



REVIEW ARTICLE

AN ANALYSIS OF LEGAL JUSTIFICATION OF THE RIGHT TO DIE IN INDIA

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ABSTRACT

This paper is about whether right to life and personal liberty includes right to commit suicide or not. Suicide which is considered to be a heinous crime not only against humanity in general but also against family and individual himself in particular. This paper is with heavy steps based on Indian Constitutional Law, Indian Penal Code and the case laws decided by the various High courts and the Supreme Court. Some aid is also taken from the Hindu law, Muslim law and Christian law texts. The right to life and personal liberty is the very foundation of the human rights and it has a very complicated history. Article 21 of the Indian Constitution is a plenty of rights and right to life is implicit under article 21. Article 21 has various components of human rights.

INTRODUCTION

Right to life owes its genesis from magna carta. Jurists like Locke and Rousseau convinced that the life and personal liberty of a person is vital, basic, natural and state is duty bound to ensure these fundamental rights. Every country to be conscious of these basic rights whether written or not. The preambular objective also exhibits right to life and personal liberty as the most significant rights. Article 21 of the Indian Constitution states that no person shall be deprived of his right to life and personal liberty except according to procedure established by law. The word 'due' has two aspects, that is, substantive due process which foretell that provisions of law should be reasonable and not arbitrary, other one is procedural due process envisages a reasonable procedure. In the outset the court adopted a restricted interpretation but with the passage of time, the skyline of article 21 is getting expanding day by day. Suicide has been a condemnable act, in ancient Greeks, an attempt to suicide was penalized with maiming the person. Christianity also believes that one cannot own his individual life and therefore one cannot choose to end it himself. In Islam religion, suicide is considered as one amongst major sins. The Hindu Law place an embargo suicide by describing that manav yoni is best among all other organisms.

METHODOLOGY

To accomplish the present work analysis method has been used with the aid of relevant judicial pronouncements and literature available in the form of reports, journals, commentaries.

BACKGROUND OF RIGHT TO LIFE RIGHT TO DIE BRITISH POSITION

It has its birth in the civil liberties in Great Britain. Antecedent to commencement of the Indian Constitution, British jurisprudence was managed by the Indian courts as it is clearly depicted from article 21 enacted once aspect of this principle namely that the executive cannot denial a person of his liberty without the authority of law and stipulate a proper procedure. The famous jurists Blackstone expressed "personal liberty consists in the power of locomotion, of changing situation or moving by one person to what so ever place one's own inclination may direct, without imprisonment or restraint unless by due course of law". However, immunity of civil liberties in Britain in only available averse to executive action and no such protection against legislative action. The court can be nosy on the ground of absence, excess of abuse of authority and disobedience of principles of natural justice.

US POSITION: The Constitution of United States of America lays down, "No person shall be deprived of his life, liberty or property without due process of law". The judiciary of USA have ample of powers to declare such law to be void if it is in disagreement with due process clause. Justice Field in *Munn v. Illinois* pointed out that 'life' is much more than mere animal existence.

INDIAN SCENARIO: In India, a few good grounds made the incorporation of fundamental rights including article 21, in the Constitution rather inevitable. The first reason was that the congress had been under protest demanding these rights averse

to British rule. Secondly, the Indian society was shattered onto many religious, cultural and linguistic groups, so it was indispensable to declare fundamental rights give to people a sense of safe future and confidence. The incorporation of article 21 was found vital because the framers represented a tacit of higher standard of behaviour in a human society.

SCOPE OF PROTECTION IN INDIA: THE JUDICIAL TREND:

The right to life and personal liberty is not settled but a qualified right. It comes into view to be a restraint on the State and it has to forbear from doing any act in contravention of one's own right to life and personal liberty. The question whether Article 21 confers a negative right or positive right. In Gopalan's case, the court held that the article 21 endows with a simply a negative right and operates as restraint on executive action. It is humbly submitted that this approach was not congruous in Indian Constitution conditions which require positive action on the part of State to ensure rights. The view point of Gopalan's case was not accepted in later holdings. In ADM Jabalpur, Bhagwati eventually laid down that article 21 guarantees 'positive rights' and personal liberty. It is true that article 21 is uttered in negative language but it is an axiomatic that to confer a right it is not necessary to use any particular form of language.

