that everyone should die with dignity and both euthanasia and suicide should be decriminalized. In *Gian Kaur v. State Of Punjab* (Gian Kaur v. State of Punjab, 1996) overruled the ruling of P. Rathinam's case and held that article 21 which guarantees right to life does not include right to die because if right to die is given then it will ruin the whole purpose for giving right to life as a fundamental right and it was held that section 309 and section 305 (assist in suicide) are constitutionally valid and should be penalized.

In *Aruna Shaunbaug v. Union of India* (Aruna Shaunbaug v. Union of India, 2011), new dimension was given to Art. 21 when the court allowed passive euthanasia in certain conditions which were laid down by the court until the legislature passes any law for passive euthanasia.

The current provisions still follow the interpretation of right to life given in Gian Kaur case and 309 is still a penal offence. There is a new wind blowing which is leaning towards decriminalizing the same. There is a dire need to decriminalize section 309 of IPC as it doesn't consider the situations which force a person to commit suicide. Some of the causes which lead people to commit suicide might be mental diseases and imbalances, unbearable physical ailments, affliction by socially-dreaded diseases, decrepit physical condition disabling the person from taking normal care of his body and performing the normal chores, the loss of all senses or of desire for the pleasures of any of the senses, extremely cruel or unbearable conditions of life making it painful to live, a sense of shame or disgrace or a need to defend one's honor or a sheer loss of interest in life or disenchantment with it, or a sense of fulfillment of the purpose for which one was born with nothing more left to do or to be achieved and a genuine urge to quit the world at the proper moment to name a few. Treating a person who commits suicide as a criminal is just cruel and inhuman. Dragging a person who is already in pain, through the rigorous procedure established by law and treating his just as other criminals is simply wrong. One should be helping the people who commit suicide, solving their problems, making sure that his mental health is taken care of rather than giving him are pain. Every person deserves to die with dignity and if due to 'n' no. of reasons he is not able to attain that, he should have a right to die when and how he wants to die. In case a person is in a vegetative state, he is not able to do

anything and he is just waiting to die, he cannot even do the basic things, he should have a right to end his life with dignity rather than slowly dying and hoping for death.

4. Comparative Studies

In India attempt to suicide is still punishable under section 309 of Indian Penal Code but Rajya Sabha has passed the Mental Health Care bill which will decriminalize the above mentioned section. After the landmark case of Aruna Shaunbaug Passive Euthanasia is allowed after Supreme Court laid down proper guidelines regarding the same. Aiding or abetting suicide is still a penal offence.

In countries such as Australia, Canada, Ireland, South Africa, Norway suicide is not considered to be a crime rather the survivors who attempted suicide are treated with care and are provided with proper health and mental care. In all these countries Aid or Abetment is considered to be an offence and various punishments are given depending from country to country.

In countries such as Japan, China and North Korea both Suicide and assisted suicide is considered to be an offence and a punishment is prescribed for the same. In Ireland and South Africa even though suicide is legal, assisted suicide and euthanasia is still considered to be an offence.

In Canada, United Kingdom and United States of America both suicide and assisted suicide is not considered to be an offence and they have a very gentle approach towards such provisions.

5. Conclusion and Suggestions

Human rights, morality, natural justice and article 21 itself talk about life with dignity and giving people liberty to decide in the matter of their own life, whether to continue living the same painful and dignity less life or to end it either by committing suicide or talking passive euthanasia to end the suffering caused by a physical ailment. There is a dire need to humanize our laws which criminalize attempt to suicide and send the person to imprisonment rather than helping him. We need laws that are in favor of the common people, which put a great emphasis on humanity and natural justice.

The author suggests that

- Section 309 of IPC should be decriminalized.
- People who attempt to commit suicide should be treated with care, not as criminals.
- Proper psychiatric evaluation should be done and treatment should be given accordingly.
- State should help in any way they can to ease the pain of the person who commit suicide.

Student, Institute of Law

Nirma University, Ahmedabad, Gujarat, India

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