The quarrelling question whether Article 21 guarantees a substantive right only or procedural right. It was held in Gopalan's case that article 21 impacts both substantive as well procedural rights. I humbly proffered that this view is correctly decided because, if a contrary view is taken, a non-citizen would have no protection for his life and liberty and thus makes favouritism between a citizen and non-citizen. 'Person' in this article will mean only a natural person. In DB Pathak v. State of Andhra Pradesh, the SC held that convict was qualified to precious rights guaranteed by article 21. There Chandrachud, J. observed, "convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess a convict is entitled to right guaranteed by article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to the procedure established by law. In Habeas Corpus case the court took an boundless view, and remarked "article 21 operates not merely as a restriction on executive but also enacts a check on the legislation".

Whether article 21 gives any protection against acts of private individual. In ADM Jabalpur case, held that the protection of article 21 is accessible against the state action and not against private individual. However, in *Asiad and Bandhua Mukti Morcha* cases the court admitted the writ petitions by way of public interest litigation. The notion of the court behind is that in a rule of law, society strives for a preserve socio economic justice to the people, the ultimate accountability lies on the state to protect the people's rights and liberties even against the encroachment by private action. In *Maneka Gandhi* case, the court shed a light on 'procedure' to mean just, fair and reasonable and held that principles of natural justice are implicit under article 21. It was only Krishna Iyer., who treated law as reasonable and not merely an enacted piece. In India, the constitutional scheme of protection to individual life and liberty attempts to strike a balance between individual good and social control and is based on assumption that in a civilized society there cannot be absolute freedom and that the individual good must give away to the social good.

CONCEPT OF RIGHT TO DIE: In *P. Rathinam v. Union of India*, the two judge bench of the Supreme Court took cognizance of the contradiction between section 309 of Indian Penal Code and Article 21 of Indian Constitution. The court ruled that right to life embodied in article 21 also embodied in it a right to not to live a forced life, to his disservice, disadvantage or disliking. Thus, the court drew a close that the right to life of which article 21 speaks of can be said to bring in its trail the right not to live a forced life and section 309 of Indian Penal Code violates article 21 and is therefore void. The above was a fanatical view and could not last for long. The Rathinam ruling came to be reviewed by a full bench of the Supreme Court in *Gian Kaur v. State of Punjab*. The court ruled that 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 'protection of life'. Right to life is a natural right but suicide is an unnatural termination of life and therefore mutually exclusive with concept of right to life

RIGHT TO DIE: RELIGIOUS APPROACH IN CHRISTIANITY

In holy Bible it is set down that God created man to have unending fellowship with him. They have an idea that their lives are given by God and that everyone has an important role to play in society. In ancient English law, the person who commits suicide so he was disadvantaged of funeral and last rituals. His property was escheated to state and his family members were denied of the means of livelihood. This was a specific posthumous punishment which forced him to rack one's brain twice before committing suicide. This law abolished in 1870.

ISLAMIC APPROACH: Suicide is haram and regarded as one of the amongst the sweeping sins. The person who commits suicide is never allowed in Jannat. Life is narrated by Allah as a favour on human beings. At times Allah in his infinite wisdom, puts a person vigorous grief to see if the servant turns to Allah and seeks guidance of disbelieves in him. The prophet Muhammad assigns suicide to the lower levels of *Dojaki*.

UNDER HINDU MYTHOLOGY: Manav yoni is best among all other organisms. It is written in Shastras also that suicide is banned for being heinous *paap*. All the Dharmashastras condemn as a great sin.

CAUSES OF SUICIDE

PHYSICAL CAUSE

The incurable diseases pushes the largest number of persons to commit suicide in India today. They are not able to perform the functional role and this situation leads to boredom, exasperation and meaninglessness.

SOCIAL CAUSES: There are three social causes of suicide - familial, social status and economic. There are four familial causes leading to suicide, quarrel with in-laws, with spouse, love affairs and deaths of dear one. The other economic factors causing suicide viz., poverty, unemployment, dispute over property and bankruptcy or sudden economic changes. Another social cause is the loss of social reputation. Most analysis have examined self-esteem within a trait conceptualisation of personality.

PSYCHOLOGICAL CAUSES: Mental disease to be a more exact, insanity also accounts for many cases of suicide. Personal disorganisation end with many times in mental disease. The mentally ill person takes the final tragic flight and kills himself. Certain specific mental disorders like melancholia, acute paranoia, senile dementia are apparently related to suicide.

CONSTITUTIONAL AND JURISPRUDENTIAL ASPECT

The jurisprudential aspect of article 21 which has emerged from various judicial pronouncements contains different shades and is multi-dimensional. The scope of article 21 has widened according to the changing needs of society, as it is evolving in nature. Section 305, 306 and 309 of Indian Penal Code deal with the offence of suicide. Section 305 and 306 provides punishment for abetment to suicide while section 309 deals with attempt to commit suicide. The first case wherein the constitutionality of section 309 was considered by Justice PB Sawant of Bombay High Court in *Maruti Dubal v, State of Maharashtra*, held section 309 IPC is violative of article 21. There is no doubt that the normal fancy of a human being is to live and to continue to enjoy the fruits of life till nature intervenes to end it. Suicide or an attempt to commit suicide is not a feature of normal life. It is an occurrence of abnormality or uncommon trait of personality. In case of *State v. Sanjay Kumar Bhatia*, continuance of section 309 is an anachronism unworthy of human society like ours. In the famous case of *P. Rathinam v. Union of India*, the double bench considered the validity of section 309 of IPC in respect of constitutional provisions. In this case court made a distinction between euthanasia and suicide. In 1996 after a couple of years a constitution bench of the Supreme Court comprising CJ. JS Verma, GN Ray, NP Singh, Faizannuddin and GT Navavati JJ., in historic case of *Smt. Gian Kaur v. Punjab* held that section 309 is not violative of article 21. Right to life is a natural right embodied in article 21 but suicide is an unnatural termination of life and therefore incompatible with concept of right to life. With respect and in all humility, there is no likeness in the nature of other rights such as the right to freedom of speech etc to provide a comparable basis to hold that the 'right to life' also includes right to die.

PASSIVE EUTHANASIA LEGALISED

In *Aruna Shanbaug v. Union of India*, the Supreme Court endowed a set of broad guidelines legalising passive euthanasia in India. These guidelines for passive euthanasia i.e., the decision to retire from treatment, nutrition etc establish that then decision to discontinue life support must be taken by parents, spouse, Or the other close relative or in absence of by a next friend and this decision requires approval from concerned High Court. In this case itself, the SC held that passive euthanasia can be allowed under exceptional circumstances under the rigorous monitoring of the court. The difference between active and passive euthanasia is that in active euthanasia something is done to end the patient's life while in passive euthanasia something is not done that would have safeguard the patient's life. In *Common Cause, A Registered Society v. Union of India* while hearing a PIL filed by NGO Common Cause, a three-judge bench of the SC interpose that the judgement in *Aruna Shanbaug* was based on a wrong interpretation. The 5-judge bench of the SC was tasked with deciding whether article 21 of the Constitution encompasses in its ambit the right to die with dignity by means

of executing a living will. Supreme Court of India on 07-03-2018 has held that right to die with dignity is a fundamental right. The bench also held that passive euthanasia is also valid. The bench also held that the right to live with dignity also includes the iron out of process of dying in case of a terminally ill patient with no hope of recovery.

OBSERVATIONS: The right to life and personal liberty is the most outstanding among all the human rights of an individual. It is fundamental, for one cannot think of one's existence without it. The preamble of Constitution guarantees India to a sovereign, social, secular, democratic republic and secures to all its citizens justice-social, economic and political. The constitutional guarantee of life and personal liberty of the individual strikes a mellifluous balance between the guarantees of life and the power of State to regulate the same in the larger social interests. It is not an absolute right but is a qualified right. Article 21 which had been stagnant for nearly three decades was brought to life by the SC in *Maneka Gandhi* case. The SC in expanding the reach and ambit of the right to life and personal liberty has interpreted article 21 as a bundle of many rights. Life is a never-ending struggle between the pain and pleasure, sorrow and happiness, favour and adverse. It should be our temperament to survive with full will power in each condition and this very will power should be protected by law.

SUBMISSIONS

'Right to Life' is a natural right integrate in article 21 but suicide is an unnatural breaking off of life and therefore incompatible with right to life. It is the duty of the state to protect life and the physician's duty to provide care and not to harm patients. If euthanasia is legalised there is a grave alarm that the State may refuse to invest in health. Attempt to suicide is a psychiatrist emergency and it is considered as a desperate call for help, multiple guidelines have been formulated for management of suicidal patients. Hence, attempted suicide is considered as a mark of mental illness. In the era of declining morality and justice, there is a possibility of misusing euthanasia by family members or relatives for succeeding the property of patient. 'Mercy Killing' should not be led to 'killing mercy' in the hands of noble medical professionals. There is a compelling need to protect patients and also medical practitioners caring the terminally ill patients from unnecessary lawsuit. Earlier diseases outcome was discovered in terms of 'CURE' but in the contemporary world of diseases such as cancer, AIDS, hypertension are debated in terms best 'CARE' since cure is distant. The desire is to bring forth care when care is not possible by low-cost methods. Hence, euthanasia for no cure illness does not have a logical argument. If euthanasia is legalised, then commercial health sector will serve death sentence to many disabled and elderly citizens for scanty of money. It has to be kept in mind that right to life exceeds before right to die with dignity.

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